

July 28, 2009

Changes to New York Powers of Attorney Effective September 1

New York State has made broad sweeping changes to its laws governing powers of attorney—instruments by which a principal can appoint an agent to conduct financial transactions on his or her behalf. These changes are set to take effect on September 1, with respect to powers of attorney executed on or after that date. Powers of attorney executed before that date will remain valid, but will become subject to certain of the provisions in the new law expanding their use for benefits and health care purposes, providing enforcement procedures and establishing standards of care. Because of the unprecedented scope of this new legislation, it affects not only those who live in New York, but also anyone who executes a New York power of attorney in connection with the conduct of business in New York.

The law prescribes an entirely new statutory short form power of attorney, which presumptively survives the principal's incapacity and which can be either currently effective or effective upon the occurrence of a future event. Unlike current law, it must be signed by both the principal and the agent, although not necessarily at the same time. Also unlike current law, the execution of a power of attorney will revoke all powers of attorney previously executed by the principal, unless he or she specifically provides otherwise.

Powers of attorney may be used to make gifts, in accordance with a preexisting pattern of gifting, of up to \$500 per year in the aggregate. All other gift-giving authority of any kind, including merely to change joint tenants or beneficiary designations, must be made in a separately executed "statutory major gifts rider." Powers of attorney may no longer be used to create, amend or revoke trusts. The statutory major gifts rider must be executed simultaneously with the execution of the short form power of attorney and must be both acknowledged in the same manner as a deed conveying real property and executed in the presence of two witnesses who are not potential gift recipients.

Third parties must honor statutory short form powers of attorney and statutory major gift riders unless they have reasonable cause not to, and the fact that the form does not accord with the third party's form is presumptively unreasonable. The exclusive remedy for failure to do so is a special proceeding under General Obligations Law section 5-1510. Other forms of powers of attorney may be utilized under certain circumstances, but this new law will not require compliance with such powers by third parties.

Agents will be uncompensated for their services unless otherwise provided by the principal. The principal may appoint a "monitor" to oversee the actions of the agent.

Katten's Trusts and Estates Practice provides the full panoply of trusts and estates-related services to both domestic and international clients. Our attorneys perform sophisticated estate, tax, business, charitable and personal planning for high net worth individuals, entrepreneurs and others with complex assets or affairs. We represent both fiduciaries and beneficiaries in connection with ongoing estate and trust administration on a multigenerational basis. We are also experienced in handling contested proceedings involving estates and trusts in the courts, before taxing authorities, and before governmental and regulatory authorities.

Miriam S. Colton, Associate	212.940.8597	miriam.colton@kattenlaw.com
Kimberly A. DeMaro, Contract Attorney	212.940.6632	kimberly.demaro@kattenlaw.com
Marla G. Franzese, Counsel	212.940.8865	marla.franzese@kattenlaw.com
Robert E. Friedman, Counsel	212.940.8744	robert.friedman@kattenlaw.com
Jacqueline Garrod, Associate	212.940.6661	jacqueline.garrod@kattenlaw.com
Lauren M. Goodman, Associate	212.940.6344	lauren.goodman@kattenlaw.com
Jasmine M. Hanif, Partner	212.940.6491	jasmine.hanif@kattenlaw.com
Milton J. Kain, Counsel	212.940.8750	milton.kain@kattenlaw.com
Dana B. Levine, Special Counsel	212.940.6668	dana.levine@kattenlaw.com
Shelly Meerovitch, Partner	212.940.8680	shelly.meerovitch@kattenlaw.com
Patience J. O'Neil, Special Counsel	212.940.3888	patience.oneil@kattenlaw.com
Yvonne M. Perez-Zarraga, Associate	212.940.6320	yvonne.perez-zarraga@kattenlaw.com
Kara B. Schissler, Associate	212.940.6662	kara.schissler@kattenlaw.com
Mariana Schwartzman, Associate	212.940.8745	mariana.schwartzman@kattenlaw.com
Beth D. Tractenberg, Partner	212.940.8538	beth.tractenberg@kattenlaw.com
Kathryn von Matthiessen, Partner	212.940.6631	kathryn.vonmatthiessen@kattenlaw.com

Published for clients as a source of information. The material contained herein is not to be construed as legal advice or opinion.

CIRCULAR 230 DISCLOSURE: Pursuant to regulations governing practice before the Internal Revenue Service, any tax advice contained herein is not intended or written to be used and cannot be used by a taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

©2009 Katten Muchin Rosenman LLP. All rights reserved.

Katten

www.kattenlaw.com

Katten Muchin Rosenman LLP

CHARLOTTE CHICAGO IRVING LONDON LOS ANGELES NEW YORK PALO ALTO WASHINGTON, DC

*Katten Muchin Rosenman LLP is an Illinois limited liability partnership including professional corporations that has elected to be governed by the Illinois Uniform Partnership Act (1997).
London affiliate: Katten Muchin Rosenman Cornish LLP.*

7/28/09