



NEW YORK CHANGES DURABLE POWER OF ATTORNEY LAW

January 11, 2021

On December 15, 2020, Governor Cuomo signed into law a bill changing New York's durable power of attorney statutory form. The goal was to simplify the form and alleviate practical problems that result from the current statutory form.

First, the law changes the strict rules which invalidated a power of attorney if the document differed from the statutory form in any way. Previously, a document that did not match the statutory form exactly could be invalidated. Under this new law which becomes effective in the summer of 2021, the document must “substantially conform to the wording” of the statutory form durable power of attorney.

Second, the law modifies the statutory short form durable power of attorney so the “Statutory Gifts Rider” will now be included in the short form durable power of attorney. Under the prior law, the Statutory Gifts rider which allowed the attorney-in-fact to make gifts on the principals behalf was a separate document with separate execution requirements. Now that it will be incorporated into one document, the formalities will be two witnesses (one of whom may also be the notary) and a notary public.

Third, the new law allows for someone to sign a power of attorney on behalf of someone else at the direction of the principal in the same manner a will can be signed for someone else.

Finally, the law enhances and strengthens the penalties and damages for financial institutions for refusing to accept a durable power of attorney. Banks cannot simply refuse durable powers of attorney because they are “outdated” or do not use the institution’s form.

If you have any questions, please contact your Cummings Lockwood LLC attorney.