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Its' the Law

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New Power of Attorney Law Makes Revocation Easier, But Maybe Too Easy

As you probably already know, a power of attorney is a document which allows you (“the principal”) to give another person (“the agent”) the authority to make decisions for you or take actions on your behalf with respect to your property or financial matters. For example, if you were selling your house and were unable to attend the closing, you could sign a power of attorney giving a third party the authority to sign the deed at the closing on your behalf. On September 1, 2009, a new law went into effect which significantly changed the rules which govern powers of attorney. The new law has been heavily criticized by attorneys for creating unnecessary confusion for what used to be a simple document to execute. One of the complaints has been of the new provision for revocation of old or prior powers of attorney.

The new law makes revocation of any prior power of attorney automatic upon execution of a new one, unless the principal expressly provides otherwise. Although at first glance this might seem to make sense, it has created a potential risk for the unwary. The new law makes it very easy for a person to inadvertently revoke a prior power of attorney that they may not want revoked. If you think about it, you probably execute powers of attorney more often than you realize. For example, if your home is located in a development that has a homeowner’s association, the homeowner’s association may have required you to execute a power of attorney when you purchased the property. Also, when you take out a mortgage loan to purchase real property the bank will frequently require you to execute a limited power of attorney for the purpose of making any necessary corrections to the enormous stack of documents you sign at the closing.

Under the new law, these types of powers of attorney are executed they may automatically revoke any prior powers of attorney and they may be revoked by any power of attorney executed subsequent to them. It should be noted that any revocation of a power of attorney is not effective as to third parties until those third parties receive actual notice of the revocation.

So how do you avoid unintentionally revoking a prior power of attorney you want to remain in effect? The best way is to have your attorney review any power of attorney before you sign it. He or she can make sure that the new power of attorney contains appropriate language that prevents you from revoking any prior powers of attorney you don’t want revoked. In addition, the New York State Legislature is in the process of adopting an amendment to the new law that would completely change the automatic revocation provision. Instead of automatically revoking any and all prior powers of attorney the proposed language in the amendment expressly provides that the execution

of a new power of attorney does not revoke any prior power of attorney executed by the principal. The amendment is expected to be passed sometime later this year. In the meantime exercise caution and have an attorney review any power of attorney before executing it.