

Corporate & Financial Weekly Digest

Posted at 2:27 PM on August 20, 2010 by [Robert L. Kohl](#)

New York State Adopts Amendments to Power of Attorney Law

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In 2009, New York State adopted amendments to the New York Power of Attorney Law imposing more demanding power of attorney disclosure and execution requirements aimed at reducing the risks of abuse and fraud in elderly care and the financial planning process. The 2009 law required the use of longer, more comprehensive forms, as well as notarization of the signatures on the power of attorney. The 2009 law provided no exceptions for commercial transactions. Because agency relationships are regularly established in the proxy process, real estate transactions, brokerage arrangements and various commercial agreements, the lack of commercial transaction exception in the 2009 law gave rise to much uncertainty among transactional lawyers. On August 13, New York enacted corrective amendments revising the ambiguities and correcting the unintended consequences of the 2009 law.

The corrective amendments clarify the 2009 law's various ambiguities and list exceptions from its rigorous provisions. These exceptions include:

1. a power of attorney given primarily for a business or commercial purpose, including without limitation:
 - a) a power to the extent it is coupled with an interest in the subject of the power;
 - b) a power given to or for the benefit of a creditor in connection with a loan or other credit transaction;
 - c) a power given to facilitate transfer or disposition of one or more specific stocks, bonds or other assets, whether real, personal, tangible or intangible;
2. a proxy or other delegation to exercise voting rights or management rights with respect to an entity;
3. a power created on a form prescribed by a government or governmental subdivision, agency or instrumentality for a governmental purpose;
4. a power authorizing a third party to prepare, execute, deliver, submit and/or file a document or instrument with a government, agency or other third party (including powers of attorney given to file forms with the Securities and Exchange Commission);
5. a power authorizing a financial institution or employee of a financial institution to take action relating to an account in which the financial institution holds cash, securities, commodities or other financial assets on behalf of the person giving the power;

6. a power given by an individual who is or is seeking to become a director, officer, shareholder, employee, partner, limited partner, member, unit owner or manager of a corporation, partnership, limited liability company, condominium or other legal or commercial entity in his or her capacity as such;
7. a power contained in a partnership agreement or in limited liability company operating agreement, as well as in condominium documents and offering plans or other agreements or instruments governing the internal affairs of an entity authorizing a director, officer, shareholder, employee, partner, limited partner, member, unit owner, manager or other person to take lawful action relating to such entity;
8. certain powers given to condominium managing agents or licensed real estate brokers;
9. a power authorizing acceptance of service of process on behalf of the principal; and
10. a power created pursuant to authorization provided by another statute that specifically contemplates creation of the power, including without limitation a power to make health care decisions or decisions involving the disposition of remains.

The corrective amendment, effective September 12, will be retroactive to September 1, 2009, the effective date of the 2009 law. Thus, as long as a power of attorney complies with the provisions of the corrective amendment, it will be deemed valid and will not need to be re-executed even if it was improperly executed under the 2009 law.

Click [here](#) to read the text of the amended New York Power of Attorney Law.

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