

The SC Uniform Power of Attorney Act  
SC Code § 62-8-101 et seq.

Presented to the  
Fall Institute of the  
South Carolina Healthcare Financial  
Management Association

**Presented**

**by**

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# General Bill S.778 – SC Uniform Power of Attorney Act

- **Adopted by Legislature and signed into law by Gov. Haley on June 9, 2016. Takes effect: Jan. 1, 2017**
- **Health Care Powers of Attorney now governed by Title 62, Article 5**
- **Financial Powers of Attorney now governed by Title 62, Article 8**



# New Statutory Framework

**Focus of new statutory framework is on three  
(3) areas:**

**1) Provisions pertaining to creation and use of powers of attorney**

**2) Default definitions for various areas of authority which may be granted to an agent**

**3) Misc. provisions concerning the relationship of the Act to other laws**

**Power of Attorney**  
A power of attorney



# Execution and Validity of a Power of Attorney in SC

**A power of attorney is durable unless it provides otherwise.**

**To be a power of attorney an instrument must be signed with the same formality as a will (two witnesses) and either acknowledged or proved.**

**A power of attorney validly signed pursuant to the law of another State or jurisdiction is valid in SC.**

**“... [A] photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.”  
SC Code § 62-8-106 (d).**

# Principal's Incapacity

**A new power of attorney does not automatically revoke a pre-existing power of attorney; but it may of course do so.**

**A power of attorney is terminated upon the death of the Principal, the Principal's revocation of it, by the express provisions of the instrument (such as on a specified date) or the entry of a divorce decree between Principal and Agent.**

**Otherwise, a power of attorney must be intentionally terminated, not by inadvertence.**

**Acts performed by an Agent without good faith knowledge of termination are valid and binding upon the Principal.**

## SC Code § 62-8-116 (a) (8) and (9)

**Persons who have standing,  
by statute, to petition the Court to  
review an agent's conduct or to  
construe a power of attorney include  
caregivers and "a person asked to  
accept a power of attorney."**

**SC Code § 62-8-116 (a) (8) and (9).**

## SC Code § 62-8-119 (a)

**“A person that in good faith accepts an acknowledged [properly executed] power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent’s authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent’s authority may rely upon the power of attorney as if the power of attorney were genuine, valid and still in effect, the agent’s authority were genuine, valid and still in effect, and the agent had not exceeded and had properly exercised the authority.” SC Code § 62-8-119 (a).**



## SC Code § 62-8-119

**SC Code § 62-8-119 (c) provides: “A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:”**

**(1) the agent’s certification [there is a statutory form for it at SC Code § 62-8-119(f)] or**

**(2) an opinion of counsel.**

**SC Code § 62-8-119 (e) provides that a person who “conducts activities through employees” is without actual knowledge of a fact “if the employee conducting the transaction ... is without actual knowledge of the fact.”**



## SC Code § 62-8-120

**If presented with a properly executed power of attorney, one must either decide to honor it or request a certification of it within seven (7) business days of presentation.**

**If Certification is requested and received, the power of attorney must be honored within five (5) business days of receipt of the Certification.**

**SC Code § 62-8-120**



## SC Code § 62-8-120 (b) (7)

**A power of attorney may be dishonored for a number of reasons, including a good faith belief that it is invalid or that the agent does not have the authority to perform the act requested or if the power of attorney does not contain language substantially similar to the following:**

**No person who may act in reliance upon the representation of my agent for the scope of authority granted to the agent shall incur any liability to me or to my estate as a result of permitting the agent to exercise this authority, nor is any person who deals with my agent responsible to determine or ensure the proper application of funds or property.**

**The statute provides for liability for reasonable attorneys fees and costs for improper refusal to honor a power of attorney.**

## SC Code § 62-8-201

**Certain**

**“hot powers”**

**must be specifically stated**

**(power to amend estate planning documents, to make gifts, to create or change a beneficiary designation, to delegate one’s authority as Agent, to enter a safety deposit box, etc.).**

**SC Code § 62-8-201**

**Hot Powers**

**Thank you!**