

SUBJECT: Powers of Attorney

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INTRODUCTION

This release applies to all credit unions, state and federal. It is designed to alert credit unions to the issues involved with powers of attorney.

EXECUTIVE SUMMARY

A power of attorney (POA) is a written document that authorizes someone to manage another person's property, finances and other matters. The person giving the authority is called the "principal." By signing a POA, the principal is authorizing someone else (an individual or perhaps an institution like a nursing home) to act on the principal's behalf. The person who has been given authority to act for the principal is called the "attorney-in-fact" or the "agent."

POAs can be important tools. Your members may rely on POAs to let others handle their finances. On the other hand, POAs carry a heightened risk of fraud. They can be forged. Even if the POA is legitimate, unscrupulous agents can abuse their POA authority and steal from your members. To help address these concerns, this release includes two checklists.

Checklist to be Used When First Presented with a POA

- ☐ Be sure the document is actually a POA.
- ☐ Examine the POA for signs of alteration.
- ☐ Check the POA for signs of forgery.

- ☐ Verify the agent's identity / conduct CIP.
- ☐ Take special care if an organization or institution is the agent.
- ☐ Read the POA and decide whether the credit union will accept it.
- ☐ Keep a copy of the POA for the credit union's files.
- ☐ Return the original POA.

Checklist to Be Used Every Time a POA Agent Asks to Make Transactions

- ☐ See Exhibit A if the POA is one of the following, which may be subject to special rules.
 - The discontinued Power of Attorney / Agent Designation, which appeared on pre-2025 versions of The League's Account Ownership Agreement form (WCUL #82024);
 - The League's discontinued Designation of Agent card (#81038);
 - The League's discontinued Power of Attorney card (#81058);
 - The Wisconsin Basic Power of Attorney for Finances and Property;
 - Military POAs; or
 - Out-of-state POAs.
- ☐ See Exhibit B if the agent asks to transact business on one of these "special" accounts:
 - Individual Retirement Accounts (IRAs);
 - Representative Payee accounts;
 - Organization accounts;
 - Trust accounts;
 - Custodial accounts;
 - Joint accounts; or
 - Guardianship accounts.
- ☐ Check the agent's identification per the credit union's policies.
- ☐ Determine the effective dates of the POA.
- ☐ Determine if the POA is "springing" or "durable."
- ☐ Check whether the credit union has been notified that the POA has been revoked or that the principal is disabled, incapacitated or dead.
- ☐ Check whether the POA authorizes what the agent wants to do.
- ☐ Don't let an agent do certain things unless specifically authorized in the POA.
- ☐ Consider reporting financial abuse.
- ☐ Require the agent to sign documents and endorse checks in a way that indicates his/her authority.

This release includes three exhibits:

- Exhibit A describes rules that apply to certain "special" POAs;
- Exhibit B describes how POA authority may be limited for certain types of "special" accounts, such as Representative Payee accounts;

- Exhibit C includes a sample completed Agent's Certification as to the Validity of Power of Attorney for Finances and Property and Agent's Authority, which the credit union can have an agent sign to certify that the agent has no actual knowledge that the POA has been revoked or that the principal has died or become disabled or incapacitated.

COMPETING CONCERNS

POAs are important tools. Your members may rely on POAs to let others handle their finances. Sometimes, a POA is done for convenience. For example, the member may just want someone else to help manage their money while the member is on vacation. Other times, having a POA is a necessity. For example, the member may want to be sure that someone else can get important documents from a safe deposit box if the member is hospitalized.

However, the use of POAs increases the risks of fraud. Identity thieves can use phony POAs to defraud unsuspecting consumers. Unscrupulous relatives sometimes forge signatures or coerce mentally incapacitated people to sign POAs.

CHECKLIST TO BE USED WHEN FIRST PRESENTED WITH A POA

Follow these steps when first presented with a POA, to help guard against a forged or altered document and to help you decide whether the credit union should accept the POA at all. You only need to go through these steps once.

A second checklist, later in the release, should then be used *every time* a POA agent asks to transact business on a principal's credit union accounts.

Here is a preliminary listing of the checklist contents, followed by discussion of each of the points:

- Be Sure the Document Is Actually a POA.
- Examine the POA for Signs of Alteration.
- Check the POA for Signs of Forgery.
- Verify the Agent's Identity / Conduct CIP.
- Take Special Care If an Organization or Institution Is the Agent.
- Read the POA and Decide Whether the Credit Union Will Accept It.
- Keep a Copy of the POA for the Credit Union's Files.
- Return the Original POA.

☐ Be Sure the Document Is Actually a POA.

Members are sometimes confused about what POAs are. A POA is a written document that authorizes someone to manage another person's property, finances or other matters. The phrase "power of attorney" does not necessarily have to appear in the document.

The person giving the authority is called the "principal." A principal uses a POA to authorize someone else (an individual or perhaps an institution like a nursing home) to act on the principal's behalf.

The person who has been given the authority to act for the principal is called the "attorney-in-fact" or the "agent." (This is different from an "attorney-at-law." The word "attorney" just means a substitute – someone who is appointed to act in the place of another. Anyone can be named as the agent in a POA; not just lawyers.) To avoid confusion, we use the term "agent" in this release.

The principal does not give up any rights by signing a POA. The principal can still manage their own accounts as they always have. The POA merely allows the agent to act for the principal, as well.

Courts do not issue POAs. They are often drafted by attorneys, but not necessarily. Fill-in-the-blank and do-it-yourself POA forms are available online, from bookstores, and from many other sources. Some are quite detailed; others are not. A simple "homemade" POA may still be perfectly valid.

Whether the document is complicated or simple, make certain that it is actually a POA before proceeding.

- It may be a Letter of Guardianship or a Letter of Conservatorship from a court. Conservators or guardians are not the same as POA agents. See Exhibit B for details on POAs and guardianship accounts. See The League's *ii Release No. 0173* for general information about guardianships.
- It may be a Power of Attorney for Healthcare, which allows someone to make medical decisions for another person. A credit union should *never* accept a Power of Attorney for Healthcare, since it does not authorize any financial transactions.

- It may be a supported decision-making agreement. Wisconsin law lets an adult with a “functional impairment” sign a special agreement so that another adult (the “supporter”) can help him/her make certain decisions. The supporter helps the person with functional impairments gather and understand information, compare options, and communicate their decisions to others.

The agreement is not a guardianship or a power of attorney. The designated supporter is not a surrogate decision-maker for the adult and is not authorized to sign legal documents for the adult or bind the adult to a legal agreement. A person with functional impairments gives up no rights by signing a supported decision-making agreement; it does not stop him/her from acting independently. The agreement cannot be used as evidence of incapacity or incompetency. The supporter has only the authority granted by the adult under the supported decision-making agreement.

For more information, please see The League’s *ii Release No. 0189 - Supported Decision-Making Agreements*.

☐ **Examine the POA for Signs of Alteration.**

A POA must be in writing. Never accept someone at their word that they have been authorized to access your member’s accounts without a written POA.

Examine the POA document carefully for signs of alteration. If you suspect that the POA was changed after the principal signed it, contact the credit union’s attorney for guidance. Wisconsin law allows the credit union to reject a POA if (among other things) it believes that the POA is invalid or it has “any other reasonable belief that the power of attorney is illegal or unenforceable and should be refused.” (Wis. Stats. § 244.20.) Wisconsin law also allows the credit union to ask for an opinion from an attorney about any matter of law concerning the POA, if the person making the request provides in writing (or other record) the reason for the request. However, refusing to accept a POA without a good faith reason could lead to court-ordered sanctions. (This is discussed in more detail later in this release, under the heading, “Read the POA and Decide Whether the Credit Union Will Accept It.”)

Copies: The law does not require that you be given the original POA document. In fact, Wisconsin’s POA statutes say that a photocopy and an electronically transmitted copy of a POA are just as effective as the original. A credit union can still ask to see the original POA. This will make it easier to spot any alterations. (The credit union does not need to keep the original, though. The agent may need to present the POA to financial institutions and other parties.)

