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By: Louis W. Pierro & Peter J. Strauss, Esq.

New Power of Attorney Law In Effect June 13th in New York State

Summary: A new law modifies the format, usefulness and enforceability of the current document by:

- 1. Eliminating the need for a separate statutory gifts rider, which had led to many problems regarding validity*
- 2. Allowing for minor language or formatting variations from the official statutory form rather than declaring the entire document ineffective*
- 3. Authorizing substantial fines on financial institution that fail to honor a valid power of attorney*

A Power of Attorney is a necessary tool for New Yorkers to plan for the possibility of future incapacity so that a trusted family member or other person may manage their financial affairs if they are unable to do so. The “agent” designated in the Power of Attorney (also referred to as a “POA”), can assist in bill paying, make investment decisions, provide necessary care and support for the maker of the POA, and where appropriate engage in important tax and Medicaid planning.

New York has had a “Statutory Power of Attorney” form contained in Article 5 of the General Obligations Law, sometimes referred to as the “Statutory Short Form,” for many years though most clients never found it “short.” But the existing law was flawed in many respects and finally, a coalition of lawyers, consumer advocates and reformers were successful in convincing the New York State legislature to enact a new POA statute that made much-needed improvements. It was signed by the Governor and goes into effect June 13, 2021.

1-866-951-7526



info@pierrolaw.com



www.pierrolaw.com



The new law will substantially change the format, usefulness and enforceability of the new document in key ways. But don't panic. If your current POA was done correctly, it will continue to be valid and there will be no need for an update. However, you should have an [estate planning](#) attorney review your existing POA to make sure it will be effective.

One important change is that the power of attorney will be condensed from the current two-part document format of the "Short Form" and separate "Statutory Gifts Rider," to a single, more user-friendly document. "Gifting" provisions will now need to be included in the "Modifications" section of the POA. Other changes include:

- Witness requirements will be simplified (but see below);
- Banks and other financial institutions could face penalties for unreasonable refusal to accept the power of attorney document;
- A presumption will apply in favor of the validity of a power of attorney form;
- And the document may be executed on behalf of a client who has a physical inability to sign the paperwork.

Another new provision is that the wording needs only to substantially conform to the provisions of the new law rather than be in the exact form of the old POA. This is an improvement since prior rules resulted in some power of attorney documents to be voided for minor inaccuracies or inconsistencies.

In addition, the new "Short Form" requires that it be witnessed by two persons in addition to being "acknowledged" before a notary public. Under the old law only the "Gifts Rider" needed to be witnessed. This requirement could be an additional challenge for some persons.

Be careful that any statutory POA you sign on or after June 13, 2021 is the new form that is required after that date. If you obtain a form "online" or from a stationary store, be sure the form has a "header" at the top of the first page indicating it is "effective 6/13/2021," or consult with an attorney.

Additional Background

The power of attorney is one of the most important documents in an estate plan and is a vital tool in the event of illness, injury or unexpected unavailability. Together with a health care proxy, the POA provides advance planning to ensure that decision-makers you choose can provide vital financial and health care assistance.

The agent you appoint under the POA can transact business in your name, and as noted, gives the agent the authority to make banking, real estate, and all other financial transactions on your behalf. Without it, your spouse or family member would be unable to speak to your mortgage holder, credit card companies, utility providers, and others regarding accounts held in only your name. The Statutory Gifts Rider allows the agent to make gifts in excess of \$500 per year, establish trusts and do further asset protection and tax planning on your behalf. If, for example, you are incapacitated, the gifts rider could enable your agent to protect your funds from being forfeited to the cost of care, including long term care, and to engage in planning to qualify you for Medicaid coverage.

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