

Life Care Planning

We are always honored to advise our clients regarding Medicaid planning for nursing home assistance for their loved ones. We specialize in obtaining Medicaid nursing home assistance for our clients who are in immediate need of long-term care.

Unfortunately, our modern health care systems are founded on the principles of acute care and are focused on curing the patient's immediate health care need or reacting to the pending health care crisis. It is important to understand that there is another group of elderly clients who for many years have been neglected by Medicare. These are the older clients who have chronic illness that require a continuity of care. Without assistance in the home or in assisted living facilities, these elderly clients may fall and break a hip or perhaps injure themselves much more severely. This will of course result in skilled care and perhaps extended custodial care in a nursing home that perhaps could have been avoided with the implementation of a good home health care system.

It is important to remember that, an "impairment" does not mean that an institutionalized form of long-term care is required. It is only after a chronic condition takes its toll on the elder's health and self-care is no longer necessary that long-term care may become needed.

Not all services selected for the elder may be affordable. For instance, assisted living, for the most part, is not paid for by Medicare or Medicaid. Often, a senior with early stage dementia is inappropriately placed in a nursing home because Medicaid pays for this form of custodial care and not assisted living. But, with "fine-tuning" the elder's home can be sold or a reverse mortgage taken and the elder can pay the difference between his or her social security and pension income and the cost of the assisted living facility with this additional lump sum for many years. VA Aid and Attendance may also be available to defray the excess expense of assisted living over current income sources. In addition, many communities and charitable organizations have senior transportation services, homebound meal programs, adult day care programs, property tax relief, assistance with paying utility bills, homemaker assistance and sitter service. Many of these programs are coordinated by the local Area Agency on Aging. In addition, there are some Medicaid waiver programs.

The attorneys and staff at the Nature Coast Law Offices of Gregory G. Gay, P.A., assist clients in developing, preparing, implementing, and the monitoring of a Life Care Plan. For individuals who now have or may have chronic long-term care needs, a Life Care Plan will help plan for current and future needs. A Life Care Plan includes assistance with coordination of community resources, and identifying and accessing payor sources (such as Medicaid, veterans' benefits, drug discount programs, and the like). After the development of a Life Care Plan, it can be used by you as a guide toward maintaining the highest quality of life.

Please let us know if we can help you or a loved one with a life care plan.



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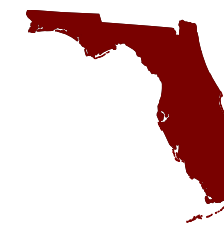
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Florida's New Power of Attorney Act

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 Florida 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 the existing law. We are writing to advise you of this change and to point out some of the ways in which the new law will differ from the current law.

Any person who signs a power of attorney on or after October 1, 2011 must be aware of the requirements imposed by the new law or risk signing a power of attorney that does not comply and which is therefore invalid.

Some examples of the changes that will become effective on October 1, 2011 under the new Act include the following.

In order to be valid, a power of attorney will need to be signed by an adult before two adult subscribing witnesses and a notary public. A limited exception to Florida's execution requirements will apply to powers of attorney created and executed under the laws of a state other than Florida, provided the execution complied with the law of the state

of execution. However, third persons may request an opinion of counsel as to validity of an out-of-state power of attorney before he or she accepts the agent's authority. It is important to understand that an out-of-state power of attorney may conflict with the requirements to convey a Florida homestead real property by power of attorney that requires the power of attorney to be executed in the same manner as a deed. A Florida deed must be signed before two witnesses and have a notary's acknowledgment. A non-Florida power of attorney valid under the provisions of that state may be used in a Florida real estate transaction for non-homestead property, but must have two witnesses and a notary before it can be used to convey homestead real property.

Unless the power of attorney provides otherwise, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original. These Florida execution requirements also do not apply to a military power of attorney which is valid if executed in accordance with the requirements for a military power of attorney pursuant to 10 U.S.C. sec. 1044(b).

A springing durable power of attorney can not be validly created after October 1, 2011. However, the legislature has declared that an existing springing durable power of attorney will remain valid after October 1, 2011.

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An agent's authority is still suspended upon initiation of a proceeding to determine the principal's capacity. This includes not only the filing of a petition to determine incapacity but also a petition to appoint a guardian advocate. The suspension takes effect when the agent has knowledge of the filing of the petition and lasts until the petition is dismissed or withdrawn. In the event of an emergency, an agent may petition the court for continued authority. Unless otherwise ordered by the court, a proceeding to determine the capacity of the principal does not affect any authority of the agent to make health care decisions for the principal, including those defined in chapter 765. If the principal has executed a health care advance directive designating a health care surrogate pursuant to chapter 765, the terms of the directive control any conflicting provisions in the power of attorney, unless the power of attorney is executed after the advance directive and the power of attorney expressly states that it is to control in the event of any conflict.

