



2009 Power of Attorney Law Changes

A power of attorney (POA) is a very popular, yet powerful, legal document used by an individual (Principal) to appoint another person (Agent) to act on his or her behalf to handle financial matters. In recent years however, Lifespan's Elder Abuse Prevention Program noticed an increase in financial exploitation cases resulting from misuse of powers of attorney. Along with many others, we advocated for changes in the law to protect vulnerable victims and stop this often hidden form of abuse.

In January, Governor Paterson signed into law significant revisions to the power of attorney law. The revisions fill gaps and clarify ambiguities – resulting in more oversight and better understanding of which actions are permissible and which actions are not regarding the use of powers of attorney. This is a brief overview of some key provisions in the new law affecting Agent, Principal and Third Parties:

The agent (individual) being granted the power must now sign the power of attorney. The power is not effective until the agent signs.

A grant of authority to make gifts and other asset transfers more than \$500 must be set out in a statutory major gifts rider. The short form power of attorney and the rider must be read together as a single instrument, the rider must be signed and dated by a principal and witnessed by two persons who are not named as permissible recipients of gifts. The rider must be executed by the principal simultaneously with the power of attorney.

The power of attorney continues in effect following the incapacity of the principal unless it expressly provides that it is terminated by the incapacity of the principal.

The power of attorney terminates when the principal dies or the agent dies or becomes incapacitated and there is no co-agent or successor agent willing or able to serve.

The agent (person holding the power of attorney) can now examine, question, and pay medical bills if the principal intends to grant the agent power with respect to records, reports, and statements.

A principal may appoint a monitor who has authority to request, receive and compel the agent to provide a record of all receipts, disbursements and transactions entered into by the agent on behalf of the principal, to request and receive such records held by third parties, and to request and receive a copy of the power of attorney. This is a mechanism for forcing the agent to provide an accounting of the principal's assets and income.

Unless stated in the power of attorney, an agent is not entitled to compensation from the assets of the principal for the responsibilities performed under a power of attorney, but is entitled to receive reimbursement for reasonable expenses incurred in connection with his or her duties.

Please note that a POA executed prior to September 1st, 2009 will remain valid. It's not necessary to execute a new document, although you may do so. For additional information on these changes, you should consult your attorney. New POA forms will be available in stores that sell legal forms.