

New Laws Affect Powers of Attorney

New laws passed by the 85th Texas Legislature went into effect for the most part on September 1st of this year, unless a specific alternate date was chosen such as January 1, 2018.

Many of these laws affected Elder Law, but the focus of today's article is on select financial powers of attorney changes highlighted below:

1. Unless the power provides otherwise, an agent is entitled to reimbursement of reasonable expenses and reasonable compensation.
2. "Hot" powers. An agent may take the following actions only if the power expressly grants them (these are not granted in the statutory form):
 - a. Create, amend or revoke a trust;
 - b. Make a gift;
 - c. Create or change beneficiary designations; or
 - d. Delegate authority under the power.
3. If subjects over which authority is granted overlap, the broadest authority controls. The agent's authority is not limited to property located in Texas.
4. An agent with actual knowledge of a breach (or imminent breach) of duty by another agent must notify the principal, or, if the latter is incapacitated, take reasonable action to safeguard the principal's best interest. Failure to do so can result in liability for the reasonably foreseeable damages that could have been avoided.
5. An agent has a statutory duty to preserve the principal's estate plan, to the extent actually known by the agent, if preservation is consistent with the principal's best interest, after considering all relevant factors, including the value and nature of the principal's foreseeable obligations and need for maintenance; minimization of taxes; and eligibility for government assistance.
6. The statutory form contains many changes. The principal, i.e., the person signing the document, is advised that if it is desired to allow a named agent to be authorized to sign home equity loan documents, then the power must be signed at the office of the lender, and attorney or a title company.
7. The statutory form also provides a new notice provision that advises the principal that co-agents may be appointed and unless otherwise provided, may act independent of one another.
8. Other changes include the addition of extensive language dealing with mineral transactions, the ability of a principal to grant a hot power regarding beneficiary designations, authority regarding life estates is provided, authority regarding a principal's mail and to provide for the care of pets.

Given the fact that so many changes were made for powers of attorney, you may want to consider updating yours as powers of attorney are serious, complicated instruments, regardless of how easily they seem to be created. Many people find out the hard way that they did not have enough power given for certain unforeseen circumstances or perhaps gave too much. This is why you should consider hiring an attorney to help with this and other estate planning documents.

You may email your questions to education@wrightabshire.com or visit our website at www.wrightabshire.com. Wesley E. Wright and Molly Dear Abshire are attorneys with the firm Wright Abshire, Attorneys, P.C., with offices in Bellaire, the Woodlands, and Carmine. Both Wright and Abshire are Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and are certified as Elder Law Attorneys by the National Elder Law Foundation. Nothing contained in this publication should be considered as the rendering of legal advice to any person's specific case, but should be considered general information.