

# CHANGES TO THE NYS POWER OF ATTORNEY LAW & STATUTORY FORMS

September 16, 2010

## Practices & Industries

Trusts & Estates

Powers of attorney are an effective and frequently used tool in many areas of the law, particularly with elder and estate planning. By executing a power of attorney, the principal authorizes another individual, the agent, to act on his or her behalf. The authority granted in a power of attorney can be broad, permitting the agent to conduct any sort of business on behalf of the principal, or it may be specific, limiting the authority to certain activities or transactions. A principal may also execute a statutory gift rider in addition to a power of attorney to grant the agent greater authority to make gifts on the principal's behalf.

Effective September 13, 2010, substantive and technical changes were made to the provisions of the New York General Obligations Law establishing powers of attorney for financial and estate planning. The changes to the law and the statutory forms were made to clarify and correct the Power of Attorney Law as amended on September 1, 2009.

In addition to corrections made to the language and wording of the 2009 statute and forms, the 2010 law makes the following noteworthy changes:

- It clarifies the process of revoking a previously executed power of attorney and provides that the execution of a new power of attorney does not revoke any previously drafted powers.
- It clarifies that the agent's power to continue to make gifts customarily made by the principal does not exceed \$500 in the aggregate per year (unless the statutory gift rider form is also executed by the principal).
- It adds the power to create, modify, or revoke a trust unless these actions constitute a gift transaction requiring the execution of the statutory gift rider form.
- It provides an exclusive list of powers to which this law does not apply, such as powers given primarily for a business or commercial purpose, a proxy, or other delegation to exercise voting/management rights, a power to create a form for a governmental agency, and a power given to a financial institution or a real estate broker to take certain actions. This exclusion, however, does not prohibit the use of the form for those reasons. But a power of attorney executed for any of those reasons will not revoke an existing statutory power.

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- It clarifies that the termination of a marriage between the principal and the agent revokes the power of attorney (although the remarriage of the principal and the agent will revive it).

Powers of attorney executed before September 13 are still valid. From September 13 onward, all powers of attorney and statutory gift riders must be made using the new forms.