An agent under a power of attorney is not obligated to act with respect to all powers granted by the principal in the document. Rather, the agent may be able to select only those transactions he or she wishes to accept authority for, leaving areas of a principal's affairs unattended. For example, if a principal grants an agent banking powers and investment powers in the power of attorney, but the agent only wishes to handle banking transactions, this could result in a situation where the principal's investments remain unsupervised, since the agent has decided not to become involved with the principal's investments. In order to avoid this result, we are advising our clients that a power of attorney signed on or after October 1, 2011, should contain an agent's acceptance with respect to all the powers contained in the power of attorney so as to assure that a person's affairs will be managed completely and not selectively in the discretion of the appointed agent.

The new Act permits incorporation by reference of banking and investment transactions, which means that a principal no longer has to specify all of the banking powers to be authorized or all of the investment powers to be authorized. Instead,

a simple reference that "my agent has authority to conduct banking transactions" or "my agent has authority to conduct investment transactions" can be used, while still conferring on the agent the whole host of powers that would typically be associated with such authority.

Because of the potential for abuse, the new durable power of attorney statute singles out certain authorities for special treatment. These are referred to as the "superpowers." A common thread to these superpowers is that their exercise can impact a principal's existing estate plan. Special note should be made of the application of these rules to powers of attorney executed on or after October 1, 2011. These rules do not affect pre-Act powers of attorney. The new statute provides that if properly authorized, the agent may on the principal's behalf:

- Create an inter vivos trust;
- Amend, modify, revoke or terminate a trust created by or on behalf of the principal;
- Make a gift;
- Create or change rights of survivorship;
- Create or change a beneficiary designation;
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; or
- Disclaim property and powers of appointment.

An agent may not exercise any of the above authorities on behalf of the principal or with the principal's property unless the principal places his or her signature or initials next to the paragraph containing the enumeration of the agent's authority in the power of attorney. It is not enough for the principal to sign or initial the page on which these powers appear. The Act requires a separate signing or initialing of each individual authority. Authority specified in a paragraph the principal signs or initials will be authorized; authority specified in a paragraph that the principal declines to sign or initial will not. Nevertheless, the express right to exercise a super power includes the duty to preserve the principal's actually known estate plan and is also subject to the proviso that the authorities must not be otherwise prohibited by another agreement or instrument to which the authority or property is subject.

Even assuming full compliance with the additional formalities, an agent may amend, modify, revoke, or terminate a trust for which the principal is the settlor only if the trust instrument also explicitly provides for amendment, modification, revocation, or termination by the settlor's agent.

Although the new Act provides that any right acquired under the current law will survive the effective date of the Act, there is a practical reason for updating your power of attorney. Once the Act has been in existence for a while, third persons relying on a power of attorney will be accustomed to the requirements of the new Act. If a pre-October 1, 2011 power of attorney is presented sometime down the road, it may come under heightened scrutiny, making it more difficult to have it honored by third persons. As a simple example, the new act requires the authority to conduct banking transactions to be initialed (or signed). Even though a pre-October 1, 2011 power of attorney is technically valid for banking, without the initials, it will not be long before bank tellers will look for properly initialed provisions in powers of attorney and will likely question those that do not comply. This could lead to delays in having a power of attorney accepted.

Please call if you have any questions on the implications of the new law or if you wish to discuss how these changes may affect your current estate planning documents.

Speaking Engagements

Mr. Gay and Mr. Ward will be honored to speak to your company, civic organization or homeowners' association about this new power of attorney law or any other elder law subject. Please call Darla, at our office, to schedule an appointment for us to speak.

Please Call: 800-226-0512

New Associate James A. Ward, Esq.



James A. Ward was raised in Northern California with an interest in agriculture and international business. After obtaining both his Bachelor of Science degree and Master of Science degree from the University of California at Davis, he worked in international agriculture for several years. Mr. Ward's work allowed him to reside in Latin America, Europe and the Middle East for extended periods of time, traveling to over 40 different countries to work with clients. He speaks excellent Spanish, and through his years of traveling has developed an ability to communicate easily with people of different backgrounds who speak limited English.

Following his career in international agriculture, Mr. Ward entered the world of finance, banking, and consulting, working as an executive for Bank of America and the Private Bank of Merrill Lynch. He also served as a Partner and Partner-in-Charge at the international audit, tax, and consulting firm of KPMG (formerly Peat Marwick International). After attending law school on a full academic scholarship and obtaining his J.D. degree at Roger Williams University School of Law in Rhode Island, Mr. Ward moved to Miami to continue his advanced law studies, obtaining his LL.M. law degree (Master of Laws) in Estate Planning from the nationally recognized Estate Planning program at the University of Miami School of Law.

Mr. Ward works with a wide range of clients across the estate planning spectrum, practicing in trusts and Medicaid planning within the firm's Elder Law practice.

In addition to helping clients, he continues to enjoy traveling, sailing, and skiing.