If you choose to accept a copy of a POA rather than the original, ask the agent to sign an “Agent’s Certification as to the Validity of Power of Attorney for Finances and Property and Agent’s Authority” (WCUL #81018). This form can be used to certify facts about the POA, the principal or the agent. Using the blank lines on the form, add a sentence saying that the agent certifies that the copy of the POA they have given the credit union is “true and correct.” See Exhibit C for a sample. This may help to give the credit union recourse against the POA agent if the agent changed the copy.

☐ **Check the POA for Signs of Forgery.**

The principal must sign the POA for it to be effective. A forged POA is invalid, and the credit union could face liability if it accepts a forgery.

It would be preferable to examine the original POA document. This will make it easier to spot forgeries. However, Wisconsin’s POA law does not require that the credit union be shown an original. It says that a photocopy and an electronically transmitted copy of a POA are just as effective as the original.

Usually, the principal on a POA is a credit union member and has appointed someone else as agent to handle his/her affairs. In that case, check the principal’s signature against the specimen signature in your files. If the signatures do not match, contact the credit union’s attorney for guidance. Wisconsin law allows the credit union to reject a POA if (among other things) it believes that the POA is invalid or it has “any other reasonable belief that the power of attorney is illegal or unenforceable and should be refused.” (Wis. Stats. § 244.20.) Wisconsin law also allows the credit union to ask for an opinion from an attorney about any matter of law concerning the POA, if the person making the request provides in writing (or other record) the reason for the request. However, refusing to accept a POA without a good faith reason could lead to court-ordered sanctions. (This is discussed in more detail later in this release, under the heading, “Read the POA and Decide Whether the Credit Union Will Accept It.”) Even if the signatures seem to match, you may want to contact the principal to verify that the POA is genuine.

Be wary of a POA signed after the principal became incapacitated: A POA is invalid if the principal lacked legal capacity at the time he/she signed it. (As explained later in this release, POAs, if signed while the member still had legal capacity, are presumed to remain effective even after the principal becomes incapacitated later.)

If you are aware that the principal has been declared incompetent, but you receive a new POA that appears to have been signed after he/she became incapacitated, contact the credit union's attorney for guidance. Wisconsin law allows the credit union to reject a POA if (among other things) it believes that the POA is invalid or it has "any other reasonable belief that the power of attorney is illegal or unenforceable and should be refused." (Wis. Stats. § 244.20.) Wisconsin law also allows the credit union to ask for an opinion from an attorney about any matter of law concerning the POA, if the person making the request provides in writing (or other record) the reason for the request. However, refusing to accept a POA without a good faith reason could lead to court-ordered sanctions. (This is discussed in more detail later in this release, under the heading, "Read the POA and Decide Whether the Credit Union Will Accept It.")

If you are unsure whether the principal may have been incapacitated at the time the principal signed the POA, but you choose to accept the POA anyway, at least ask the agent to sign an "Agent's Certification as to the Validity of Power of Attorney for Finances and Property and Agent's Authority" (WCUL #81018). This form can be used to certify facts about the POA, the principal or the agent. Using the blank lines on the form, add a sentence saying that the agent certifies that the principal was competent when the POA was executed. See Exhibit C for a sample. (This may help the credit union avoid liability, but it is not a guarantee.)

☐ **Verify the Agent's Identity / Conduct CIP.**

Verify that the person presenting the POA is, in fact, the named agent. Check your credit union's policies and procedures to see what you must do to verify identity. At a minimum, you should check a photo ID, such as a driver's license.

Customer Identification Program rules: The federal Customer Identification Program (CIP) rules set *minimum* identity verification requirements. CIP is only legally required if the agent is opening a new account for a person who lacks legal capacity, i.e., someone who has been adjudged incompetent (or a minor). In that case, the agent's identity must be verified to satisfy CIP rules. (But still open the account in the principal's names and use the principal's taxpayer identification number for tax reporting.)

The CIP regulations do not require you to perform CIP on a POA agent if:

- The agent is simply making transactions involving a member's existing account; or
- The agent wants to open a new account for a principal who is competent.

However, your credit union's policies and procedures may require CIP even where it might not be legally mandatory. If so, gather the necessary ID information and complete one of the League's CIP cards (#81080).

For more information about CIP, see The League's *ii Release No. 0159*.

☐ **Take Special Care If an Organization or Institution Is the Agent.**

Sometimes, the principal names an organization, such as a nursing home, as his/her agent. This is acceptable, but special precautions need to be taken.

If the POA simply names an organization as agent, you need to know who, specifically, from that organization should be allowed to access the principal's accounts. Ask the organization for a corporate resolution or similar document, designating the individuals who can act for the organization and providing their specimen signatures. Otherwise, for example, any nursing home employee might ask to withdraw money from the principal's account, and the credit union could not verify if that person was really authorized to do so.

☐ **Read the POA and Decide Whether the Credit Union Will Accept It.**

The credit union needs to decide whether it will accept the POA being presented. The first step is to read the entire document carefully.

Wisconsin law normally protects the credit union from liability if it accepts an "acknowledged" POA in good faith. It also allows a credit union to decline a POA if it has good faith reasons for doing so. (The credit union must be cautious, though, because it can face court sanctions if it refuses to accept a POA without an appropriate reason.) A credit union that is not sure whether to accept a POA can ask its attorney to review the matter. Some issues may be resolved by asking

the POA agent to sign an “Agent’s Certification as to the Validity of Power of Attorney for Finances and Property and Agent’s Authority” (WCUL #81018). See Exhibit C for a sample. This section of the release examines all of these issues.

Accepting an “Acknowledged” POA in “Good Faith”

Wisconsin’s POA statutes protect a credit union from liability if 1) it accepts a POA with an “acknowledged” signature of the principal, and 2) it acts in good faith.

Wisconsin’s POA statutes make it clear that the principal needs to sign the POA. The agent can sign it too (such as to indicate he/she has accepted the appointment as agent), but the agent’s signature is not necessary for the POA to be valid. Also, another person can validly sign a POA with the principal’s name if that person is acting at the principal’s direction and in his/her “conscious presence.” It is unclear how the credit union would verify the validity of such a signature.

An “acknowledged” signature generally means acknowledged before a notary public. The new law does not require the principal’s signature to be notarized for the POA to be valid, but notarization should give the credit union some level of assurance that the principal’s signature is bona fide, since notaries are supposed to verify a signer’s identity.

“Good faith” means the credit union must act honestly. Even if the principal’s signature has been acknowledged by a notary, the credit union is not acting in good faith if it accepts a POA even though it has “actual knowledge” that:

- The POA is invalid;
- The POA has been terminated; or
- The agent is improperly exercising the agent’s powers.

So, if the credit union knows any of those facts, the POA should be declined.

The Wisconsin POA statutes say that a credit union has actual knowledge of a fact about a POA (or about a principal or an agent) only if the employee who conducts the transaction has actual knowledge of that fact. This helps to protect credit unions against liability if an employee accepts a forged, invalid or revoked POA but that employee did so honestly and without actually knowing that it was forged, invalid or revoked. Some other employee’s knowledge is not “imputed” to the whole credit union.

Asking for Additional Documents

A credit union is not required to investigate whether a POA is valid or the agent’s exercise of authority is proper; however, when asked to accept an acknowledged / notarized POA, The Wisconsin POA statutes allow the credit union to request and rely on any of three documents:

1. A signed “Agent’s Certification” form;
2. An English translation if the POA is in another language; or
3. An opinion from an attorney about any matter of law concerning the POA, if the person making the request provides in writing (or other record) the reason for the request.

The translation or attorney’s opinion must be provided at the principal’s expense.

Once the credit union gets the signed certification, translation or an opinion from an attorney, it has five days to accept the POA (provided there is no other good faith reason to reject it).

The Wisconsin POA statutes include language for an “Agent’s Certification” form. The certification form is available from The League as “Agent’s Certification as to the Validity of Power of Attorney for Finances and Property and Agent’s Authority” (WCUL #81018). The form can be used to certify facts to anyone who is asked to accept a POA (whether the statutory POA form was used or some other form). See Exhibit C for a sample. If the agent signs the certification, the credit union can rely on it without further investigation.

