
ESTATE PLANNING UPDATE

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NEW REQUIREMENTS FOR FINANCIAL POWERS OF ATTORNEY

In May, the Michigan State Legislature amended the statutes governing financial power of attorney documents. As these documents have become common place as estate planning tools and conservatorship avoidance tools, the State Legislature had received reports of financial exploitation of the elderly through abuses of the financial power of attorney document. In an effort to try curb these abuses, the Legislature changed state law to now require that the *agent* (the person appointed to act under the power of attorney document) sign an acceptance form specifically acknowledging the fiduciary duties of the agent to, among other things, follow the instructions of the *principal* (the person granting the power of attorney), keep the principal informed of the agent's actions, maintain records of financial transactions, and act in the best interest of the principal. This acceptance is very similar to the acceptance form which we have had for the medical power of attorney/patient advocate designation document.

By terms of the new statute, the requirement of an acceptance does not apply to any power of attorney documents signed before October 1, 2012. However, the statute also specifically provides that no third party is liable if the third party requires the agent to sign an acceptance form before recognizing the validity of the durable power of attorney.

Over recent years banks and other financial institutions in order to protect their clients – as

well as themselves – have been scrutinizing power of attorney documents and often have internal policies that dictate when the institution will or will not recognize the validity of such a document.

My suspicion is that, even despite the specific language of the statute, a cautious financial institution will now require all agents to sign an acceptance form, even where the power of attorney was signed before October 1, and even if the bank has previously honored the document. Again, since the institution cannot be held liable for requiring the acceptance, it is only to the institution's benefit to have a signed acceptance on file.

If you ever encounter any difficulties or questions in attempting to use any financial power of attorney document, please do not hesitate to contact me immediately. Do not hesitate to call directly from the financial institution; sometimes problems or questions can be cleared up quickly and easily if I can speak directly to the institution's representative.

Should you have any questions regarding estate planning, or your other estate planning documents, such as your Last Will & Testament, durable financial power of attorney, durable medical power of attorney, or revocable living trust, please do not hesitate to contact me for a confidential consultation.



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