

New Power of Attorney Legislation

After almost two years in the New York State Legislature, the Power of Attorney form has undergone a major change. The section of the general obligations law which addresses the Power of Attorney has now been revamped. For example, the new legislation now provides 16 definitions of who is an agent, what is capacity, and how an agent may be compensated, etc. Agents will now be subject to a “prudent person standard of care” with defined responsibilities. This includes keeping records (with receipts) on the agent’s transactions.

The current statutory form power of attorney will now be broken into two separate forms. The first form is similar to the old statutory power of attorney but now only provides for essentially the non-gifting powers of an agent. The second form, to be called the Statutory Major Gift Rider (SMGR), provides optional gifting powers and limits of the agent.

The changes include a revised statutory short form that still needs to be notarized. However, if a principal wants to authorize gifts in excess of those allowable in the revised statutory form, the new (SMGR), which must be witnessed rather than notarized, must accompany the statutory form.

The new statutory short form will require not only the Principal’s signature, but also requires that the appointed Agent sign the power of attorney and have the Agents’ signature acknowledged. The Power of Attorney form will only then be effective upon the acknowledgement of the Agent’s signature.

The (SMGR) is an optional form. It is designed to address the extent of gifting abilities granted to the Agent, and addresses the issue of compensation to the Agent as well as gifting to the Agent. Similar to the execution of a Will, the (SMGR) will be required to be signed by two disinterested witnesses.

What does this mean for you?

If you already have a Power of Attorney it will remain in effect. However, you should reconsider updating it, along with your other estate planning documents, because your needs may have changed since you executed these very important documents. You may want to limit or expand the gift giving powers you give to your agent.

If you do not have a Power of Attorney in place, regardless of the new legislation, you should still consider how the Power of Attorney along with other estate planning documents can be of great value to you.