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NEW LAW CHANGES NEW YORK POWER OF ATTORNEY

On January 29, 2009, Governor Patterson signed into law amendments to Title 15 of Article 5 of the General Obligations Law which significantly change the Power of Attorney form (“POA”) in New York, effective March 1, 2009. Some of the differences are as follows:

The “old” POA required only the signature, and notarization, of the principal, the one creating the form. The new POA must now be signed, dated and acknowledged by both the principal and the agent.

- The old POA contained a provision that permitted gifts of up to \$10,000.00 to certain designated family members. This provision was frequently supplemented with language that increased the amount and expanded to whom gifts could be made. Under the new law, if the principal intends to authorize gifts, the gift-giving authority must be initialed by the principal and, for gifts in excess of \$500 per calendar year, a separate form, the Statutory Major Gifts Rider (“SMGR”), is also required.
- The SMGR is an important new document. Among other things, it may authorize the agent to create and fund trusts, to create joint accounts or modify “totten trust” beneficiaries, and to change beneficiaries on retirement benefit plans.
- The new law defines the responsibilities of the agent, which include record-keeping with receipts, and provides that, upon the written request of a co-agent, governmental entity, court evaluator, guardian, or representative of the principal’s estate, the agent must make the records available. The form contains an optional provision authorizing the principal to appoint a “monitor” who is also entitled to request and receive records of transactions by the agent and can compel the agent to produce records by a special proceeding. The provisions regarding the agent’s responsibilities and special proceedings apply

to all POAs, including those executed before the effective date of the new law.

- Acceptance of the new POA is mandated. The former statute only required acceptance by financial institutions which, by definition, omitted brokerage firms, securities firms and others who manage stock accounts. Now, on a going forward basis, no third party can refuse to honor a POA or SMGR, or even an old POA that was properly executed, without reasonable cause. Banks and brokerage firms will no longer be able to require their own forms.

Powers of attorney created prior to the effective date of the new law are still valid. However, if it has been more than three (3) years since your estate plan was reviewed, or if there have been changes in your family, finances or life, the enactment of the new statute is an excellent reason to have your power of attorney, as well as the balance of your estate plan, reviewed now. We therefore strongly recommend that you contact us to discuss whether updating or creating a new power of attorney is warranted.