By signing the Agent’s Certification before a notary, the POA agent swears under penalty of perjury that:

- The principal granted him/her authority under a POA;
- The principal is still alive;

- The principal has not revoked the POA or terminated the agent's authority to act under the POA;
- If the POA is "springing" (that is, meant to go into effect at some later date or when some event occurs), then that event has actually occurred; and
- If the agent is a successor agent, the original agent is no longer willing or able to serve.

If the credit union needs the agent to attest to other relevant statements, the form includes blank lines that can be used. For example, the agent might be asked to swear that a POA copy is "true and correct."

Refusing to Accept a POA

Under Wisconsin law (Wis. Stats. § 244.20), a credit union can refuse to accept an acknowledged / notarized POA within 10 [business](#) days after it is presented, but only if it acts in good faith. Wisconsin law allows the credit union to reject a POA if:

- The credit union "is not otherwise required to engage in a transaction with the principal in the same circumstances";
- The agent wants to do something that is "inconsistent with federal or state law";
- The credit union has actual knowledge that the POA has been revoked or is terminated (for example, because the POA principal has died);
- A request for an Agent's Certification, translation or attorney's opinion has been refused;
- The credit union believes that the POA is invalid;
- The credit union believes that the POA does not authorize what the agent is asking to do;
- The credit union believes that the person asking to make the transaction is not the agent named in the POA;
- The credit union knows of a pending case asking a court to interpret the POA;
- The credit union has "any other reasonable belief that the power of attorney is illegal or unenforceable and should be refused;" or
- The credit union makes a report to a designated law-enforcement or adult-at-risk agency, stating a good-faith belief that the principal may be subject to abuse (or it knows that someone else has made such a report). If you suspect someone acting under a POA is defrauding a member, or that any member is a victim of financial exploitation, Wisconsin and federal law allow you to alert appropriate authorities. Wisconsin law also allows the credit union to contact relatives or certain other parties (including contacts that a member may authorize in advance) about suspected financial exploitation of a "vulnerable adult" (meaning someone 65 or older or an "at risk" adult). For more information, see The League's *ii Release No. 0174, "Reporting Financial Abuse."*

It is not good-faith if the credit union refuses to accept an acknowledged POA because the document is "too old." POAs do not automatically become invalid with the passage of time. Instead, if the credit union is worried that a POA might no longer be valid, it should ask the agent to sign the "Agent's Certification as to the Validity of Power of Attorney for Finances and Property and Agent's Authority" (WCUL #81018).

The credit union might ask the parties to use a different POA form, but it cannot require it. Refusing to accept a POA because the credit union would prefer that the parties had used a different POA form is not "good faith."

Before 2010, Wisconsin law was silent on whether the credit union could ask the principal to sign a POA of the credit union's choosing even if another POA form had already been provided. In fact, at one time The League's Account Agreement Brochure (#82004) protected the credit union's right to reject a POA or to require the use of a POA form approved by the credit union:

We [the credit union] are under no obligation at any time to honor any document appointing an agent or attorney-in-fact. We reserve the right to require the appointment of an agent or attorney-in-fact to be executed on a form approved by us.

The credit union should no longer rely on this language or insist that parties use a different POA form. The language is removed from newer versions of the brochure.

The credit union can be sanctioned for refusing to accept a POA if it does not act in good faith. Whoever is asking the credit union to accept the POA can go to court if the credit union refuses. If the court finds that the POA is valid, it can order the credit union to accept the POA and require the credit union to pay the costs and attorney fees that the person incurred.

☐ **Keep a Copy of the POA for the Credit Union's Files.**

You will need to keep a copy of the POA on file. Whenever the agent asks to make transactions on the principal's accounts, you will need to review your copy to be sure that it authorizes what the agent wants to do.

The law does not require that you be given the original POA document. In fact, Wisconsin's POA statutes say that a photocopy and an electronically transmitted copy of a POA is just as effective as the original. If you have been presented with an original, though, it is best to make a copy yourself, to be sure the copy is true and correct. Mark it "copy made from original," along with your name and date.

If you have not been presented with the original, ask the agent to sign an "Agent's Certification as to the Validity of Power of Attorney for Finances and Property and Agent's Authority" (WCUL #81018). This form can be used to certify facts about the POA, the principal or the agent. Using the blank lines on the form, add a sentence saying that the agent certifies that the copy of the POA they have given the credit union on this date is "true and correct." See Exhibit C for a sample. This may help to give the credit union recourse against the POA agent if it turns out that the agent changed the copy.

☐ **Return the Original POA.**

Other businesses or financial institutions may be asked to rely on the same POA, and they'll want to examine the original, too. Ordinarily, the principal or the agent will need to keep the original POA.

CHECKLIST TO BE USED EVERY TIME A POA AGENT ASKS TO MAKE TRANSACTIONS

Use the following checklist *every time* a POA agent asks to transact business at the credit union. These steps will help you determine whether the POA is legally effective and whether it allows the agent to do what he/she wants to do.

Here is a preliminary listing of the checklist contents, followed by discussion of each of the points:

- See Exhibit A If the POA Is One of the Following, Which May be Subject to Particular Rules:
- See Exhibit B if the Agent Asks to Transact Business on One of These "Special" Accounts:
- Check the Agent's Identification per the Credit Union's Policies.
- Determine the Effective Dates of the POA.
- Determine if the POA Is "Springing" or "Durable."
- Check Whether the Credit Union Has Been Notified that the POA Has Been Revoked or that the Principal Is Disabled, Incapacitated or Dead.
- Check Whether the POA Authorizes What the Agent Wants to Do.
- Don't Let an Agent Do Certain Things Unless Specifically Authorized in the POA
- Consider Reporting Financial Abuse.
- Require the Agent to Sign Documents and Endorse Checks in a Way that Indicates His/Her Authority.

☐ **See Exhibit A If the POA Is One of the Following, Which May be Subject to Particular Rules:**

- The discontinued Power of Attorney / Agent Designation, which appeared on pre-2025 versions of The League's Account Ownership Agreement form (WCUL #82024);
- The League's discontinued Designation of Agent card (#81038);
- The League's discontinued Power of Attorney card (#81058);
- The Wisconsin Statutory Form Power of Attorney for Finances and Property;

- Military POAs; and
- Out-of-state POAs.

If the credit union is asked to rely on any of these types of POAs, review Exhibit A to this release to see if special rules apply.

☐ **See Exhibit B if the Agent Asks to Transact Business on One of These “Special” Accounts:**

- IRAs;
- Representative Payee accounts;
- Organization accounts;
- Trust accounts;
- Custodial accounts;
- Joint accounts; and
- Guardianship accounts.

A POA agent’s ability to act for a principal is limited – or may even be prohibited – on these types of accounts. Before letting a POA agent do business on any of these types of accounts, review Exhibit B to this release to see if special rules apply.

☐ **Check the Agent’s Identification per the Credit Union’s Policies.**

Take reasonable precautions – such as asking to see a driver’s license or other photo ID – to be sure the person claiming to be the agent is, in fact, the agent named in the POA. Your credit union’s policies and procedures should spell out what forms of identification are acceptable.

If the POA names co-agents, then each of them can act on their own, unless the POA says otherwise. (That could lead to different agents giving conflicting instructions to the credit union about a principal’s account, unfortunately.)

A POA can name successor agents, who step in if the original agent resigns, dies, becomes incapacitated, is not qualified to serve as an agent, or declines to serve. If a successor agent has taken over the responsibilities under the POA, be sure that this has been documented in the credit union’s files, verify the underlying facts, and check the successor agent’s identification.

☐ **Determine the Effective Dates of the POA.**

Most POAs have no effective dates; they become effective immediately when they are signed, and the agent may immediately act on the principal’s behalf. POAs usually have no termination dates, either. Wisconsin’s POA statutes provide that a POA is presumed to go into effect as soon as it is signed, unless the POA says otherwise. If the principal does not want the POA to go into effect when signed, then he/she should address this in POA. (Wis. Stats. § 244.09.) As explained in Exhibit A to this release, if the “Wisconsin Statutory Form Power of Attorney for Finance and Property” was used, any special limits on the effective date for the POA should be set out in the “special instructions” section of the form.

