

MEMORANDUM – LEGAL SERVICES UPDATE

To: Sutton Land Title Agency Clients
From: Scott Spinner
Date: September 8, 2010
Subject: NEW Power of Attorney Forms effective September 12, 2010

On August 15, 2010, Governor Paterson signed into law a technical corrections bill amending New York's power of attorney law (the "2010 Amendments"). The 2010 Amendments will resolve a number of issues created by the enactment of sweeping changes to Title 15 of New York's General Obligations Law in January 2009 (the "2009 Law"). Specifically, the 2010 Amendments will create broad exemptions for certain commercial and business transactions.

Notably for real estate attorneys, the key aspects of the new law which takes effect September 12, 2010 (and is retroactive to September 1, 2009) are numerated as henceforth:

1. The 2010 Amendments, which become effective on September 12, 2010, will apply retroactively to September 1, 2009, the date the 2009 Law took effect.
2. The execution of a new power no longer acts as an automatic revocation of a prior power (multiple Powers can still co-exist).
3. Customary forms of Powers of Attorney in favor of condominium boards (as contained in most condominium plans) remain valid and are exempt from the new law, as are commercial powers contained in certain loan documents, corporate proxies, and powers coupled with an interest.
4. The changes affect how real estate attorneys treat situations where the agent or donee is using the principal or donor's power of attorney to make a no-consideration or (very little consideration) transfer of title.
 - a. The new law emphasizes that a Statutory Gifts Rider (now to be termed the Statutory Gifts Rider), is not essential to transfer a real property interest unless the transfer itself is a gift. The word "Major" has been deleted from the Statutory Gifts Rider section as it now applies to all gifts over \$500.00.

- b. Whenever a power of attorney is used in a no-consideration transfer of title, the principal/ donor of the power must have executed the Statutory Gifts Rider.
- c. To comply with the new law and to enable the donee of the power to make a gift; that is, a transfer for no or little consideration, the principal/donor must have executed two sections of the new form power of attorney.

First, the donor/principal must initial Section (h) within the power of attorney itself,-“Certain Gifts Transactions: Statutory Gifts Rider (Optional)”.

Second, the donor/principal must execute the Statutory Gifts Rider Authorization attached to the form power of attorney. Within the Statutory Gifts Rider Authorization, the donor/principal must initial one of the gifting authorizations which the donor wishes to give to the donee/agent. The authorization are (a) limited authority to make gifts which do not exceed the federal gift tax exclusion amount limits (currently \$13,000.00); ((b) gifts above or below the federal tax exclusion amounts and (c) Grant of Specific Authority for and Agent to make Gifts to Himself or Herself ; (Optional).

If the donee/agent is using the power to make a no consideration transfer of real property to a third party, the donor/principal of the power then, the donor must have initialed section (b) of the Statutory Gifts Rider. Here, we are assuming that the value of most New York real property exceeds the federal gift tax exclusion (currently, \$13,000).

If the donee/agent is using the power to make a gift to himself or herself, then the donor/principal of the power must have executed Section (c) of the Statutory Gifts Rider.

- d. The donor/principal’s signature on the Statutory Gift Rider must be acknowledged as well as his or her signature on the power of attorney itself.
- e. Two people must witness the donor/principal execution of the Statutory Gifts Rider. The person notarizing the donor/principal’s signature may one of the witnesses. Note that the witnesses are required to date their signatures, print their names, and insert their addresses.



The Real Estate Transaction Specialists.

Please find attached the new POA form and Statutory Gifts Rider effective on or after September 12, 2010. However, powers of attorney executed before that date are still valid. Until September 12, 2010, the old POA form should still be used.

You may also find them on our website: www.suttonalliance.com

Any question regarding the “New” Statutory Short Form Power Of Attorney and the Power Of Attorney New York Statutory Gifts Rider forms should be directed to the Sutton Legal Department.

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