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New York State implements a new Durable Power Of Attorney For Financial Matters Beginning June 13, 2021

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New York State has created a new Durable Power of Attorney form for financial matters. This document is effective starting June 13, 2021. Any prior executed Power of Attorney forms will still be considered valid. There are four major changes to the new Durable Power of Attorney form.

1. Elimination of the statutory gift Rider SGR

The new Power of Attorney eliminates the Statutory Gift Rider SGR as part of the Power of Attorney document. The new document now allows for major gifts to be incorporated into the new Durable Power of Attorney form for financial matters. The major gifts are now incorporated into the document as a modification or additional power. This allows the principal to carefully create specific gifting powers to meet the individuals' specific personal needs and goals.

2. Gifts can now be made up to \$5000.

The new Power of Attorney allows for gifts up to \$5000 in a single year. Agents can also make gifts to themselves under the new law, provided the grantor to gives them specific authority to do so. The agent can also change the type of ownership interest in a particular property using the new Durable Power of Attorney. For example, John Smith owns a piece of real property jointly with right of survivorship along with his brother Will Smith. The Power of Attorney agent can sever this ownership and change it to Tenants in Common. This change of ownership could impact current ownership as well as inheritance rights.

3. Substantial conformity is no longer necessary under the new law.

Under the new law, if there is a validity executed Power of Attorney minor or insignificant defects will not invalidate the Power of Attorney document. This would include spelling errors, punctuation errors, formatting errors etc. If the document substituted conforms to the statute then the document will now be deemed valid. In the past any defects would invalidate the document.

4. New penalties for unreasonable refusal to accept a valid Power of Attorney

Under the old law there was no remedy when a financial institution failed to recognize a validity executed Power of Attorney. The new law now provides for damages when there is unreasonable refusal by a financial institution to recognize a Power of Attorney.

In addition, there is now a safe harbor provision for a third-party who acts in good faith when recognizing a durable power of attorney. The new law create a safe harbor for recipients of a durable power of attorney if the person/institution is acting in good faith and excepting and recognizing the durable power of attorney such individuals or institutions will be shielded from liability provided:

1. The Power of Attorney was signed by the principal and verified by a notary public or an authorized person to take the knowledge next.
2. There is no actual knowledge of areas that they know the document is forged or invalid.

Once a power of attorney is presented the recipient will have 10 days to decide to a accept reject the power of attorney. If it is appropriate, they can request an affidavit from the agent establishing that the Power of Attorney is in full force and effect.

After receipt of the affidavit the recipient must accept or reject the power of attorney within seven days. They can also request an opinion of counsel as to the validity of the document .

Any rejection must stipulate the reasons for the rejection. It must be sent to the principal and the agents. The reasons can include: non-conforming forms, missing or unacceptable signatures, invalid notarization, improper or unacceptable proof of identification or suspicion of elder abuse. The document is most original, or attorney certified copy.

These four changes are designed to help make the Power of Attorney more user friendly, effective, and easy to implement. We will continue to monitor problems that develop with respect to the development implementation and recognition of the new Durable Power of Attorney in New York State.

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