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The New Power of Attorney Law: What the Changes Mean For You

Elder Law Day: Summer Series

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AGENDA

- Introduction
 - What is a Power of Attorney?
 - Frequently Asked Questions?
- Updates to new POA law
 - What has changed?
 - What do I need to do?
- Q/A





What is a Power of Attorney?

- A Power of Attorney is a document that allows to appoint one or more people to handle your financial affairs for you.
- The person you name to act for is you is called your “agent.” You are known as the “principal.”
- You can choose to appoint up to two agents, and two successor agents. Successor agents begin to serve if your primary agent/s are unable to perform their duties. If you choose multiple primary or successor agents, you must designate whether you wish for them to act together or separately.
- The Power of Attorney law became effective in New York in 2009. Changes were made in 2010, and most recently in June 2021.



Who Can Complete a Power of Attorney?

- In order to complete a Power of Attorney (POA), you must be at least 18 years of age and be able to understand what a power of attorney is, which we refer to as mental capacity.
- Mental capacity is referred to as the ability to comprehend the nature and consequences of the act of executing, revoking, amending, or modifying a Power of Attorney, or the authority of any person to act as agent under a Power of Attorney.
- If you suffer a sudden illness which causes you to be unable to manage your own affairs, you may not be able to complete a POA at that time.
- It is never too early to consider signing a POA, so long as you have reliable and trustworthy agents to assist you.



Can I Still Manage My Own Finances After I Sign a POA?

- Yes! Signing a POA does not relinquish your own ability to manage your own finances.
- Signing a POA simply allows one or more agents to assist you.
- The document becomes particularly helpful if you were ever in a state where you were unable to manage your finances.



Can a POA be Revoked?

- Yes. Powers of Attorney are not set in stone. They can be revoked at any time by the Principal so long as they have the requisite capacity to do so. This is completed by executing a revocation form.
- In order for the revocation to be effective, it must be served to all of the agents, as well as any third party who relies on the document (banks, other financial institutions, etc.)
- The POA document automatically terminates upon the passing of the Principal.



Choosing Your Agent

- The POA is a very powerful tool where you can give someone unlimited access to your finances.
- While the POA can be of great value to you, it is very important to choose a trustworthy agent.
- Some questions to ask yourself when considering an agent:
 - Is this person financially responsible for their own affairs?
 - Is this person close by so that they can effectively manage my finances (go to your bank, etc.)?
 - Will this person always act in my best interests and never for themselves?



The Rights of a Principal

- Remember, you can still manage your finances yourself even though you have appointed an agent through a POA.
- As the Principal, you have the ability to request information from your agent at anytime.
- You can ask your agent for copies of bank statements to make sure your money is being spent properly.
- Your agent must provide these records to you.
- Though they are rarely used, you may also appoint a monitor, who is a third party who oversees the work of the agent.



What Authorities Can I Give My Agent?

- Common authorities that can be granted in the POA include:
- Real estate transactions;
- Chattel and goods transactions (personal belongings);
- Banking transactions
- Bond, share and commodity transactions;
- Business operating transactions;
- Insurance transactions;
- Estate transactions;
- Claims and litigation;
- Personal and family maintenance (gifts);
- Benefits from government programs or civil or military service;
- Financial matters related to health care; records, reports, and statements;
- Retirement benefit transactions;
- Tax matters;
- All other matters;
- Authority to delegate powers to another person whom the agent may select.



Is My POA Valid if Executed in Another State?

- Yes, as long as your Power of Attorney was validly executed in another state, it is valid in New York.
- Likewise, a validly executed New York POA should be honored in other states as well.





How Long Will My POA Last?

- The POA will typically last until:
 - The principal dies;
 - The POA is revoked by the Principal;
 - The agent's authority is revoked – with no successor agent to step in.
 - The agent dies, becomes incapacitated or resigns – with no successor agent to step in.
 - If the agent is a spouse, the POA will terminate in the event of a divorce – if there is no co-agent or successor agent who can step in.



Updates to the New POA Law

- Changes were made to the POA law that went into effect on June 13, 2021.
- POA's that were validly drafted and executed prior to 6/13/21 are still valid. You do not need to sign a new POA.
- If you are considering completing a POA, it is recommended you speak with an attorney to assist you to ensure that you are using the most up-to-date form.
- There are strict requirements for drafting and signing a POA. If not done properly, the document will be deemed invalid and it will not be honored.
- We will cover some of the requirements to make a valid POA.



Updates to the POA Law

- In 2009, and again in 2010, New York created a *Statutory Short Form Power of Attorney*.
- POA's had to contain exact wording from the Statutory Short Form. POA's that did not have exact language would be invalid.
- The document had to be signed and dated by the Principal, with requisite capacity. The Principal's signature had to be notarized as well.
- The Statutory Gifts Rider was created to allow agents to make gifts on behalf of the Principal that exceed \$500.
- Further changes in 2013 eased some of the strict requirements to have a valid POA...



Updates to the POA Law

- The following changes were made, effective June 13, 2021.
- The document must be signed, initialed and dated by a principal with capacity, or in the name of such principal by another person, other than the agent or successor agent, in the principal's presence and at the principal's direction.
- This removes the requirement that the principal **MUST** sign and date the document





Updates to the POA Law

- Introduces *substantial conformity*: General Obligations Law §5-1501(n)
 - The new law allows for POA's to have some wording that might not be exactly the same as the statutory short form.
 - In the past, not having exact wording would invalidate the document.
 - A given Power of attorney substantially conforms to the form required notwithstanding that the form contains:
 - An insignificant mistake in wording, spelling, punctuation or formatting, or the use of bold or italic type; or
 - Uses language that is essentially the same as, but not identical to, the statutory form, including utilizing language from a previous statute.
- Failing to include clauses that are not relevant to a POA shall not cause it be invalid.



Updates to the POA Law

- Elimination of the Statutory Gifts Rider (SGR)
 - Prior to the June 13 changes, a POA must contain a SGR if the principal was going to allow the agent gifting authority.
 - The SGR was a second document that discussed specific gift-giving authorities.
 - Now, in order to grant this authority, the principal need only include the gifting authority as a modification to the POA.
 - Gifts in excess of \$5,000 per year must be authorized in a modification.



Changes to the POA Law

- Honoring a POA:
 - Third parties who refuse to honor a POA within a specified time can be financially sanctioned for their failure to respond.
 - Ex: If a bank does not timely honor a valid POA and allow the agent to perform their duties, the bank can be financially sanctioned.



Questions?

