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## LEGAL BRIEFS

### Uniform Power of Attorney Act

The use and misuse of general powers of attorney have been a focus of the Elder Law Section for many years now. On the one hand, these tools are an easy and affordable tool for our clients with diminishing capacity and declining abilities to provide a mechanism for the management of their assets and the payment of their bills. On the other hand, these tools have been abused by overreaching family members, friends and caretakers to obtain access to the assets of those vulnerable adults.

During the past ten years or so, members of the General Assembly have attempted to introduce reform legislation that either addressed the creation of general powers of attorney or the abuse of these powers. Because none of these attempts were comprehensive in nature, they gained little support from the members of this Section. In fact, some of these attempts created numerous opportunities for unintended consequences. In any case, the result is that nothing significant has been done in Annapolis to make general powers of attorney more effective tools. Hopefully, this status quo is about to change.

On April 21, 2006, Professor Linda Whitten from Valparaiso University School of Law addressed a number of persons interested in improving the use of general powers of attorney in Maryland. Professor Whitten is the Reporter for the Drafting Committee for the Uniform Power of Attorney Act, a committee of the National Conference of Commissioners on Uniform State Laws. In attendance at this meeting were Senator Dolores G. Kelley, representatives from the Maryland Bankers Association, and several representatives from the Estates & Trusts and Elder Law Sections of the Maryland State Bar Association. The purpose of the meeting was to provide a forum for

Professor Whitten to give an overview of the Uniform Power of Attorney Act (the “Act”) and to answer any questions about that Act. Ultimately, however, the goal of the meeting was to establish a base from which future actions could be initiated to introduce legislation that embraces the provisions of the Act.

The Act addresses a number of the concerns that have been discussed in Maryland in the past. For example, each power of attorney will be presumed to be durable in nature and legally effective upon execution. Also, if a guardianship is established, only the court may revoke a power of attorney, not the guardian. Furthermore, a power of attorney given to a spouse will be terminated upon the filing for divorce or annulment. And, an agent under a power of attorney may be compensated on a reasonable basis.

Among the most controversial parts of the Act is the provision that creates liability for persons who unreasonably refuse to accept the authority of agents of powers of attorney. In Maryland, there is no statutory or common law basis for requiring any third party, such as a bank or an insurance company, to accept a power of attorney, even if that the third party bases such a decision on reasons that would otherwise seem arbitrary. In those cases, an agent may have no other choice than to resort to the establishment of a guardianship to achieve the goals of a vulnerable principal.

Under the Act, if a person unreasonably refuses to accept the power of attorney, that person may be held liable for attorney’s fees and costs associated with any court proceeding that would be necessary to confirm the validity of the power of attorney or to mandate acceptance of that power of attorney.



It is anticipated that the Elder Law Section, the Estate & Trusts Section and other interested sections of MSBA will continue to review the Act and to coordinate with members of the General Assembly to adopt the provisions of the Act in the upcoming session of the General Assembly.