

New Power of Attorney Law in New York

In January 2009, the New York State Legislature approved and Governor Patterson signed into law the legislation that dramatically changes the laws pertaining to powers of attorney. The changes are intended to stave off financial abuse of the elderly.

The new power of attorney, and the forms that accompany it, is considerably more complex than its predecessor. The assistance of a lawyer, although not required, is well advised.

All powers of attorney executed prior to September 1, 2009 will remain valid. The current, simpler forms are available in commercial stationery stores, Office Depot, Staples etc. and usually can be completed without the assistance of a lawyer. Those individuals who do not have a power of attorney should consider using the current, simpler forms before September 1, 2009, the effective date of the new law.

The new power-of-attorney law eliminates all gift-giving authority of the agent except to continue a principal's history of gift-giving not to exceed \$500 per person or charitable organization per year. All other gift-giving may only be accomplished through a separate document, the Statutory Major Gifts Rider.

The new law requires that the agent must sign the power of attorney, acknowledge his legal responsibility, and keep detailed records of all receipts, transactions

and expenditures.

Generally, powers of attorney must be understood as potent planning tools not only for estate planning but also for Medicaid and other public benefits. When an individual (the principal) signs the power of attorney, he gives another person (the agent) the power to act in his place and on his behalf in managing his assets and financial affairs.

A power of attorney can be either a "general" power of attorney where the agent may perform almost any act the principal might have performed himself regarding financial management, or a "limited" power of attorney where the agent has one or more specific powers, such as the power to sell a particular property to a particular purchaser at a particular time.

The durable power of attorney provides that those powers granted to the agent shall not be affected by the subsequent disability or incapacity of the principal. That is, a durable power of attorney is unlike the ordinary power of attorney in that it is not invalidated upon the incapacity of the principal.

In a few states the principal is allowed to delegate to the agent in the durable power of attorney various health care powers in addition to control over financial matters. In New York State, however, a health care proxy must be a separate document. ■