But some POAs have specific dates when the agent’s authority begins or ends.

Check the terms of the POA to be sure it has not terminated. Similarly, if the beginning date has not yet been reached, then the POA is not yet effective. In either case, you should decline to let the agent transact business.

An “Agent’s Certification as to the Validity of Power of Attorney for Finances and Property and Agent’s Authority” (WCUL #81018) may offer little protection if the credit union accepts a POA that has expired.

Old POAs: The passage of time does not automatically revoke a POA. Wis. Stats. § 244.10. You can still rely on a POA that was executed years ago.

However, if you are presented with an old POA, ask the agent to sign an “Agent’s Certification as to the Validity of Power of Attorney for Finances and Property and Agent’s Authority” (WCUL #81018). See Exhibit C for a sample. This is a statutory form, based on language found in Wis. Stats. § 244.62. It can be used to certify facts about the POA, the principal or the agent. Anyone who is asked to accept a POA – whether the statutory POA form was used or some other form – may ask the agent to sign such a certification. Under Wisconsin law, if the agent signs the certification, the credit union can rely on it without further investigation. Wis. Stats. § 244.19(4).

By signing the Agent's Certification before a notary, the POA agent swears under penalty of perjury that (among other things) the principal is still alive and the principal has not revoked the POA or terminated the agent's authority.

☐ **Determine if the POA Is "Springing" or "Durable."**

Even if a POA does not set out a date when it terminates, some POAs terminate if certain events occur, such as when the principal becomes incapacitated (that is, when they lack the capacity to manage their own decisions).

For that reason, you need to know what type of POA the agent has. Never assume; you must read the POA!

Most POAs the credit union is likely to see will either be "durable" or "springing."

Durable: A durable POA is effective regardless whether the principal later becomes incapacitated or remains in perfect health. It remains in effect until the principal dies or it is terminated or revoked.

Most people who sign a POA want it to be durable, so that their POA can continue to handle their affairs and a court-appointed guardian won't be needed if they become incapacitated. Wisconsin law used to say that a POA needed to include special language making it durable. (For example, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal" or similar words.) If the POA did not have the special language to make it durable or springing, then by default it stopped being effective as soon as the principal became incapacitated or disabled – the opposite of what most people wanted.

Since Sept. 1, 2010, Wisconsin's POA statutes have said that a POA is presumed to be durable – to stay in effect no matter what – unless it says otherwise. The POA is also presumed to go into effect as soon as it is signed.

Springing: A springing POA becomes effective only if the principal later becomes incompetent or disabled, or if some other event described in the POA occurs. The credit union can decline to accept a springing POA if there is no evidence that the event has occurred. (Wis. Stats. § 244.20(1)(h).)

A springing POA might say, for example, "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words. In Wisconsin, POAs are presumed to be durable, so if the principal wants the POA to be "springing," it needs to say so.

The law defines the term "incapacity," using the same standard that is used when a court decides whether to appoint a guardian for someone: A person is incapacitated if the person is unable to manage property, finances, or business affairs because of an impairment in the ability to receive and evaluate information or to make or communicate decisions, even with technological assistance. A person also may be considered incapacitated if he or she is missing, incarcerated, or outside the United States and unable to return.

The POA form may authorize certain people to determine whether the principal is incapacitated (or whether some other event that causes the POA to "spring" to life has occurred). If it does not, then the law spells out what evidence is needed to show that the principal is incapacitated, such as a letter from a physician.

The credit union can ask the agent to sign an "Agent's Certification as to the Validity of Power of Attorney for Finances and Property and Agent's Authority" (WCUL #81018). See Exhibit C for a sample. By signing the form before a notary, the POA agent swears under penalty of perjury that (among other things) if the POA only "springs to life" when some event happens, then that event has actually happened. Anyone who is asked to accept a POA – whether the statutory POA form was used or some other form – may ask the agent to sign such a certification. Under Wisconsin law, if the agent signs the certification, the credit union can rely on it without further investigation. Wis. Stats. § 244.19(4).

☐ **Check Whether the Credit Union Has Been Notified that the POA Has Been Revoked or that the Principal Is Disabled, Incapacitated or Dead.**

Even if the POA, on its face, appears to be in effect (for example, it's durable and sets no date for the agent's authority to begin or end) it still may have been revoked. This can happen in several ways under Wis. Stats. § 244.10:

- The principal can revoke a POA at any time and for any reason, but Chapter 244 of the Wisconsin Statutes does not specify how a POA is to be revoked. If a principal verbally informs the credit union that a POA has been revoked, that may be enough, but the credit union may want to ask for written confirmation – preferably a signed, written and dated statement, expressing the principal's intent to revoke the POA. The principal should be referred to his/her attorney for help drafting any such document. (The Greater Wisconsin Agency on Aging Resources, Inc. offers a

packet of materials that POA principals can use to revoke a POA. [Click here](#) to download it.) By signing a new POA, a principal does not automatically revoke a prior POA, unless the new POA says so.

- The Wisconsin POA statutes say that if a court appoints a conservator or guardian after a principal executes a POA, the agent is accountable to the conservator or guardian – as well as to the principal. The POA is not automatically terminated, and the agent’s authority continues unless limited, suspended or terminated by the court. (Wis. Stats. § 244.08.) The guardianship statutes say that if a court appoints a guardian of the estate or conservator for someone who already has a durable POA, the court can revoke the POA or limit the authority of the agent under the terms of the POA. But if the court does not order such a revocation or limitation, the guardian may not make decisions for the ward that may be made by the agent. Wis. Stats. § 54.46(2)(c). See The League’s *ii Release No. 0173* for more information about guardianships.
- The death of the principal automatically revokes a POA.
- Unless the POA says otherwise, if the principal and agent are married, and one of them files for a divorce, annulment or legal separation, that automatically terminates the agent’s authority under the POA. (The Wisconsin POA statutes terminate the POA when the “action is filed” to end the marriage, not when the court grants a final divorce.)
- The agent’s authority ends if the principal and agent’s domestic partnership is terminated.
- If the POA is not durable or springing, it is revoked automatically if the principal becomes disabled or incapacitated.

However, the Wisconsin statutes provide that the termination of the agent’s authority or the incapacity of the principal does not automatically revoke or termination the POA as to anyone who acts under it in good faith and without actual knowledge of the termination or incapacity. (Wis. Stats. § 244.10). In other words, the credit union is protected if it relies on a POA and does not know that the principal has died or that the principal has become disabled or incapacitated.

Check the credit union’s files to see whether it has received any notice (or learned on its own) that the POA has been revoked or that the principal has died. If so, the POA can no longer be used. Similarly, if you know that the principal is incapacitated, the POA can only still be used if it is durable or springing, as explained above. Otherwise, it is no longer valid.

If you are not sure whether the POA has been revoked or whether the principal has died, ask the agent to sign “Agent’s Certification as to the Validity of Power of Attorney for Finances and Property and Agent’s Authority” (WCUL #81018). See Exhibit C for a sample.

This is a statutory form, based on language found in Wis. Stats. § 244.62. It can be used to certify facts about the POA, the principal or the agent. Anyone who is asked to accept a POA – whether the statutory POA form was used or some other form – may ask the agent to sign such a certification. Under Wisconsin law, if the agent signs the certification, the credit union can rely on it without further investigation. Wis. Stats. § 244.19(4).

By signing the Agent’s Certification before a notary, the POA agent swears under penalty of perjury that:

- The principal granted him/her authority under a POA;
- The principal is still alive;
- The principal has not revoked the POA or terminated the agent’s authority to act under the POA;
- If the POA is “springing” (that is, meant to go into effect at some later date or when some event occurs), then that event has actually occurred; and
- If the agent is a successor agent, the original agent is no longer willing or able to serve.

