



## MAKE SURE YOUR POWER OF ATTORNEY IS NOT OBSOLETE WHEN YOU REALLY NEED TO USE IT

Sweeping changes have taken place with the new Durable Power of Attorney statute in Florida, which goes into effect on October 1, 2011, and applies to all power of attorneys regardless of

when they were executed.

A durable power of attorney (POA) allows you to designate someone to serve as your agent to have general authority in making financial decisions on your behalf. This document is effective immediately upon execution. "Durable" means that it remains in effect even if you become incapacitated. "Incapacity" is your inability to take the necessary actions to obtain, administer and dispose of your real and personal property.

So, the question that everyone is asking is, "do I really need to sign a new POA?" If your existing document is valid prior to October 1, 2011, then it will remain valid. However, the new POA will be the one financial institutions will be expecting to see in the future. If you or a loved one has Parkinson's, now is a good time to sign a new POA so that if the time comes when it may be needed, having the new POA in place will ensure its acceptance by a third party.

While there are several other changes that were made to the new POA statute, the following highlights a few of the important changes.

### **No More Springing POA**

Under the existing statute, a "springing" POA takes effect only when you lose capacity, as certified by your primary physician. Under the new POA statute, the POA is effective immediately once its signed regardless of future incapacity.

## **Co-Agents Act Independently**

Under the existing POA statute, if you designate two or more agents to act on your behalf, unless the POA provides otherwise, the co-agent must act together. Under the new POA statute, each co-agent named may exercise his or her authority independently instead of a majority rule. Of course, if you want joint action, then the POA must state your intentions.

## **No Overall Power to Act - Must Be Specific**

Under the new POA, a general statement covering an overall grant of authority (such as “to do all acts that the principal can do”) is not sufficient. An agent may perform only those acts specifically listed in the POA. There are even certain “super” powers outlined in the new POA statute that require a separate signing or initialing of each individual authority. For example, if you want your child to have the authority to create or change a beneficiary designation of your IRA, then next to that power, you must also sign your name or place your initials.

## **Protection from Liability to Third Parties**

The new POA statute includes extra protection from liability to third parties who accept and act in reliance on a POA in good faith. The new POA statute now requires the third party to accept or reject a POA within a reasonable time. For financial institutions (such as a bank), four (4) business days is presumed to be a reasonable time to accept or reject an agent’s authority to conduct banking or investment transactions. If a third party rejects a POA, such rejection must be in writing.

The question remains, “do I really need to sign a new POA?” Because of the drastic measures in rewriting the new POA statute that covers all POAs whenever signed, the answer is yes. You want to make sure your POA works when you need it to.