

Proposed Rule Amendment Relating to Power of Attorney

**State of Wisconsin
Department of Employee Trust Funds
Employee Trust Fund Board
Wisconsin Retirement Board
Teachers Retirement Board
Group Insurance Board
Deferred Compensation Board**

The Wisconsin Department of Employee Trust Funds (ETF) proposes an order pursuant to s. 227.14, Stats., to repeal and recreate administrative rule ETF 10.75 relating to the implementation of statutory changes related to power of attorney for finances and property pursuant to 2009 Wisconsin Act 319.

Notice of Public Hearing

A public hearing on the proposed rule will be held on February 3, 2011, at 2:00 p.m. in Conference Room GA at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin. Persons wishing to attend should come to the reception desk up the stairs (or by elevator) from the main entrance to the building.

Analysis Prepared by the Department of Employee Trust Funds

1. Statutes Interpreted:
Various statute sections in ch. 244, Stats., relating to uniform power of attorney.
2. Statutory Authority:
Sections 40.03 (2) (i), (ig), (ir), and 227.11 (2) (a), Stats.
3. Explanation of Agency Authority:
By statute, the ETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.
4. Related Statute or Rule:
There are no other rules that clarify how ETF will administer Chapter 40 benefits with respect to power of attorney. 2009 Wisconsin Act 319 contains changes to the statutes relating to power of attorney for property and finances.
5. Plain Language Analysis:
2009 Wisconsin Act 319 updates provisions related to the uniform power of attorney for property and finances. Rule changes are necessary to bring ETF's treatment of power of attorney documents into harmony with the new statutes, including:

- A rule clarifying how the department will process conflicting transaction requests from co-agents when the principal has granted authority to execute such transactions to multiple agents.
 - A rule specifying how the department will implement the 10-day deadline for rejecting power of attorney documents and requests provided in 2009 Wisconsin Act 319.
 - A rule specifying the department's treatment of an agent's request to execute a transaction when the power of attorney document is incomplete or certification is required.
 - A rule clarifying that a power of attorney does not automatically terminate when a domestic partnership established under Chapter 40 is terminated.
6. Summary of, and Comparison with, Existing or Proposed Federal Regulations:
There are no existing federal regulations that specifically address how states process and administer power of attorney.
 7. Comparison with Rules in Adjacent States
All states except Louisiana have adopted the Uniform Power of Attorney Act, although each state may incorporate additional provisions into their own power of attorney laws. If a power of attorney was executed in a state other than Wisconsin, the department would abide by that state's laws with respect to the authority and powers granted in the power of attorney document.
 8. Summary of Factual Data and Analytical Methodologies:
2009 Wisconsin Act 319 amended Wisconsin's statutes governing uniform power of attorney for finances and property. The proposed rule change is intended to bring ETF's power of attorney rule into harmony with the amended statutes
 9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report:
The rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System.
 10. Effect on small business:
There is no effect on small business.
 11. Agency contact person:
Linda Owen, Policy Analyst, Department of Employee Trust Funds, 801 W Badger Rd, Madison, WI 53713-7931, P.O. Box 7931 (use ZIP Code 53707 for PO Box); Phone: 608-267-2847; e-mail: linda.owen@etf.state.wi.us

12. Place where comments are to be submitted and deadline for submissions:
Comments may be submitted to the contact person no later than 4:30 p.m., Central Standard Time, on February 14, 2010. The place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.
 13. Proposed Effective Date:
This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided by s. 227.22 (2) (intro.), Stats.
 14. Fiscal Estimate:
The rule will have a minimal fiscal effect, in that it will require minor changes to ETF's procedures with respect to reviewing power of attorney documents. Any costs are anticipated to be insignificant, and the Department can absorb these costs within the existing base budget. The rule will not create any additional fiscal impact on any county, city, village, town, school district, technical college district, or sewerage districts. The rule will not create any additional fiscal impact on the state for the current biennium. The rule will not have any fiscal impact on the private sector.
 15. Free Copies of Proposed Rule:
Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931. The telephone number is: (608) 266-1071.
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ETF 10.75 is repealed and recreated.

1 **ETF 10.75 Power of attorney. (1)** As used in this section, “power of attorney”
2 includes all of the following: (a) A uniform statutory power of attorney as defined in s.
3 244.61, Stats.;

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5 (b) A uniform statutory power of attorney as defined under and containing the
6 language required in a uniform statutory power of attorney act enacted by a jurisdiction
7 other than the state of Wisconsin, provided the power of attorney meets the
8 requirements of and does not conflict with s. 244.61, Stats.;

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10 (c) A durable power of attorney as defined in s. 244.01 (3), Stats.;

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12 (d) A durable power of attorney as defined under and containing the language
13 required in a uniform durable power of attorney act enacted by a jurisdiction other than
14 the state of Wisconsin, provided the power of attorney meets the requirements of and
15 does not conflict with s. 244.01 (3) Stats.;

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17 (e) A person’s common law authorization, whether durable or non-durable, to act as
18 the person’s agent under a power of attorney.

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20 (f) A power of attorney document signed before September 1, 2010, is presumed to
21 be non-durable unless the power of attorney document specifies that it is durable.