If the credit union needs the agent to attest to other relevant statements, the form includes blank lines that can be used. For example, the agent might be asked to swear that a POA copy is “true and correct.”

☐ **Check Whether the POA Authorizes What the Agent Wants to Do.**

POAs do not let an agent do whatever he/she likes. Even after you verify that the POA is valid (not revoked, etc.), you must also check whether the POA lets the agent do what he/she is asking to do. Wisconsin law allows the credit union to reject a transaction under a POA if:

- The agent wants to do something that is “inconsistent with federal or state law”;

- The credit union has actual knowledge that the POA has been revoked or is terminated (for example, because the POA principal has died);
- A request for an Agent's Certification, translation or attorney's opinion has been refused;
- The credit union believes that the POA is invalid;
- The credit union believes that the POA does not authorize what the agent is asking to do;
- The credit union believes that the person asking to make the transaction is not the agent named in the POA;
- The credit union knows of a pending case asking a court to interpret the POA;
- The credit union has "any other reasonable belief that the power of attorney is illegal or unenforceable and should be refused;" or
- The credit union makes a report to a designated law-enforcement or adult-at-risk agency, stating a good-faith belief that the principal may be subject to abuse (or it knows that someone else has made such a report). If you suspect someone acting under a POA is defrauding a member, or that any member is a victim of financial exploitation, Wisconsin and federal law allow you to alert appropriate authorities. Wisconsin law also allows the credit union to contact relatives or certain other parties (including contacts that a member may authorize in advance) about suspected financial exploitation of a "vulnerable adult" (meaning someone 65 or older or an "at risk" adult). For more information, see The League's ii Release No. 0174, "Reporting Financial Abuse."

It is not good-faith if the credit union refuses to accept an acknowledged POA because the document is "too old." POAs do not automatically become invalid with the passage of time). Instead, if the credit union is worried that a POA might no longer be valid, it should ask the agent to sign the "Agent's Certification as to the Validity of Power of Attorney for Finances and Property and Agent's Authority" (WCUL #81018).

The credit union might ask the parties to use a different POA form, but it cannot require it. Refusing to allow a transaction because the credit union would prefer that the parties had used a different POA form is not "good faith."

The credit union may be liable if it lets an agent do more than a POA allows. Wisconsin courts have ruled that if a financial institution can tell whether an agent is exceeding his authority from the face of POA documents, the financial institution will be liable for unauthorized transactions.

The key is that you must read the POA! And you must check it every time the agent wants to transact business!

POAs can give the agent general or limited powers.

A limited POA authorizes the agent to do only specific things. For example, a limited POA may permit the agent to access the principal's checking account but not share certificates.

A general POA (if properly drafted) may permit *almost* all actions the principal would be allowed to do if he or she were present. To be general, the POA will include language like: "In general I give my said attorney full power to act in the management and disposition of all my estate, affairs and property of every kind and wherever situated in such manner and with such authority as I myself might exercise if personally present." (The next subsection, "General POAs and References to Powers in Statutes," explains that if a POA grants an agent authority to do everything the principal could do, then the agent has all of the authority spelled out in sections 244.44 to 244.56 of the Wisconsin Statutes.)

A general POA can also contain exceptions. For example, the principal may grant authority for all matters except the ability to mortgage the principal's property.

A POA grants only those powers that are clearly spelled out. If a POA is ambiguous, courts have said that it must be construed against allowing the act the agent wants.

(Note: The "Agent's Certification as to the Validity of Power of Attorney for Finances and Property and Agent's Authority" (WCUL #81018) does *not* offer any protection if you allow an agent to exceed their authority under the POA.)

GENERAL POAS AND REFERENCES TO POWERS IN STATUTES

Wisconsin's POA statute has detailed descriptions of 15 specific powers (Wis. Stats. §244.44 to §244.56.) They are:

- **244.44** Real property;

- 244.445 Digital property;
- 244.45 Tangible personal property;
- 244.46 Stocks and bonds;
- 244.47 Commodities and options;
- 244.48 Banks and other financial institutions;
- 244.49 Operation of entity or business;
- 244.50 Insurance and annuities;
- 244.51 Estates, trusts, and other beneficial interests;
- 244.52 Claims and litigation;
- 244.53 Personal and family maintenance;
- 244.54 Benefits from governmental programs or civil or military service;
- 244.55 Retirement plans;
- 244.56 Taxes; and
- 244.57 Gifts (discussed in detail in this release under the “Don’t Let an Agent Do Certain Things Unless Specifically Authorized in the POA”).

As explained in Exhibit A to this release, the “Wisconsin Statutory Form Power of Attorney for Finance and Property” (the statutory POA form) lists each of these 15 subjects. If the principal initials the heading for a subject, that power is included in the agent’s authority. The statutes then spell out the agent’s authority on that subject.

But any POA (not just the statutory form) can incorporate some or all of these 15 subjects by referring to them. This could be done in two ways:

- If a POA grants an agent authority to do everything the principal could do, then the agent has all of the authority set out in each of those 15 sections. (Wis. Stats. §244.41(3).)
- The principal could also incorporate a specific power from the list, either by referring to the statutory section number or by referring to the short descriptive term for the power. (Wis. Stats. §244.42(2).) That way, someone drafting a POA can simply refer to a statutory power, and it’s as if that entire section of the statutes were included word-for-word in the POA. The POA does not need to explain all the details about how far a certain power extends; the statutes define it (making POAs shorter and easier to read, and giving a “baseline” in the statutes for the meaning of a power that a POA grants).

For example, if a POA gives the agent authority over “banks and other financial institutions” or if it cross-references Wis. Stats. §244.48, then the statutes say the agent is authorized to do all of the following (unless the POA limits or modifies the agent’s authority):

- Continue, modify and terminate an account or other arrangement made by or on behalf of the principal.
- Establish, modify and terminate an account or other arrangement with a credit union the agent selects.
- Contract for services, including renting a safe deposit box.
- Withdraw (by check, order, electronic funds transfer or otherwise) money or property of the principal deposited with or left in the credit union’s custody.
- Receive statements, notices and similar documents from the credit union and act with respect to them.
- Enter a safe deposit box or vault and withdraw or add to the contents.
- Borrow money and pledge the principal’s personal property as collateral, or pay, renew or extend the time of payment of a debt.

- Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or non-negotiable paper of the principal or payable to the principal; transfer money, receive the cash or other proceeds of those transactions; and accept a draft drawn by a person upon the principal and pay it when due.
- Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or non-negotiable instrument.
- Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks and give an indemnity or other agreement in connection with letters of credit.
- Consent to an extension of the time of payment with respect to commercial paper or a financial transaction.

The 15 statutory powers can be modified, if the principal wants. The credit union should check the POA to see whether any of the agent's authority is restricted in some way or whether special conditions apply to the POA. The POA might give the agent authority to handle some or all of the 15 areas and then explain that it is modifying the agent's authority in certain ways.

☐ **Don't Let an Agent Do Certain Things Unless Specifically Authorized in the POA**

Even if the principal gives the agent general authority to do anything the principal could do, the Wisconsin POA statutes list eight things an agent can only do if the POA explicitly allows for it. (Wis. Stats. § 244.41). Five of these subjects are particularly important to credit unions:

- *Making gifts to others.* The agent cannot give away the principal's assets, unless the POA specifically says so. If the POA does allow for gifting, the agent may still be subject to limits on the amount of a gift that can be given under Wis. Stats. § 244.57.
- *Self-dealing.* POA agents cannot engage in "self-dealing," that is, they cannot use the principal's assets for themselves. But if the agent is the spouse or domestic partner of the principal, the agent can use the POA for his or her own benefit (or the benefit of someone the principal is legally obligated to support, like a child). This is the only exception; if the agent is not the spouse or domestic partner, he / she may not use the principal's assets for his / her own benefit unless the POA specifically says so.
- *Creating, amending, revoking, or terminating an "inter vivos" trust.* The agent cannot change the principal's living trust or revoke it unless the POA specifically says so.
- *Adding or changing joint owners or payable on death beneficiaries.* The Wisconsin POA statutes limit an agent's ability to create or change rights of survivorship and beneficiary designations. This means that the agent cannot add or change joint owners on the principal's accounts, or add a payable-on-death beneficiary to the principal's accounts, unless the POA specifically says so (whether the joint owner or POD beneficiary is the agent or some other person).
- *Delegating the agent's authority under the POA.* Unless the POA specifically says so, the agent cannot give his/her powers under the POA to some third party (although the agent could resign so that a successor the principal had named could take over). The legal experts who wrote the Uniform Power of Attorney Act commented that, "If desirable, a principal may give the original agent authority to delegate the agent's authority during periods when the agent is temporarily unavailable to serve."

