MCUL CUCORP
MICHIGAN CREDIT UNION LEAGUE & AFFILIATES

June 2012 **Volume 13, Issue 4**

Michigan Durable Power of Attorney: PA 141 of 2012

The Michigan Legislature has been concerned that durable powers of attorney can be used for purposes of financial exploitation, particularly in cases involving the elderly. In an effort to further protect disabled and elderly citizens Governor Snyder signed into law Public Act (PA) 141 of 2012 on May 22, 2012. The new law places greater responsibilities and restrictions on durable powers of attorney, and addresses the responsibilities and prohibited conduct of the "Attorney-in-Fact". To read Public Act 141 of 2012 click here.

Please Note: Michigan Credit Union League services are designed to provide accurate information with regard to the subject matter covered, with the understanding that the League does not render legal services. For specific legal advice, please consult with your credit union's attorney.

Q. 1. When does the law go into effect?

A. The law took immediate effect when it was signed by the Governor on May 22, 2012; however the new requirements apply to all new durable power of attorneys that are executed after October 1, 2012.

Q. 2. What is a durable power of attorney?

A. A power of attorney is a document used to authorize one individual to represent another. An ordinary power of attorney ends when the Principal becomes mentally incapable to handle his/her affairs because of sickness or injury. A *durable* power of attorney (DPOA) exists so that the Attorney-in-Fact has the ability to act for the Principal even if he/she becomes disabled or incapacitated. A DPOA contains the words "This power of attorney is not affected by the Principal's subsequent disability of incapacity, or by lapse of time;" "This power of attorney is effective upon the disability or incapacity of the Principal;" or wording that is significantly similar to those examples.

Q. 3. How should a durable power of attorney be signed?

A. The DPOA must be signed voluntarily by the Principal and:
1) Be signed in the presence of two witnesses, neither of whom is the Attorney-in-Fact, or
2) Be signed by the Principal and notarized by a notary public.

The Attorney-in-Fact must also execute an acknowledgment of his/her responsibilities before exercising authority under the DPOA.

Q. 4. Can the credit union allow an Attorney-in-Fact to act on a durable power of attorney if no acknowledgement is executed?

A. Yes. An Attorney-in-Fact's failure to execute an acknowledgement does not affect his/her authority to act for the Principal as provided for in the DPOA and does not affect his/her responsibilities or potential liability to the Principal.

Q. 5. What responsibilities does this new Michigan law require for a durable power of attorney?

A. The law requires that the Attorney-in-Fact act in accordance with the standards of care applicable to fiduciaries; reasonably follow the instructions of the Principal; keep the Principal informed; not make a gift of all or any part of the Principals' assets, unless specifically provided for in the DPOA or by court order; not assign themselves as a joint member on an account; maintain records; and maintain records of the attorney-in-fact's actions on behalf of the principal, including transactions, receipts, disbursements, and investments.

Q. 6. Can the credit union be liable to a third party or the Principal for honoring a DPOA?

A. A credit union will not be liable to the Principal or any other person because it has complied in good faith with instructions from an Attorney-in-Fact named in a DPOA, regardless of whether the Attorney-in-Fact has executed an acknowledgment. A credit union will not be liable to the Principal or any other person if it requires an Attorney-in-Fact named in a DPOA to execute an acknowledgment before recognizing the DPOA.

Q. 7. Under a durable power of attorney, when do the powers of the agent begin?

A. The Principal can sign and have the document witnessed/notarized which gives the Attorney-in-Fact powers immediately or the Principal might want the powers to begin in the future at such time as he becomes incapable of handling his financial affairs.

Q. 8. Once the durable power of attorney is signed, can the Principal change his/her mind?

A. Yes. The Principal can change his/her mind and revoke the DPOA assuming that he/she still has the capacity to contract. In general, a power of attorney can be revoked at any time prior to its stated expiration date, if any. The Principal must give notice to the Attorney-in-Fact that the power is revoked. The notice of revocation should be in writing although an oral revocation can be effective. The Principal should also provide a written notice of revocation to the credit union. If the credit union is given any form of notice that a power of attorney has been revoked, it is recommended that the credit union contact its legal counsel before proceeding.

Q. 9. Can anyone else revoke a power of attorney?

A. If a conservator is appointed for the Principal by the probate court, the conservator usually has the right to revoke the DPOA.

Q. 10. Can an Attorney-in-Fact act after the death of the Principal?

A. No. The power of attorney, regardless of the type, ends on the death of the Principal or when the Principal revokes the power of attorney.

Q. 11. Can the Attorney-in-Fact be the joint owner of the account?

A. No. Michigan law now prohibits the Attorney-in-Fact from being a joint owner of an account of the Principal in a DPOA relationship, unless this is specifically addressed in the power of attorney or ordered by a court.

Q. 12. Does a credit union have to honor a durable power of attorney?

A. A credit union is not obligated to honor a DPOA. The credit union may wish to do so as part of serving the Principal if the Principal is a member. CUs should encourage members contemplating signing any type of power of attorney to bring the document and the Attorney-in-Fact to the credit union and making appropriate arrangements ahead of time so that the document doesn't emerge as a surprise on a busy day at the teller's window.