



## **New form of power of attorney goes into effect**

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Recent changes in legislation have resulted in important changes in what many lawyers and clients refer to as a "power of attorney." Effective Sept. 1, 2009, the NYS legislature promulgated a new Statutory Short Form Power of Attorney (New POA). From and after Sept. 1, 2009, a person desiring to give another person the authority to act on his or her behalf must use the New POA. While old forms that were validly executed prior to Sept. 1 will still be valid, only the New POA can be signed on and after Sept. 1.

The proper delegation of authority by power of attorney in the New POA is not as simple as one might expect. The New POA must be signed by both the principal and the attorney in fact, and must be acknowledged in the same way that a deed for the transfer of real property is signed and acknowledged. The New POA must also be executed and initialed in a prescribed manner. Also, the New POA now permits the principal to give his attorney in fact the authority to make major gifts when executed in connection with the new Statutory Major Gifts Rider.

The New POA is also "durable," meaning that, unless the New POA explicitly provides otherwise in writing, the attorney in fact retains the right to act on behalf of the principal even after the incapacity of the principal, unless the New POA is revoked or otherwise effectively modified in writing prior to any such incapacity.

Parties must be careful to ensure that the form of power of attorney that they sign meets the new statutory requirements. If it does not, a bank may reject it for use in a transaction, and a title company may not be able to have it recorded, thereby throwing a major wrench into the ability to consummate a transaction. As always, the use of a power of attorney requires careful consideration concerning the scope and nature of its intended use.

More so than ever, the use of any power of attorney, including the New POA, should be discussed with your attorney prior to its execution and should be used cautiously and with consideration given to the scope and purpose of the intended grant of authority.

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