These limits are in place because under Wisconsin law, a POA agent is a fiduciary. This means that the agent must exercise the utmost good faith and loyalty to the principal. The agent must act only for the principal's benefit, even at the expense of the agent's own interests. Unless a POA specifically says otherwise, these fiduciary duties limit an agent's authority.

☐ **Consider Reporting Financial Abuse.**

While you are not required to police every POA transaction for signs of self-dealing or unauthorized gifts, you should not ignore obvious abuse by the agent, either. Under Wisconsin's POA statutes (Wis. Stats. § 244.19), a credit union is entitled to rely on a POA as being genuine, valid and in effect, and it can assume that the POA agent has not exceeded his/her authority and is properly exercising it – but only if the credit union has no "actual knowledge" that:

- The POA is void, invalid, or terminated;
- The purported agent's authority is void, invalid, or terminated; and
- The agent is exceeding or improperly exercising the agent's authority.

In other words, if the credit union's staff actually knows that the agent is doing more than he/she is authorized to do, or that the agent is exercising his/her POA powers improperly, then the credit union cannot rely on the POA. The credit union may need to consult its attorney for specific guidance when questionable situations arise.

Handling withdrawals: For example, when an agent requests a withdrawal from a principal's account, you do not need to ask why. But if the agent asks to transfer money from the principal's account to pay the agent's own boat loan at the credit union, this should raise suspicions.

Handling check deposits: When a POA agent presents a check made payable to the principal, the credit union should treat the check like it would treat a check payable to a business. Require that it be deposited, in full, into the principal's account. The agent may then withdraw the funds separately. These transactions will appear on the principal's monthly statement, creating a "paper trail" for the principal or other concerned parties to monitor the agent's activities.

The credit union should not let an agent cash checks payable to a principal or allow a split deposit, with cash given back to the agent. Nor should the credit union let the agent deposit the check into the agent's own account.

Reporting Abuse

As explained earlier in the release, a credit union can refuse to accept an acknowledged / notarized POA if it acts in good faith when it makes a report to a designated law-enforcement or adult-at-risk agency, stating a good-faith belief that the principal may be subject to abuse (or when it knows someone else has made such a report).

Agents sometimes steal funds from their principals. Financial abuse of the elderly is often done by agents acting with apparent authority under a valid POA. According to the State Bar of Wisconsin, more than 80 percent of victims of abuse by an agent under a durable POA are victimized by relatives, most of whom are immediate family members.

If you suspect someone acting under a POA is defrauding a member, or that any member is a victim of financial exploitation, Wisconsin and federal law allow you to alert appropriate authorities. Wisconsin law also allows the credit union to contact relatives or certain other parties (including contacts that a member may authorize in advance) about suspected financial exploitation of a "vulnerable adult" (meaning someone 65 or older or an "at risk" adult). For more information, see The League's *ii Release No. 0174, "Reporting Financial Abuse."*

☐ **Require the Agent to Sign Documents and Endorse Checks in a Way that Indicates His/Her Authority.**

A check made payable to the principal should be endorsed to indicate the name of the principal/payee, "by" the signature of the agent, and an explanation of the agent's authority. For example, an agent named Ima Poa depositing a check for your member, Pat Principal, should endorse the check this way:

Pat Principal
By *Ima Poa*, Ima Poa
Attorney-in-fact for Pat Principal

SETOFF

The credit union cannot setoff against the principal's funds to recover for the POA agent's personal debts. Since the agent has no ownership interest in the principal's accounts, those accounts are not eligible for setoff to recover on debts the agent owes to the credit union. For more on setoff, see the League's *ii Release No. B013*.

EXHIBITS

- Exhibit A: Rules for Certain POA Forms
- Exhibit B: Special Accounts and Powers of Attorney
- Exhibit C: Sample Completed Agent's Certification

* * * * *

League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that The League does not render legal services. If you have general questions regarding this release,

please call The League at (608) 640-4050 if local or (800) 242-0833. For specific legal advice, please consult your credit union's attorney.

Legal Affairs Department

PEG/jb

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EXHIBIT A: RULES FOR CERTAIN POWER OF ATTORNEY FORMS

If the credit union is relying on any of the following types of power of attorney (POA) forms, review the material below for particular rules that may apply:

- The discontinued Power of Attorney / Agent Designation on the League's Account Ownership card (#82024);
- The League's discontinued Designation of Agent card (#81038);
- The League's discontinued Power of Attorney card (#81058);
- The Wisconsin Basic Power of Attorney for Finances and Property; or
- Military POAs.

The Discontinued Power of Attorney / Agent Designation on the League's Account Ownership Card (#82024)

In 2025, The League removed the Power of Attorney / Agent Designation from its account forms, because it was seldom used and seemed to cause confusion among members and credit unions staff.

However, if your members have already signed agent designations on WCUL account forms, the credit union may still honor them. The following material explains how the old agent designations work and the limits on their scope.

The credit union cannot require an agent be designated with this form instead of or in addition to a separate POA form. Use of this agent designation requires the signature of all owners of the account – even if the account only requires one signature for withdrawals.

The designation is a limited, durable POA. In fact, it is *very* limited: *It only authorizes withdrawals and only from the particular account the card applies to.* Don't be misled by the language on the card that seems to authorize virtually any “transactions regarding this account.” Wis. Stats. Chap. 705 requires this language but later states that withdrawals are the only transactions authorized.

The designation on the Account Ownership card does *not* authorize the agent to:

- Transact business on other accounts or sub-accounts the member owns;
- Create new accounts or certificates;
- Designate payable on death beneficiaries;
- Re-title accounts;
- Pledge the account on a loan;
- Take out a loan in the principal's name;
- Sign the member's name to cash or deposit checks;
- Endorse and deposit any checks, drafts, notes, bills, certificates of deposit, or other instruments or orders for the payment of money;
- Cash checks payable to the member; or
- Access the member's safe deposit box.

The POA agent cannot cash or deposit the member's checks – unless the member has already endorsed them. Does this mean the agent cannot make deposits to the member's account? No, not exactly. The agent, like anyone else, can make deposits of cash or properly endorsed checks to an account without the member being present. However, the agent cannot sign the member's name to cash or deposit checks.

A separate Account Ownership card should be completed for each sub-account. The designation grants authority only in regard to the account or certificate of deposit designated on its face by account number, not by membership number generally.

The designation may be revoked at any time. The member's death automatically revokes the agency designation.

The League's Discontinued Designation of Agent Card (#81038)

The League used to provide a Designation of Agent card (#81038). That card has been discontinued. However, your credit union may still have some of these signed cards in effect. If so, review the material above about the Power of Attorney / Agent Designation on the League's Account Ownership card (#82024). That material also applies to the discontinued Designation of Agent card.

The League's Discontinued Power of Attorney Card (#81058)

The League used to provide a Power of Attorney card (#81058). It has since been discontinued. However, your credit union may still have some of these signed cards in effect.

The discontinued card allowed agents to transact business on the account number designated on the card. Specifically, it allowed the agent:

- To endorse and deposit into the account any checks, drafts, notes, bills, certificates of deposit, or other instruments or orders for the payment of money to the parties;
- To make withdrawals of any sum from the account; and
- To grant to the credit union a security interest and lien in the account to obtain loans on the member's behalf.

