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ELDER LAW NEWS UPDATE

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TO: Clients, Friends and Colleagues

SUBJECT: NEW YORK STATE-NEW POWER OF ATTORNEY

As you are probably aware by now, effective September 1, 2009, a New Power of Attorney form is in effect in New York State by virtue of Chapter 644 of the laws of 2008. It amends the provisions of the General Obligations Law (GOL) relating to the use of powers of attorney and creates a new statutory short form.

What does this mean to those of you who have Powers of Attorney created prior to September 1, 2009?

Powers of Attorney that have been executed prior to September 1, 2009 will continue to be valid as long as they were properly prepared and executed under the laws in effect at the time of their creation.

Some changes in the new law, *however*, affect the application and interpretation of prior Powers of Attorney. **YOU DO NOT NEED TO CHANGE ANYTHING ON YOUR CURRENT FORMS.** These interpretations are automatically applied to the prior Powers of Attorney:

1. Old Provision J - *benefits from military service* will now include the power to act for the principal in governmental programs and is newly titled "**Benefits from Governmental Programs or Civil or Military Service**" in the new Power of Attorney. (GOL §5-1502J)

2. Old Provision K- *records, reports and statements* will now include the power to access records relating to the provisions of health care, make decisions relating to the payment of health care consented to by the principal, and is newly titled "**Health Care Billing and Payment Matters, Records, Reports and Statements**" in the new Power of Attorney. (GOL § 5-1502K)

3. Old GOL § 5-1504 Acceptance of Statutory Short Form Power of Attorney only applied to financial institutions, but now the provision reads "No '*third party*' ...shall refuse, **without reasonable cause**, to honor a statutory short form power of attorney..." The statute defines reasonable cause and applies to all Powers of Attorney.

4. New GOL §5-1505 -**Standard of Care; Fiduciary Duty; Compelling Disclosure of Record** applies to the duty of **all agents** to act "according to the instructions of the principal...or in the best interest of the principal,"... "to keep principal's property separate and distinct from any other property owned or controlled by the agent..." and "to keep a record of all receipts, disbursements, and transactions... and to make such record and ... copy of the power of attorney available within fifteen days of a written request..." by a number of identified parties.

5. New GOL §5-1510 -**Special Proceedings** may now be commenced when the agent fails to produce the Power of Attorney and the records of all transactions performed.

In addition to the foregoing changes being applied to your current Powers of Attorney, be aware that you may also now *inadvertently* REVOKE your Powers of Attorney as provided below.

URGENT !

ANYONE WHO CONTEMPLATES SIGNING A BANK OR BROKERAGE LIMITED POWER OF ATTORNEY MUST CONTACT ME IMMEDIATELY! THE NEW LAW PROVIDES THAT A NEW POWER OF ATTORNEY WILL REVOKE PRIOR POWERS OF ATTORNEY! THIS ACTION WILL INADVERTENTLY REVOKE THE POWERS YOU NOW HAVE IN PLACE!!!

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