

## **New Florida Power of Attorney Law**

The law controlling Powers of Attorney in Florida was substantially changed effective October 1, 2011 (Florida Statutes Chapter 709). In most cases the changes are not retroactive and powers of attorney executed before the effective date are still valid, but the new law may still have an impact on the use of an existing Power of Attorney.

A Power of Attorney is a legal document by which one party grants authority to an agent to act in place of the principal. The act performed by the agent pursuant to the power of attorney is binding on the principal and the principal's successors in interest as if the principal had performed the act personally.

The highlights of new Florida law include the following:

- A power of attorney that becomes effective in the event of disability or some future contingent event known as a "springing power of attorney" can no longer be executed. All Powers of Attorney must be effective when signed (there is an exception of military powers);
- A Principal must specifically initial any provision that allows for:
  - gifting, changing the beneficiaries of a retirement account,
  - changing any beneficiary of an annuity,
  - changing the ownership or beneficiary of a life insurance policy,
  - amending, modifying, creating, revoking or terminating a trust,
  - waiving the principal's right to be a beneficiary of a joint and survivor annuity, including survivor benefits under a retirement plan,
  - disclaiming property and powers of appointment;
- If multiple agents are named, absent explicit direction otherwise, each agent may act unilaterally.
- Third parties are required to accept a copy of the power of attorney and not demand an original, but cannot require the use of their form. Third parties may have a reasonable time to review the document and require a statement under oath from the agent;
- Filing for dissolution of marriage terminates the authority of a spouse to act as agent;
- The agent may not delegate authority to act as agent (except for investment functions);
- The duties of an agent include keeping records of all receipts, disbursements and transactions made on behalf of the principal, and not acting contrary to the principal's reasonable expectations, including preserving the principal's estate plan.

To avoid confusion and future problems when correction may not be possible, it is advisable to review and perhaps revise any older power of attorney forms, as well as determine if copies of an existing or older Power of Attorney are in the possession of anyone. Powers of Attorney executed outside of Florida or using computer-generated self prepared purchased forms are particularly subject to question.

*This information is only a brief summary and does not completely analyze the law or apply to particular factual or legal circumstances. It is not intended to create any attorney-client relationship or provide legal advice. You should consult your attorney for specific information.*