

Banking *e-Alert*

Mind Your POAs: The New Uniform Power of Attorney Act Imposes Time Frames to Take Action.

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As we discussed in our recent client alert, the new West Virginia Uniform Power of Attorney Act (the “Act”), which took effect on **June 8, 2012**¹, specifies that financial institutions and other parties relying on powers of attorney have limited time periods during which they must take action when presented with an acknowledged *statutory* power of attorney. The Act defines a “statutory power of attorney” as a document that is substantially in the form set forth in the Act². If a bank has concerns about accepting an acknowledged statutory power of attorney for a customer, the Act gives the bank the right to ask for reassurances that the power of attorney is valid. The reassurances can be:

- an agent’s certification under penalty of perjury that the power of attorney is valid;
- an English translation if the document is in a foreign language; or
- the opinion of counsel as to the power of attorney.

When presented with a statutory power of attorney, the bank has a duty to either accept the statutory power of attorney document or request reassurances **no later than seven (7) business days** after the power of attorney is presented. If the bank seeks reassurances and the agent provides a certification, translation or opinion, then the bank has to accept the power of attorney **no later than**

five (5) business days after receiving the reassurances. Banks may not require a customer to present a different or additional power of attorney in place of the statutory power of attorney presented. Failure to abide by these time limitations may subject a bank to a court order mandating acceptance of the acknowledged statutory power of attorney. The court can, in its discretion, cause the bank to pay reasonable attorney’s fees and costs incurred for any court proceedings, so Banks need to be mindful of the new time limits for dealing with powers of attorney.

For example, say that Jane Smith presents to Bob Jones, an employee at Bank, an acknowledged statutory power of attorney that names her as agent for her husband, John Smith, on the effective date of the Act, **June 8, 2012**. Bob Jones knows that Bank has only until June 19, or **seven business days** after Jane Smith presented the document, to ask for reassurances. If Bob Jones asks Jane Smith to provide reassurance in the form of an agent’s certification on June 19 and Jane does so, Bob Jones knows that the Bank will only have until June 26, or **five business days** after receiving Jane Smith’s certification, to accept the power of attorney. Bob Jones, who is aware that if the Bank fails to act within those windows of time, it may be liable for court costs and fees, accepts the power of attorney from Jane Smith.

¹ The Act provides that the legislation was effective 90 days after passage and that date is June 8, **not** June 10 as set forth in our prior client alert.

² The Act is generally applicable to all powers of attorney, regardless of whether they meet the definition of a “statutory power of attorney.” The provisions relating to the time periods for taking action apply only to **statutory** powers of attorney.

Since a bank has potential liability for not responding timely when presented with a statutory power of attorney, it is important to train bank employees about the seven and five day time periods imposed by the Act.

Afterword: In our earlier alert, we noted that the new Act provides statutory forms that may be used and that will be deemed to be in compliance with the Act. Copies of the Statutory Power of Attorney and the Agent's Certification,

can be found on the Bowles Rice McDavid Graff & Love, LLP website by clicking on the following hyperlinks:

<http://www.bowlesrice.com/shared/forms/StatutoryFormPoA.PDF>

<http://www.bowlesrice.com/shared/forms/AgentCertiValidityPoAandAgentAuthority.PDF>

Contacts:

Should you require more information regarding the new Uniform Power of Attorney Act please feel free to contact Sandy Murphy, Esq. or Emily Lambright, Esq. of Bowles Rice McDavid Graff & Love, LLP at (304)-347-1100.

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