

MARYLAND GENERAL AND LIMITED POWER OF ATTORNEY ACT

The Maryland General and Limited Power of Attorney Act (Title 17 of the Estates and Trusts Article of the Maryland Code) that went into effect on October 1, 2010, will be very beneficial to people who prepare for their potential incapacity. Below are key provisions of this legislation:

- It provides two statutory power of attorney forms – a Personal Financial Power of Attorney and a Limited Power of Attorney.
- A person or entity that refuses to honor a power of attorney substantially similar to either statutory form is subject to a court order mandating acceptance of the power of attorney and liability for reasonable attorney's fees and costs incurred in an action to validate or mandate acceptance of the power of attorney.
- Non-statutory powers of attorney, including powers of attorney created before the effective date of this legislation, are valid and enforceable but do impose liability on the refusing party for reasonable attorney's fees and costs.
- A person or entity may not require a person to execute an additional or different form of power of attorney for any authority granted in a statutory power of attorney.
- A person can authorize an agent to engage in other acts on his behalf in addition to those acts specifically authorized in the statutory forms.
- A power of attorney can remain enforceable until the person granting authority dies regardless of how much time has elapsed if no other terminating event has occurred.
- A power of attorney executed on or after October 1, 2010, must be in writing, signed by the principal (with certain exceptions), attested and signed by two or more adult witnesses, and notarized.

Passage of this legislation will hopefully eliminate the common problem of financial institutions refusing to accept powers of attorney presented after a person becomes incapacitated. While the two statutory power of attorney forms cover many of the common uses by agents, they are not sufficient by themselves to address certain rights or obligations of the agents. Therefore, I am advising my clients to execute a supplemental durable power of attorney in addition to a statutory form power of attorney. This approach will provide the dual benefits of (1) enforceability and provision for reasonable attorney's fees if a third party refuses to honor a statutory power of attorney, and (2) comprehensive coverage and customization to satisfy all of the client's potential financial needs.

Please call the Law Office of Jill A. Snyder, LLC at 410-864-8788 to find out how to update your existing power of attorney to maximize your benefit from this legislation.