**Businesses Must Prepare for the Recent Amendments of the New York Power of Attorney Statute**

The New York State legislature has recently amended its power of attorney (POA) statute. As this article is being finalized, the Governor has not yet just signed the law, but we have been advised that Governor Cuomo will sign shortly and the law will be effective 180 days after he signs. All businesses that receive POAs must accept them unless they have a good reason not to. We strongly recommend that businesses adopt procedures to ensure that they only accept POAs that provide maximum protection from liability.

In 1948, New York created a “short form” POA to avoid lengthy POAs that describe, in detail, every power being granted. Instead, the detail is in the statute, with shorthand references in the POA itself. The law was amended in 2008 to create a procedure to verify that the principal (the person who grants the POA is known as the “principal”) properly authorized large gifts, but that procedure was too cumbersome. The amendment also created other unintended problems with POAs intended for other purposes, which the legislature partially solved in a 2010 amendment, but many of the problems remained.

In 2015, the New York State Bar Association created a Task Force to fix the statute. I was honored to be selected, representing the Business Law Section, as one of the ten members of the Task Force. In addition to fixing the problems with the provisions regarding large gifts, four members of the Task Force representing the Trusts and Estates and the Elder Law practice areas insisted on adding provisions to strengthen the requirement that businesses accept POAs. As a compromise between the competing interests of a principal granting the POA and a business receiving the POA, the task force added language that protects businesses against liability for relying upon a POA. However, taking advantage of those protections requires advance preparation and training.

Businesses may reject POAs that are not the statutory short form with no reason being required. A business in New York may not refuse to accept a statutory short form POA unless it has a good reason, and without a good reason, it may be liable for damages for acting unreasonably. A business may also demand an attorney’s opinion letter on relevant legal issues as a condition of accepting a POA.

Advance preparation will substantially mitigate the risk of liability for a justifiable rejection of a POA. Furthermore, in a compromise that I drafted, a business, when acting in good faith, may rely upon a POA that appears to be signed and notarized, even though the POA is unknowingly forged or no longer in effect.

A business has only 10 business days after receiving a POA to send notice of rejection. We recommend that all businesses should be ready to respond promptly when it receives a POA by taking the following precautions in advance:

* Have at least two forms ready to use when presented with a POA. In many cases, both forms will be used together.
	+ The first form should an affidavit from the person who seeks to use the POA (known as the “agent”) regarding the effectiveness of the POA, which the business can require the agent to sign and have notarized.
	+ The second form should be a notice of rejection of the POA, which must explain the reasons for rejection. The reasons may vary from industry to industry. We recommend that the form include as many preprinted reasons as possible, with boxes to check when applicable, plus an “other” box. The pre-printed reasons should include, at least, (i) the suspicion of elder abuse; (ii) the failure to provide an opinion of legal counsel; (iii) the POA is not signed and notarized; (iv) the POA is not a signed original or an attorney-certified copy; (v) there are complex modifications to the form of POA that render the POA confusing, unintelligible or require an unreasonable level of additional research to determine if the transaction is authorized; (v) the agent has not properly signed the POA; (vi) the principal’s signature appears to have been forged or not notarized; and (vii) the POA has been previously rejected.
	+ Banks, as frequent recipients of POAs, should also list that (i) the agent is named on a money-laundering or anti-terrorist list; (ii) the agent has failed to provide identification in accordance with the bank’s customer identification or enhanced due diligence program; and (iii) the principal’s signature on the POA does not match a signature on file that was given at or about the same time that the POA was signed.
	+ All defects must be stated in the initial rejection notice. Additional unstated reasons may not be reserved for a second rejection.
* All employees must be trained on how to handle POAs. We recommend that you should train one or two employees at each location in the legal requirements. Other employees should be trained to refer all POAs to those employees. Remember that you have only 10 business days to accept or reject, so your procedure should require prompt action.
* The statute does not include a time period during which the agent must respond to a request for additional documents or information. A business has seven business days after receiving the agent’s response to either accept the POA or issue a final rejection. The agent only gets two bites at the apple. A first bite when the agent presents the POA and a second bite when the agent responds to a notice of rejection or demand for an affidavit. If the agent fails to provide the documents and information necessary to cure all problems, then you should notify the agent that the rejection is final because of the agent’s failure.

A business should not accept a power of attorney if it has actual knowledge or a reasonable basis to believe that (i) a report has been made to a government agency alleging elder abuse; (ii) the principal has died; (iii) the principal is incapacitated, unless the POA provides that it survives disability; (iv) the principal was incapacitated at the time the POA was executed; or (v) the POA was procured through fraud, duress or undue influence.

Actual knowledge refers to the knowledge of the employee conducting the transaction involving the POA after making reasonable inquiry. “Reasonable inquiry” depends upon the nature of the business but should include consulting with other employees who regularly deal with the principal’s business. For example, if a POA is presented to a bank branch in Manhattan when the principal does business in Albany, inquiry to the personnel in Albany is appropriate.

The Short Form Power of Attorney statute is far from short itself, and it contains many complexities. This article is just a brief discussion of one of the many important relevant issues. If you have any questions regarding powers of attorney or the obligation to accept them, please contact Jay L. Hack, Esq. at jlh@gdblaw.com, or your attorney at Gallet Dreyer & Berkey, LLP.