

Is Your Power of Attorney Effective?

By Kristen M. Jackson, Attorney

New rules on what durable powers of attorney may affect you.

On October 1, 2011 a new law governing durable powers of attorney (DPOA) took effect in Florida, which substantially changed their format to make them more acceptable to financial institutions. If your DPOA was executed before October 1, 2011 it is considered “grandfathered in” by the new law, so it is still valid even if its format differs from the new law’s requirements. If you need to take action for an incapacitated person using a DPOA signed prior to the effective date of the new law, you should be able to continue to use it. Beware, however, you may have to deal with bank employees who do not necessarily understand the application of the new law or who interpret it differently than it is intended and may reject the DPOA.

Any DPOAs that lack specificity and a list of “super” powers that must now be initialed may not meet the grandfathering clause in the opinion of a reviewer. For example, the reviewers, such as financial institutions (banks), may not permit the DPOA agent to access your accounts pursuant to a DPOA because it does not contain the requisite language under the new law and may require an attorney opinion letter regarding the DPOA and any proposed action.

Because many reviewers may not accept a DPOA prepared prior to October 1, 2011, you should consider preparation of a new DPOA pursuant to present law. You don’t want to wait until you need to use a DPOA since you may encounter a reviewer who rejects the DPOA or requires an opinion letter from an attorney, which letter may or may not be accepted by the reviewer, resulting in greater cost to you than simply having a new DPOA prepared now. And, if you become incapacitated and your DPOA which predates October 1, 2011 is rejected by your bank, planning opportunities are limited or nonexistent; once you are determined to be incapacitated it is too late to execute a new DPOA and your family may

encounter major inconveniences and expense for guardianship court proceedings.

Based upon the difficulties some may have already experienced since the implementation of the new DPOA law in 2011, it is recommended that those with DPOAs dated prior to October 1, 2011 have new DPOAs prepared. In the end it will save you time, money and anguish. **L**



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