



LAW OFFICES OF

JOANNE SCHLENK MCAVEY, PLLC

MEMBER OF NYS AND SUFFOLK COUNTY BAR ASSOCIATIONS
PAST CO-CHAIR OF THE ELDER LAW COMMITTEE OF THE SOBA

1641 DEER PARK AVENUE
DEER PARK, NEW YORK 11729
(631) 243-4516
FACSIMILE: (631) 243-2501
ELDERCAREATTY.COM
E-MAIL: MCAVEYPLLC@GMAIL.COM

ELDER LAW NEWS UPDATE

Winter 2021

TO: Clients, Friends and Colleagues

**Check out www.eldercareatty.com.

NEW POWER OF ATTORNEY EFFECTIVE 6/15/21!

On December 15, 2020, Governor Cuomo signed into law changes to the NYS Power of Attorney as Chapter 323 of the Laws of 2020 with Chapter Amendments. They will be effective on June 15, 2021. Currently, the Powers of Attorney require the *exact* wording from the statute to be effective and recognized. With this change in law, there has been a clear departure from this rigid implementation, in that now 1) **Powers may “Substantially” conform to the wording of the statute** and still be viable. 2) The **Statutory Gifts Rider has been eliminated**, so that gift giving authority may now be incorporated into the Modification section of the **Power of Attorney**. 3) **The Power of Attorney may now be signed by another at the direction of the Principal** provided there is mental capacity. 4) *Execution* now requires **two witnesses along with a notary**. 5) Further, **third parties, such as banks, must not refuse to accept a Power of Attorney without reasonable cause**, or risk being subject to Damages, including attorney’s fees and costs in litigation. These are but the main changes to the statute, known as NY General Obligations Law 5-1501 et. seq.

What does this mean for you? Your current Powers of Attorney are still effective as long as they were properly executed in accordance with the law at the time of execution. Nevertheless, the new *Powers of Attorney* will be easier to administer and be recognized by third parties, such as financial institutions. One long form will be prepared instead of two. And for those who are physically handicapped, they will now be able to direct another individual to sign the Power of Attorney on their behalf. *In the context of medicaid planning and applications, these changes are significant.*

UPDATE ON THE COMMUNITY MEDICAID CHANGE OF LAW- 30 MO. LOOK BACK PERIOD

As you may recall from my Fall 2020 Update, the Community Medicaid program for home care assistance will now be subject to a look back period of 30 months, which will require reporting of asset transfers. It is no longer a matter of undertaking financial planning the month before you apply for Community Medicaid for it to be approved. The implementation of this look back period is now extended to 4/1/21 due to the Public Health Emergency. As of now, Home Care Applications filed before 4/1/21 **will not** be subject to a look back period. Applications filed after 4/1/21 **must report asset transfers** made after 10/1/20, so that a penalty period will be assessed, and an applicant would have to privately pay for his/her care during such time.

What does this mean for you? If you are in need of personal care aides now, then this is *the time to apply for Medicaid*. If you do not have an immediate need, then this is the time *to undertake Medicaid Planning* to qualify in the future. Either way, it is no longer prudent to procrastinate.

I hope this has been helpful.

Stay safe and well!

Circular 230 Disclosure: Unless otherwise expressly indicated, any federal tax advice contained in this communication is not intended or written to be used and may not be used for the purpose of avoiding tax-related penalties under the IRC or promoting, marketing or recommending to another party any tax related matters. This communication is also not intended to be used as legal advice, which may only be rendered after consultation of counsel and based upon client’s circumstances.