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Legislative Changes to Durable Power of Attorney Statute

We previously reported most of the changes implemented by the Florida Legislature earlier this year, but there is still one more change that is critically important that becomes effective next month. On October 1, 2011, Florida's new Power of Attorney Act will become effective for all powers of attorney used in the state of Florida. While the goal of the legislature in adopting the Act was to address perceived defects in the current law, the new Act contains many new execution and other requirements that differ significantly from current law.

Before addressing some of the changes, let's first review what a power of attorney is and what it's designed to do. A power of attorney is a directive in whereby you appoint one or more individuals to legally act on your behalf. The individual executing the document is called the "principal" and the individual named to act on behalf of the principal is referred to as the "agent". Under traditional common law, a power of attorney only worked when the principal was mentally capable of acting, but was physically unavailable. This traditional use failed to address the period of the principal's mental disability, the timeframe when most people actually want the power of attorney to be effective. To address this issue, states enacted "durable" power of attorney statutes, which allow the principal to grant the agent authority to act even when the principal loses capacity to act on their own behalf. A properly drafted durable power of attorney continues to be the cornerstone for disability planning in most estate plans and is critical for the avoidance of guardianship proceedings in the event you become incapacitated.

Although a full review of the legislative changes imposed by the legislature is beyond the scope of this article, let's review some of the more significant changes. Many people have historically relied on very simple powers of attorney that contain a one-paragraph blanket grant of authority to act, effectively stating something to the effect of "my Agent is authorized to do any act I could do if present and capable." After October 1, signing this form of power of attorney will no longer be a wholly effective grant of power. Under the new law, an agent will only be permitted to exercise the authority specifically granted in the power of attorney. Further, individuals executing a power of attorney are now required to sign their initials at certain powers (such as gifting, creation of trusts, etc.) contained in the document if they want their agent to have the right to exercise those powers.

It is important to note that the new law specifically provides that powers of attorney executed prior to October 1, 2011 are not invalid and will continue to be governed under prior law. However, for anyone who has actually tried to use a power of attorney at a financial institution, you understand it is not always as easy as it should be. As banks and financial institutions start to train their employees on the requirements of the new law, it is

very likely that we will see some improper denials of valid pre-October 1, 2011 powers of attorney in light of the new changes. As a result, we recommend everyone consider updating their existing powers of attorney to comply with the new law. Our office has been working diligently to update our power of attorney to comply with the new law and will be reaching out to our clients to discuss updates in the near future. We will also be holding workshops for clients and friends of the firm to review the new power of attorney statute in more detail. If you have any questions about your power of attorney or the powers of attorney for your clients, please feel free to contact our office to schedule a time to speak with one of our attorneys.

The Law Offices of Hoyt & Bryan assists families in the protection of their loved ones by focusing their practice in the areas of Estate Planning, Probate and Trust Administration, Elder Law including Medicaid and VA Planning and Special Needs Planning, Pet Planning, Business Succession Planning and Real Estate. The founders, Peggy Hoyt and Randy Bryan, are both dual board certified by the Florida Bar in Wills, Trusts and Estates as well as Elder Law. Hoyt & Bryan is the only law firm in Florida with the distinction of two attorneys with these certifications. We offer many complimentary educational workshops each week in our Learning Center at The Law Offices of Hoyt & Bryan and monthly workshops in the Auditorium of One Senior Place in Altamonte Springs. For more information please contact our office at 407-977-8080 or visit our website HoytBryan.com.