



LEGAL ALERT

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New York State Enacts New Requirements for Power of Attorney Regulations

On June 13, 2021, a new version of the New York Statutory Short Form Power of Attorney went into effect. Powers of Attorney signed before this date that complied with the earlier law continue to be valid. However, any Power of Attorney signed after June 13th must comply with the new requirements, as outlined below.

1. Witnessing Requirement

Under the old law, a Power of Attorney had to be notarized, but it was not necessary for the document to be witnessed. Under the new law, the person designating an agent (known as the “principal”), still needs to have his or her signature notarized, but now must sign the Power of Attorney in the presence of two witnesses (one of whom can be the notary). The witnesses cannot be individuals named in the document as agents and serving as a witness makes a person ineligible to receive gifts from the agent at a later date. Therefore, it is important to select disinterested witnesses when signing a Power of Attorney under the new law.

2. No Gifts Rider

Under the old law, agents were prohibited from making gifts or taking certain actions on behalf of the principal if the aggregate value of the transaction was greater than \$500, unless the principal had signed a Statutory Gifts Rider. The new law eliminates the Statutory Gift Rider and increases the dollar threshold for actions requiring special authorization (from \$500 to \$5,000), but special care is still needed when considering gifting and the powers a principal intends to grant to his or her agent.

Many estate planning actions, such as updating beneficiary designations on retirement accounts and life insurance policies and adding transfer on death designations to bank or investment accounts, which could previously be authorized under the Statutory Gifts Rider, now require authorization under the “Modifications” section of the Power of Attorney itself. Clients who wish to authorize their agents to make gifts in excess of \$5,000 per year, or who want their agent to have broad estate planning powers should talk to their attorney to make sure their Power of Attorney, whether prepared under the old or new law, is properly drafted.



3. Acceptance and Timeline

The new law creates a presumption of validity for a Power of Attorney, encouraging banks and other financial institutions to accept the document. The new law sets up a strict timeline for acceptance or rejection of a Power of Attorney by any third party doing business in New York, and requires that if a Power of Attorney is rejected, the third party must provide written notice to the principal and the agent. A third party cannot refuse to honor a power of attorney without reasonable cause for doing so. This is meant to simplify the use of the Power of Attorney and cut through the sometimes-arbitrary red tape imposed by banks and other financial institutions. If you have any trouble with a third party honoring a Power of Attorney, you should contact your attorney to discuss options.

4. Damages

Under the earlier law, an injunction compelling acceptance of a Power of Attorney was the only relief available if a third party rejected a Power of Attorney. Under the new law, if a Court finds that the third-party unreasonably refused to accept the Power of Attorney, the Court may award damages, including reasonable attorney's fees and costs.

Conclusion

A Power of Attorney is an essential estate planning document. You should review your files to make sure that you have a valid Power of Attorney in place. If you do not have a Power of Attorney or if you have any questions about your existing Power of Attorney, you should contact your attorney to discuss.

For additional insight and information, please contact:



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