KNOWLEDGE IS POWER: HOW THE NEW FLORIDA POWER OF ATTORNEY ACT AFFECTS YOU

The new Florida Power of Attorney Act went into effect on October 1, 2011, and contains important changes that anyone who has previously executed a power of attorney - or anyone who has drafted one for their clients - should know. Whereas the majority of individuals who have executed Power of Attorney ("POA") designations prior to October 1, 2011 will not need to re-execute a new POA, it is imperative that clients, financial institutions and attorneys understand how the new law affects them.

Before discussing any of the changes, certain terminology must be defined. The "Principal" is the person designating who will represent him or her regarding financial matters if he or she cannot or does not want to act in this capacity. The "Agent" is the person so designated. The new act uses the term "Agent" in lieu of the term "Attorney-in-Fact," which is what Agents formerly were called under the old POA laws.

Here are some of the most significant changes:

1. Copies are now as valid as an original POA. Under prior law, only an original signed document could be used to confirm the authority of the Agent to act. The new law allows use of copies of the POA document to confirm this authority. Clients who have provided copies of their POA documents to their designated Agents should be aware of this change in the law, and should consider whether they would prefer to have an attorney hold all copies in escrow. Escrowed copies could be distributed to the Agent when the document was needed. This would provide a safeguard regarding any potential misuse of the POA. Financial institutions that are presented with a copy of a POA should be aware that affidavits from the holder of the original document are no longer required.

2. Multiple Designated Individuals Can Now Act Independently. Prior to the new act, a Power of Attorney document that designated more than one Agent to act on behalf of another required that all Agents act jointly when handling any of the Principal's financial affairs. Under the new law, however, each Agent can act alone unless the document specifically states that multiple Agents must act jointly. For example, an Agent designated in a document that also designates two other individuals to act can sign checks without the knowledge or consent of the other two designated individuals. Generally speaking, we do not recommend designating multiple Agents. However, individuals who have named multiple Agents should review their POA designations and determine whether it appropriately reflects their wishes.

3. Powers Granted to Designated Agents Must Be Specified. Under prior law, a general designation of an Agent empowered that Agent to do anything that was permitted under the relevant statutes, regardless of whether the Power of Attorney designation specifically described that action. The new Florida Power of Attorney Act states that an Agent may only exercise authority specifically granted to him or her in the POA designation. Clients executing POAs after October 1, 2011, should review their documents to ensure that all of the powers that an Agent might reasonably be expected to need are described appropriately in the document.

4. Agents Who Are Unrelated to the Principal May Not Make Gifts to Themselves in Excess of the Annual Exclusion Amount. Prior law did not allow Agents to make gifts to themselves unless the document stated otherwise. The new Florida Power of Attorney Act is consistent with prior law. However, the new Act also states that if the Principal authorizes the Agent to make gifts but does not specify any limitation on the amount of those gifts, the Agent may only make gifts to himself or his dependents up to the federal gift Annual Exclusion Amount (currently $13,000). If a
Principal wants his Agent to have the ability to make gifts in excess of this amount, the POA designations must include language that allowing gifts in excess of the Annual Exclusion Amount.

5. **The Text Permitting Certain Powers Must be Specifically Initialed by the Principal.** The new Act provides that an Agent may only exercise certain powers if the language describing the power is specifically initialed by the Principal. These powers include: (1) the authority to create an inter vivos trust; (2) to amend, revoke or terminate a trust created by the principal; (3) to make a gift; (4) to create or change rights of survivorship; (4) to create or change a beneficiary designation; (5) to waive the principal's right to be a beneficiary of a joint and survivor annuity; and (6) to disclaim property and powers of appointment. Furthermore, an Agent who is not an ancestor, spouse or descendant of the Principal may not create for himself or herself, or any of his or her dependents, any interest in the principal's property (whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise) unless the power of attorney specifically allows the Agent to do so.

The new law provides that Powers of Attorney executed prior to the enactment of the Act will remain valid, provided that the execution of the document complied with the laws in effect at the time of execution. However, if you have questions regarding whether your current Power of Attorney Designation is sufficient in light of the new Florida Power of Attorney Act, please contact our [Wealth Transfer Department](mailto:wealth-transfer@gray-robinson.com).

Lisa H. Lipman  
5551 Ridgewood Drive, Suite 101  
Naples, FL 34108  
Phone: 239-598-3601  
lisa.lipman@gray-robinson.com