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Client Newsletter

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Changes to the Illinois Power of Attorney Act

Sweeping changes have been signed into law affecting the Illinois Power of Attorney Act. Governor Quinn signed into law House Bill 6477, which will be **effective July 1, 2011**. We have read the new law and are preparing to implement the changes next year. You should be aware of these changes, especially if you are now acting as an agent or are named as an agent to be effective in the future.

Overview of Current Law

Currently, Illinois allows for powers of attorney. A power of attorney (POA) grants someone else (the "agent") the power to make certain decisions on the individual's (the "principal") behalf. The powers granted are those enumerated within the power of attorney document.

In general, there are two categories of decision-making usually delegated to an agent in a power of attorney. Those categories are health care decisions and property/financial decisions.

Although some attorneys combine these two categories into one document, the majority of attorneys use separate documents for each category.

Changes to the Law

Notice to the Principal

A notice to the principal explains the POA in general and its various provisions.

Notice to the Agent

A notice to the agent details how an agent should act in accordance with the law.

Changes to the POAs

There are various changes to the POA documents, but they primarily are made to accommodate the use of the notices described above.

Better Definitions

The new law changes or clarifies definitions of "incurable or irreversible condition", "permanent unconsciousness", and "terminable disease".

Witness Restrictions

Health care POAs cannot be witnessed by certain individuals, including, among others: parents, siblings, attending physician.

Certification and Acceptance of Authority

Previously, a third-party (usually a financial institution) who, in good faith, relied on a POA through the agent's affidavit was "fully protected and released". In addition to an affidavit, a third-party may now rely on a form titled "Agent's Certification and Acceptance of Authority".

Standard of Care

The prior standard of using "due care" in the exercise of the agent's duties is re-

placed with "good faith for the benefit of the principal using due care, competence, and diligence in accordance with the terms of the agency . . ."

Record Keeping

Although an agent was always required to keep a record of receipts, disbursements, and significant actions, the new law provides who can request a copy of those records and how to do so. Also, the new law provides an enforcement mechanism and penalties for failure to provide adequate records after a request.

Revocation of Prior POA

The execution of a new POA does not revoke a previously executed POA unless the new POA expressly revokes the prior POA or the powers contained therein.

Protection to Successor Agents

The law will provide certain protections to successor agents from actions performed by the primary agent.

Co-Agents

As before, co-agents are not allowed in the use of the statutory forms. However, if co-agents are named in a non-statutory form, then the law provides when and how they should act.

Out-of-State POAs

The new law now expressly states when an out-of-state POA is valid in Illinois.

An Ounce of Prevention . . . The Role of a Business Law Firm

Every business, from the one-person shop to the international corporation needs to involve legal counsel at every stage of the business lifespan. The old adage is true, "an ounce of prevention is worth a pound of cure."

Forming the Business

The law firm, along with other key players (accountant, financial planner, etc.) plays a vital role in educating a potential business owner about the various entities available. Among these are corporations, limited liability companies, partnerships, and sole proprietorships. Knowing the liability protection (or lack thereof) and tax ramifications at this stage can pay off in the future as the

business grows.

Opening For Business

Properly structuring the timeline for opening a business is vital to efficient use of the start-up funds. An attorney will help in this process.

Leasing and/or Buying Real Estate

Almost every business needs physical office or work space. The decision to lease vs. buy as well as properly handling the transaction is key to maximizing business funds and tax savings. A good business attorney will advise accordingly.

Hiring, Managing, and Terminating Employees

Almost every employer will tell you that handling personnel matters is the

least enjoyable part of the job and the most risky in terms of litigation. Knowing the employment process, about employment contracts, employee handbooks, and the termination process is vital. Using a knowledgeable attorney at this stage may prevent larger problems.

Business Records

Many times, business owners are unaware of the consequences of the failure to properly maintain their records, including a corporate minute book. It takes a knowledgeable attorney to properly draft these documents, including the minutes (and no, accountants should not be doing this for you).

Day-to-Day Matters

Matters come up constantly that the business owner may have never experienced before or may need guidance on. Among these are: contract reviews and modifications, collections of accounts receivable, and licensing issues.

Succession Planning/ Dissolution

Properly planning for the succession or dissolution of a business, well in advance, can provide certainty and peace of mind.

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