

Asset Protection Law Newsletter



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*A FREE LEGAL UPDATE FOR ELDERS AND SAME SEX PARTNERS WHO SEEK ASSET PROTECTION * FEBRUARY 1, 2013 EDITION*

QUESTIONS AND ANSWERS ABOUT NEW FLORIDA DURABLE POWER OF ATTORNEY EFFECTIVE OCTOBER 1, 2011

Q. Do you still need 2 subscribing witnesses and a notary?

A. Yes

Q. Is a Power of Attorney durable if the document does not explicitly designate that it is durable?

A. No.

Q. Is Springing Power of Attorney eliminated?

A. Yes, unless executed before October 1, 2011.

Q. Can each Co-Agent act independently of the others?

A. Yes, unless the document indicates otherwise.

Q. Is attorney-in-fact obligated to handle banking and investment matters for principal if he does not specifically consent to do so?

A. No.

Q. Must authority of agent to amend trust of principal be specifically enumerated in the trust?

A. Yes. Principal must sign or initial this provision.

Q. What if the trust itself does not permit for modification by attorney-in-fact?

A. Your attorney must amend trust to permit this.

Q. What happens with the Power of Attorney documents signed prior to October 1, 2011?

A. They are okay, but banks will be hesitant to work with the old law. So it is better to have new documents prepared.

Q. Must authority to conduct banking transactions be initialed or signed by principal?

A. Yes. This could lead to delays.

Q. Which powers must be specifically initialed by principal for these powers to be effectively given to the attorney-in-fact?

A. Attorney-in-fact's authority to conduct banking transactions must be initialed or signed.

Q. Are there new mandatory fiduciary duties for agents that cannot be eliminated by agreement as well as default duties that can be waived by written agreement?

A. Yes

Q. If Co-Agent has actual knowledge of a fiduciary breach by another co-agent does he have affirmative duty to take appropriate action to protect principal?

A. Yes.

Q. Does failure to take action by one co-agent for the action of another co-agent make the first co-agent the agent liable to the principal for the reasonably foreseeable loss caused by the second co-agent?

A. Yes.

Q. Are global provisions such as those attempt to grant the agent authority to do all acts the principal can do, are ineffective?

A. They are ineffective.

Q. Which powers require they be specifically granted in the power of attorney document?

A. These powers must be specifically stated in the document itself.

1. Create inter vivos trust
2. Modify an inter vivos trust
3. Make a gift
4. Create or change rights of survivorship
5. Create or change a beneficiary designation
6. Waive principal's right to be a beneficiary of a joint and survivor annuity (including under a retirement plan)
7. Disclaim property and powers of appointment

Q. Agents are specifically prohibited from performing which acts on behalf of the principal?

A. Agents are specifically prohibited from performing these acts for the principal:

1. Perform duties that require the exercise of personal services of the principal.
2. Vote in election
3. Execute or revoke any will or codicil
4. Exercise powers of authority granted by Principal as trustee or court – appointed fiduciary

Q. Is the new law the exclusive method of interpretation of a durable power of attorney document?

A. No. Common law of agency and principles of equity can be used, in addition to the new law, for interpretation of a durable power of attorney document.

Q. Are remedies in new law exclusive?

A. No. The new law does not eliminate any other remedy.

Q. When does the Power of Attorney terminate?

A. It terminates in any of the following situations:

1. When guardianship begins
2. Death of Principal
3. Incapacity of Principal when the Power of Attorney is not durable
4. Adjudication of incapacity by Court
5. Revocation of Power of attorney by Principal
6. Termination by its terms
7. Accomplishment of Power of Attorney purpose

Q. Is it better to make attorney-in-fact accept all terms of agency?

A. Yes. Have him sign consent in writing in front of two witnesses and a notary agreeing to accept all terms of the agency.

ATTENTION ATTORNEYS!

WE RECOMMEND YOU INCLUDE THE FOLLOWING PARAGRAPH IN ALL POWERS OF ATTORNEY DOCUMENTS:

“In addition I authorize my attorney-in-fact to enter into a personal services contract in which she is the provider and I am the client, as well as to enter into any other contract or agreement on my behalf which might be construed as a conflict of interest between me and my attorney in fact.”

NEWS YOU CAN USE

2013 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	\$2,130.00
Personal Needs Allowance:	\$35.00
Asset Limit (Individual):	\$2,000.00
Asset Limit (Couple):	\$3,000.00
Medicare Part B Premium:	\$104.90
Community Spouse Resource Allowance:	115,920.00
Minimum Monthly Maintenance Income Allowance:	\$1,891.25
Maximum Monthly Maintenance Needs Allowance:	\$2,898.00