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23 (g) A power of attorney document signed on or after September 1, 2010, is presumed
24 to be durable unless the power of attorney document specifies that it is non-durable.

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26 **(2)** The department or the Wisconsin Deferred Compensation Program administrator,
27 as applicable, shall accept the agent’s signature in lieu of the principal’s signature for all
28 transactions for which the department or the Wisconsin Deferred Compensation
29 Program administrator requires the principal’s signature, provided that all of the
30 following conditions are met:

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32 (a) The department or the Wisconsin Deferred Compensation Program administrator,
33 as applicable, received either the original of the power of attorney which is dated and
34 signed by the person granting the power of attorney, or a legible facsimile copy or e-
35 mail attachment, subject to s. ETF 10.82. The department or the Wisconsin Deferred
36 Compensation Program administrator, as applicable, may require additional
37 documentation deemed necessary to verify that the power of attorney remains in effect.

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39 (b) The appointment under power of attorney has not terminated or expired.

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41 (c) The powers delegated under the power of attorney include authority to make the
42 transaction authorized by the agent.

43

44 (d) If requested by the department or the Wisconsin Deferred Compensation Program
45 administrator, the agent certifies that he or she does not have knowledge of the
46 termination of the appointment, the principal's death, or if applicable, the principal's
47 incapacitation. If the department or the Wisconsin Deferred Compensation Program
48 administrator requests such certification, and the agent does not provide the certification
49 as requested, the department or the Wisconsin Deferred Compensation Program
50 administrator may decline to act upon the request.

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52 (e) If the power of attorney is conditioned on the incapacitation of the principal, upon
53 request of the department or the Wisconsin Deferred Compensation Program
54 administrator the agent provides evidence satisfactory to the department or the
55 Wisconsin Deferred Compensation Program administrator that the principal has become
56 incapacitated.

57
58 (f) Subject to par. (c), the department and the Wisconsin Deferred Compensation
59 Program administrator, as applicable, shall treat as valid any beneficiary designation
60 received prior to the principal's death that is signed by the agent, without regard to the
61 date on which the power of attorney was executed by the principal or the date on which
62 the department or the Wisconsin Deferred Compensation Program administrator
63 receives the beneficiary designation form, provided that the agent signed the beneficiary
64 designation on or after the date on which the principal executed the power of attorney
65 granting that authority to the agent.

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67 **(3)** (a) The department or the Wisconsin Deferred Compensation Program
68 administrator, as applicable, shall review acknowledged power of attorney documents
69 for technical completeness, and will reject any that are technically deficient within 10
70 days after receipt by the Department.

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72 (b) The department and the Wisconsin Deferred Compensation Program
73 administrator, as applicable, shall not honor transaction requests by the agent for which
74 the power of attorney document does not grant authority to the agent, regardless of
75 whether the agent's request is rejected within 10 days after the department received the
76 agent's request.

77
78 (c) The effective dates of certain transactions are based on the receipt date of either
79 the transaction request or certain documents, such as a benefit application. If the
80 department receives such a transaction request from the agent, but either has not
81 received the power of attorney or the department requests certification under par. (2)
82 (d), the department must receive the requested certification or the power of attorney
83 within 30 days after the department's notification to the agent that the power of attorney
84 or certification is required. If the department receives the certification or power of
85 attorney within 30 days, the effective date of the transaction requested will be based on
86 the original date on which the department received the transaction request.

87 (c) Par. (b) shall not apply if the principal executed the power of attorney after the
88 date on which the department received the transaction request.

89 (d) A document signed by the agent prior to the date on which the power of attorney
90 becomes effective shall have no force or effect.

91 **(4)** (a) If the principal has granted joint power of attorney to co-agents, the
92 department or the Wisconsin Deferred Compensation Program administrator, as
93 applicable, shall require the signature of each agent on any transaction that requires the
94 principal's signature.

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96 (b) If the principal has granted separate power of attorney to more than one agent,
97 each with independent authority, the department and the Wisconsin Deferred
98 Compensation Program administrator, as applicable, shall honor transaction requests
99 signed by any single agent, subject to par. (2) (c).

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101 (c) If agents under par. (b) request to execute conflicting transactions, the department
102 or the Wisconsin Deferred Compensation Program administrator, as applicable, may
103 decline to act upon the requests of one or more of the agents if it is determined to be in
104 the best interests of the principal.

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106 **(5)** The department or the Wisconsin Deferred Compensation Program administrator,
107 as applicable, may decline to act upon the request of an agent acting under an alleged
108 power of attorney if there is reason to believe that the purported agent is not the
109 appointed person, the appointment is not in effect, the authority of the power of attorney
110 does not extend to the particular transaction, or the power of attorney is otherwise
111 defective.

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113 **(6)** (a) Unless otherwise specified in the power of attorney, if the agent is the
114 principal's spouse or domestic partner as defined in s. 770.01 (1), Stats., the power of
115 attorney terminates if an action is filed for the dissolution of the agent's marriage to the
116 principal or the domestic partnership of the principal and agent is terminated.

117
118 (b) Unless otherwise specified in the power of attorney, if the agent is the principal's
119 domestic partner as defined in s. 40.02 (21c), Stats., the power of attorney does not
120 automatically terminate if only the domestic partnership as defined in s. 40.02 (21d),
121 Stats., terminates.