The POA card was “durable,” meaning that once signed, it remained effective *regardless* whether the principal later became incapacitated, incompetent or disabled. The card could be revoked at any time. This only required the signature of any one party to the account, on the termination lines provided on the back of the card. As with any POA, the member's death would automatically revoke the authority granted by this card.

Wisconsin Statutory Form Power of Attorney for Finances and Property

The Wisconsin Legislature provides a statutory POA form in Wisconsin Statutes § 244.61. It is called the “Wisconsin Statutory Form Power of Attorney for Finance and Property.” The form gives Wisconsin residents many options in creating a POA that suits their needs.

The form, along with other estate-planning forms, such as a “power of attorney for health care” and a “directions to physicians (living will),” is available on the Wisconsin Department of Health Services website, at www.dhs.wisconsin.gov/forms/advdirectives/ADFormsPOA.htm However, the credit union should not advise members regarding what POA form to use or how to complete a form.

The form includes plain-language instructions to the principal and agent. Using the form is optional for lawyers and non-lawyers. In other words, people can still write their own POAs, or they can hire attorneys to draft them.

The form lists 15 subject areas. If the principal initials the heading for a subject, that power is included in the agent's general authority. The 15 powers are listed in this release, in the “Checklist to be Used Every Time a POA Agent Asks to Make Transactions,” under the subheading, “General POAs and References to Powers in Statutes.” A section of Chap. 244 in the statutes defines what each of these subject areas covers. An appendix to the statutory form includes the text of the statutory definitions.

Special Instructions

The powers can be modified, if the principal wants, by using the form's “special-instructions” section. The credit union should check this area to see whether any of the agent's authority is restricted in some way or whether special conditions apply to the POA. The POA might give the agent authority to handle some or all of the 15 areas and then explain that it is modifying the agent's authority in certain ways.

As explained in the release, unless a POA says otherwise, it is presumed to go into effect as soon as it is signed and to be “durable” – to stay in effect whether the principal later becomes incapacitated or remains in perfect health. If the principal does not want the POA to be durable or to go into effect when signed, then he/she should address this in the “special instructions” area.

Banks and Other Financial Institutions

If the POA principal initial the subject “Banks and Other Financial Institutions,” that means (according to Wis. Stats. § 244.48) that the agent can do all of the following (unless the POA limits or modifies the agent's authority):

- Continue, modify and terminate an account or other arrangement made by or on behalf of the principal.
- Establish, modify and terminate an account or other arrangement with a credit union the agent selects.
- Contract for services, including renting a safe deposit box.
- Withdraw (by check, order, electronic funds transfer or otherwise) money or property of the principal deposited with or left in the credit union's custody.
- Receive statements, notices and similar documents from the credit union and act with respect to them.
- Enter a safe deposit box or vault and withdraw or add to the contents.
- Borrow money and pledge the principal's personal property as collateral, or pay, renew or extend the time of payment of a debt.
- Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or non-negotiable paper of the principal or payable to the principal; transfer money, receive the cash or other proceeds of those transactions; and accept a draft drawn by a person upon the principal and pay it when due.
- Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or non-negotiable instrument.
- Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks and give an indemnity or other agreement in connection with letters of credit.
- Consent to an extension of the time of payment with respect to commercial paper or a financial transaction.

Because of the restrictions on gifts and self-dealing (discussed in this release under the heading "Don't Let an Agent Do Certain Things Unless Specifically Authorized in the POA"), do not allow an agent using this form to add joint owners or payable-on-death beneficiaries to credit union accounts unless the POA authorizes gifting.

Signatures

The statutory form should bear the principal's signature, which should have been acknowledged before a notary public. Wisconsin's POA statutes do not require the principal's signature to be notarized, but notarization should give the credit union some level of assurance that the principal's signature is bona fide, since notaries are supposed to verify a signer's identity.

Also, the Wisconsin POA statutes say that another person can validly sign a POA with the principal's name if that person is acting at the principal's direction and in his/her "conscious presence." It is unclear how the credit union would verify the validity of such a signature.

The statutory form does not require the agent's signature. Rather, an agent may accept the authority granted by taking action in accordance with the POA or by otherwise indicating acceptance. (Signing the POA would be such an indication, but it is not required).

Military POAs

Federal law provides that members of the armed services may execute either a general or specific military POA. By federal law, a military POA is "to be given legal effect without regard to state law." 10 U.S.C. § 1044b. A military POA:

- Is exempt from any requirement of form, substance, formality, or recording that is provided for POAs under the laws of a State, and
- Shall be given the same legal effect as a POA and executed in accordance with the laws of the State concerned.

The Wisconsin POA statutes say that a military POA is valid if it complies with federal law (10 U.S.C. 1044b). It also says that Wisconsin's POA statutes do not apply to "a power created on a form prescribed by a government or governmental subdivision, agency or instrumentality for a government purpose."

Out-of-State POAs

The Wisconsin POA statutes say that an out-of-state POA is valid in Wisconsin if it complied with the laws of the state or jurisdiction where it was signed. The language in an out-of-state POA has to be interpreted based on the laws of the state or

jurisdiction where it was signed, too. (Some POAs may say, instead, that they are to be interpreted under the laws of a particular state; if so, then that state's laws govern the interpretation of the POA, regardless of where it was signed.)

EXHIBIT B: SPECIAL ACCOUNTS AND POWERS OF ATTORNEY

An agent's ability to act for a principal via a power of attorney (POA) is limited – or even prohibited – on certain “special” types of accounts. These include IRAs, Representative Payee accounts, organization accounts, trust accounts, custodial accounts, joint accounts and guardianship accounts.

Before allowing an agent to transact business on any of these types of accounts, review the material below to see if any special limitations apply.

IRAs

The IRS accepts POAs in most tax matters and has no special rules for IRAs. As always, though, the POA must authorize the act the agent wants to perform. Look for language that reasonably could be interpreted to give the agent authority over all deposit accounts. Also, look for language that gives power over income tax matters, as decisions on withdrawals and deposits automatically affect income taxes. Finally, be sure the agent is not breaching fiduciary duties by, for example, changing the IRA's beneficiary if the POA does not authorize the principal to do so.

Wisconsin's POA statutes provide for a statutory POA to grant the agent general authority over “retirement plans.” This includes Individual Retirement Accounts (IRAs) and Roth IRAs. That general grant of authority includes the power to withdraw benefits, make a rollover, establish a retirement plan, make contributions to a plan, exercise investment powers available under a plan, and borrow from a plan. (Wis. Stats. § 244.55).

Representative Payee Accounts

POAs are not recognized by the Social Security Administration on a representative payee account. These accounts are sometimes created for people who received monthly Social Security or Supplemental Security Income checks and need someone to help them manage their money. The Social Security Administration can appoint someone to serve as the beneficiary's “representative payee.” The beneficiary's benefits are then paid in the representative payee's name on the beneficiary's behalf.

The Social Security Administration does *not* accept POAs for management of a person's monthly benefits. Only the SSA-designated representative payee may transact business on these accounts for the beneficiary.

For more information about representative payees, see The League's *ii Release No. 0129*.

Organization Accounts

Corporations, limited liability companies, partnerships and other organization need to use resolutions – like the League's Depository Declaration and Agreement form (#81075) – to specify who can handle the organization's accounts.

The Depository Declaration and Agreement spells out the powers of each person authorized to transact business on the organization's accounts, and it provides specimen signatures. A credit union would not pay a check or permit any other withdrawal from an organization's account except as authorized by a current Depository Declaration and Agreement.

As a general rule, an individual is not authorized to transact business for an organization based only on a personal POA.

Subject to some limits, a general POA (which authorizes the POA agent to anything the principal could do) gives the agent general authority “with respect to operation of an entity of business.” The agent could do things like sell the principal's ownership interest in the business. (Wis. Stats. § 244.49.) However, The League does not believe that this personal POA gives a POA agent the right to access an organization's account, even if the POA principal is an authorized signer on that account. Instead, the organization should complete a new Depository Declaration and Agreement, appointing the additional person as an authorized signer.

