

GlobalNote®

Changes to New York's Power of Attorney Law

TO: Clients and Friends¹
DATE: September 9, 2009

Effective September 1, 2009, New York State has amended its power of attorney statute providing significant reforms to the use of powers of attorney in New York. The revised power of attorney law was a result of eight years of study by the New York State Law Revision Commission and much debate in the legal community. The new law applies to powers of attorney executed in New York by individuals. Powers of attorney executed outside of New York are valid in New York if they comply with the laws of the jurisdiction of execution, regardless of whether the principal is a domiciliary of New York. The revised law includes several revisions to the existing power of attorney law and creates a new statutory short form power of attorney.² Pursuant to Chapter 644 of the Laws of 2008, to be effective, a statutory short form power of attorney must meet the requirements of Sections 5-1501B and 5-1513 of New York's General Obligations Law ("GOL").

GOL Section 5-1501B, which identifies the procedure for creating a valid power of attorney, provides that the instrument must be in at least twelve point font, and must be signed, dated and acknowledged before a notary by both the principal AND the agent (though not necessarily at the same time). This is a significant departure from the prior law which did not require the agent's signature on the power of attorney. GOL Section 5-1513 sets forth the statutory short form power of attorney and contains certain disclosures that must be included verbatim in the instrument. Of note, the new law imposes certain fiduciary and other duties on the agent. The agent's fiduciary obligations

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² Powers of attorney which grant the authority to make gifts in excess of \$500 and other asset transfers must be made in a separately executed in a "major gifts rider" to a statutory power of attorney, which contains the signature of the principal duly notarized and which is witnessed by two persons who are not named in the instrument as permissible recipients of gifts or other transfers, in the same manner as a will.

include acting in accordance with the instructions of the principal and in the principal's best interest, keeping records, segregating the principal's property from the agent's property and avoiding conflicts of interest. GOL Section 5-1501B states that the effective date of the power of attorney is the date on which the agent's signature is acknowledged. Significantly, the new law also provides that the execution of a power of attorney revokes any and all prior powers of attorney executed by the principal (including unrelated powers of attorney), unless expressly stated otherwise.

A power of attorney executed prior to September 1, 2009 will continue to be valid, provided that the power of attorney was valid in accordance with the laws in effect at the time of its execution (and provided that any new power of attorney executed on or after September 1, 2009 contains language stating that prior powers of attorney of the principal are not revoked). Any powers of attorney executed on or after September 1, 2009 will need to comply with the revised law. Investment management clients with fund documents or managed account agreements that contain powers of attorney should consider having these documents updated per the requirements of the new law.

The New York state legislature is currently considering certain technical amendments to the revised law including whether to retain the portion of the revised law which provides that the execution of a power of attorney would automatically revoke any previously executed power of attorney forms.

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If you have any questions or wish to discuss your current powers of attorney, please do not hesitate to contact us.