

## The Alabama Supreme Court Interprets Alabama's Uniform Power of Attorney Act

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Financial institutions should understand that relying on a power of attorney may subject them to potential liability as the use of powers of attorney becomes more commonplace. The Alabama Supreme Court recently [shed some light](#) on this topic in *Forbes v. Platinum Mortgage, Inc.*, No. 1180985, 2020 WL 746533 (Feb. 14, 2020).

In *Forbes*, Platinum Mortgage and PennyMac Loan Services LLC relied on a power of attorney when executing a \$175,000 mortgage. The principal's conservator later claimed that the principal lacked the capacity to execute the power of attorney and initiated the action. The trial court disagreed. The trial court determined that Platinum Mortgage and PennyMac properly relied on the power of attorney because the principal's signature was authorized by a notary. Upon review, the Alabama Supreme Court affirmed. The Alabama Supreme Court explained that where a power of attorney document appears valid on its face and a third-party has no knowledge of any purported invalidity, the third-party (here the mortgagee) may rely on the power of attorney.

While this is the determination of the Alabama Supreme Court, the holding interprets language in the Uniform Power of Attorney Act. This means that for all those third-parties relying on powers of attorney it is important to determine whether the document is facially valid. Additionally, if there is any actual knowledge of an alleged *invalidity* the third-party should be wary about relying on the power of attorney.

The holding also reflects the importance of notarization and how when a document is notarized lenders or other third-parties can rely on the agent's signature.

This decision is positive for third-parties relying on powers of attorney because, under these facts, the risk is on the principal rather than on a party who properly relies on a power of attorney. That said, it is important for financial institutions to have procedures in place to ensure the facial validity of every power of attorney presented.

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