If the POA principal was the sole owner of the business, § 244.49(7) gives the POA agent additional authority, including the right to “demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business...” Credit unions may consult with their attorney if a POA agent claims that the POA authorizes him to access the accounts of a business that was solely owned by the POA principal.

For more information on organization accounts, see The League's *ii Release No. 0161*.

Trust Accounts

If an account is held in the name of a trust (usually called a revocable living trust) only the trustee(s) can be allowed to transact business on that account.

Subject to some limits, a general POA (which authorizes the POA agent to anything the principal could do) gives the agent general authority over “estates, trusts and other beneficial interests.” The agent could do things like “accept ... payment from an estate [or] trust.” (Wis. Stats. § 244.51.) However, The League does not believe that this personal POA gives a POA agent the right to access the trust’s account, even if the POA principal is the trustee. That’s because a trustee is a fiduciary, meaning he/she has special obligations when it comes to managing the trust. Wisconsin court opinions say that a fiduciary cannot delegate his/her responsibilities to a third party. For that reason, a credit union would generally not allow an agent to handle the trust’s accounts based on the trustee’s POA.

For example, let’s say Tom Smith is the trustee for the Smith Family Living Trust, which his parents established years ago. Tom gives his wife, Agnes Smith, a general POA. That general POA allows Agnes to act as Tom’s agent with respect to all of Tom’s personal assets, for Tom’s benefit. So, Agnes could use the POA to make withdrawals from Tom Smith’s solely owned checking account. But Tom does not own the trust accounts; those are owned by the Smith Family Living Trust, which is a separate legal entity. Agnes has no authority to act on the trust’s behalf, so she cannot transact business on the trust’s accounts. Only the Smith Family Living Trust’s trustee can do that, and he cannot choose to delegate that authority to someone else. If Tom can no longer handle the trust, then the trust should name a successor trustee to take over.

There could be an exception to this general rule if the POA (and the trust) explicitly say that the POA agent can handle trust matters. Wisconsin’s POA statutes say that even if the POA authorizes the agent to do anything the principal could do, there are still some things an agent can only do if the POA explicitly allows for it. This includes “exercising fiduciary powers that the principal has authority to delegate.” (Wis. Stats. § 244.41.) This may allow a POA to specifically empower the POA agent to access a trust’s account in some situations. For example, the principal may have set up a revocable living trust and named himself or herself as the trustee. The trust and the POA might provide that the principal authorizes his POA agent to step in and handle trust matters for the principal. This would have to be spelled out specifically in the POA. (It should be addressed in the trust documents, too.) These situations should not be common, and if they arise, credit unions may consult with their own attorneys before allowing a POA agent to transact a trust account.

The Wisconsin POA statutes say that an agent cannot change the principal’s living trust or revoke it unless the POA specifically says so.

For more information on trust accounts, see The League’s *ii Release No. 0116 and No. 0161*.

Custodial Accounts

Like a trustee, a custodian is a fiduciary and cannot delegate his/her responsibilities through a POA. Even though the custodian may have executed a valid POA authorizing an agent to handle the custodian’s personal affairs, this does not entitle the agent to act on a custodial account.

If the custodian no longer wishes to handle the custodial account, the custodian may appoint a successor or, in some cases, a court will need to do so.

For more information on custodial accounts, see The League’s *ii Release No. 0012*.

Joint Accounts

The credit union should not ordinarily insist that all owners of a joint account consent before a POA agent can transact business on the account. Any account owner can name a POA agent to act on their behalf. If the POA document gives proper authority for an agent to do something an account owner could have done, the credit union cannot deny the agent that ability.

Consider a joint account for which the agreement allows any one of the joint owners to transact business on the account independently (as on a typical “or” account). The credit union should let a POA agent -- who has been authorized by any one of the account owners -- transact business on the account for the POA principal. The POA agent can take withdrawals without the signature of any joint owner.

For example, if John and Mary have a joint account and Mary’s valid POA document gives banking authority to Susan, then Susan can sign for withdrawals on Mary’s behalf.

- On a single signature “or” account, where John and Mary can each do withdrawals on their own, Susan the POA stands in Mary’s shoes and can withdraw on her own - just like Mary can.
- On a dual signature “and” account, where John and Mary must both sign for withdrawals, then Susan the POA agent is subject to the same restriction as Mary. Susan can only withdraw funds on Mary’s behalf if John also signs for the withdrawal.

Wisconsin law provides that a person (e.g., the credit union) does not need to honor a POA if the person is not otherwise required to engage in a transaction with the principal (e.g., Mary) in the same circumstances. The credit union would not let Mary withdraw funds on her own on a dual-signature account, so it cannot let her agent, Susan, withdraw funds without John also signing for the withdrawal.

Old versions of The League's Account Agreement Brochure (#82004) said: "If there is more than one owner of an Account, the Credit Union reserves the right to require agreement of all Account holders to the terms of the [POA] document." The League has revised the form to delete that language. If forms in use have that or similar language, the credit union should normally not rely upon it.

Guardianship Accounts

If a court appoints a guardian of the estate or conservator for someone who already has a durable POA, the court will usually appoint the POA agent to serve as the guardian or conservator, as well. But what if the guardian and the POA agent are different people? The Wisconsin POA statutes say that if a court appoints a conservator or guardian after a principal executes a POA, the agent is accountable to the conservator or guardian – as well as to the principal. The POA is not automatically terminated, and the agent's authority continues unless limited, suspended, or terminated by the court. (Wis. Stats. § 244.08.) But if the court does not order such a revocation or limitation, the guardian may not make decisions for the ward that may be made by the agent. Wis. Stats. § 54.46(2)(c). See The League's *ii Release No. 0173* for more information about guardianships.

Saver's Sweepstakes Accounts

Saver's Sweepstakes is The League's prize-linked savings program. A POA agent can open a Saver's Sweepstakes account for a principal, or make transactions on the principal's existing Saver's Sweepstakes account, if the POA document allows it (as with any other depository account).

The Saver's Sweepstakes Account Agreement allows the agent to sign for the principal by saying:

If I am a fiduciary – such as a power of attorney agent, custodian, guardian or conservator – I sign in a representative capacity on behalf of the principal/ward I represent, whose name is _____. I understand that only he/she will be eligible to win Saver's Sweepstakes prize drawings and that any prizes won will belong solely to him/her, not to me.

Even if the POA agent signs the Saver's Account Agreement on the principal's behalf, the POA agent is not the account holder. The account holder (and potential prize winner) is the POA principal.

For details, see The League's *ii Release No. 0184 – "Saver's Sweepstakes™ Compliance FAQs."*

EXHIBIT C: SAMPLE COMPLETED AGENT'S CERTIFICATION

**AGENT'S CERTIFICATION AS TO THE VALIDITY OF
POWER OF ATTORNEY FOR FINANCES AND PROPERTY AND AGENT'S AUTHORITY**

STATE OF WISCONSIN

COUNTY OF Kewaunee

I, Christopher Braun, certify under penalty of perjury that
(Name of agent)
Louise Neumann granted me authority as an agent or successor
(Name of principal)
agent in a power of attorney dated October 15, 2023. I further certify that to my knowledge:

- (1) The principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney, and the power of attorney and my authority to act under the power of attorney have not terminated.
- (2) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred.
- (3) If I was named as a successor agent, the prior agent is no longer able or willing to serve.
- (4) The copy of the power of attorney I have provided to the ABC Credit Union is a true and correct copy of the original document.
(Insert other relevant statements)
- (5) The principal was not incompetent when the power of attorney was signed.

SIGNATURE AND ACKNOWLEDGMENT

Christopher Braun October 24, 2023
(Agent's signature) (Date)

Christopher Braun
(Agent's name printed)
1028 N. 3rd Street, Forestville, WI 54235
(Agent's address)
920-555-0100
(Agent's telephone number)

This document was acknowledged before me on October 24, 2023, by
(Date)

Christopher Braun
(Name of agent)



John Doe
(Signature of notary)

John Doe, Notary Public
(Printed name of notary)

My commission expires: Dec. 15, 2024
(Date)

This document prepared by:
John Doe