

“Changes to the Power of Attorney”  
by Michelle L. Fagan

New York State has revised the statute affecting the New York statutory Power of Attorney form. Any Power of Attorney documents executed on or after September 1, 2009 must adhere to the requirements of the revised statute.

Under any Power of Attorney, the person executing the document is referred to as the principal. The principal nominates a person referred to as the agent or attorney-in-fact to handle certain business and/or financial affairs depending on the powers they initial on the Power of Attorney document. Under the former Power of Attorney, only the principal had to sign the Power of Attorney in the presence of a Notary Public. Under the provisions of the new Power of Attorney, the agent also has to sign the document in the presence of a Notary Public in order for the agent to have authority to act on the principal’s behalf. The agent does not need to sign the Power of Attorney at the same time as the principal. The new statutory short form Power of Attorney includes a notice to the agent informing the agent of his or her fiduciary obligations and the legal limitations on the agent’s authority. The purpose of requiring the agent’s acknowledgement is an attempt to prevent an agent from denying knowledge of his or her duties and responsibilities as the agent for the principal.

Another major change involves the power of the agent to make gifts. Under the prior Power of Attorney, the principal could grant the agent the power to make gifts by simply placing his or her initials next to a short description of the gifting power. Because gifting is a significant power to bestow upon an agent, the new statute seeks to protect the principal from abuse of this power by

the agent. Under the new statutory short form Power of Attorney, the principal has to initial next to the section entitled “Major Gifts and Other Transfers: Statutory Major Gifts Rider” and also has to execute a Statutory Major Gifts Rider at the same time as he or she executes the Power of Attorney. The Statutory Major Gifts Rider has different sections specifying different gifting authorities which the principal can choose to initial. The Statutory Major Gifts Rider must be signed in front of two disinterested witnesses and a Notary Public.

Thus, the new statutory short form Power of Attorney requires a much more elaborate execution process in the attempt to inform the principal of the powers he/she is bestowing upon the agent, to inform the agent of his or her duties to act in the best interests of the principal and in short, to protect the principal from an agent mishandling his or her duties.

For more information about the new statutory short form Power of Attorney, please contact Michelle Fagan, [mfagan@cdog.com](mailto:mfagan@cdog.com), or any of the Chamberlain D’Amanda attorneys in the Trusts and Estates Department.

The purpose of this publication is to alert you to legal updates and developments. This is a general informational update and should not be considered legal advice.

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