

CAPITOL ♦ TITLE

MARYLAND LEGAL BULLETIN

New Legislation – Maryland General and Limited Power of Attorney Act

*Goldstein & Levy, P. A.
General Counsel*

September 24, 2010

On May 20, 2010, Governor O'Malley signed into law Chapter 689, HB 659 (the "Act") which repeals Estates and Trusts Sections 13–601 through 13–603 (Powers of Attorney) and adds Estates and Trusts Sections 17–101 through 17–204 under the new title "**Maryland General and Limited Power of Attorney Act**". **The Act takes effect on October 1, 2010.**

PROVISIONS:

The Act defines "power of attorney" as "a writing or other record that grants authority to an agent to act in place of the principal, whether or not the term 'power of attorney' is used." (17-101.) It incorporates provisions from the old law governing powers of attorney and makes many additions including:

- new execution requirements,
- new statutory forms;

Execution Requirements

The Act requires that POAs executed on or after October 1, 2010 be:

- in writing;
- signed by the principal or by some other person for the principal, in the presence of the principal, and at the express direction of the principal;
- acknowledged by the principal before a notary public; and
attested and signed by two or more adult witnesses who sign in the presence of the principal and in the presence of each other (one of the witnesses can be the notary). (17-110.)

[New Statutory Power of Attorney Forms](#)

While the Act creates two statutory forms (Limited and General), a POA that does not substantially conform to a statutory form will still be valid if it is properly executed. But, if the statutory form is used, “a person may not require an additional or different form of power of attorney” (17-104.) And “a person that refuses . . . to accept an acknowledged statutory form power of attorney 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 . . . that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.” (*Id.*) Therefore, non-statutory forms may continue to be accepted or rejected (as they are under current practices), but a document that substantially conforms to one of the two statutory forms may not be rejected on the basis of the content of the form alone.

“BOTTOM LINE”: A failure to utilize the new, statutory form POA may cause a problem and delay in your transaction. **IT IS, THEREFORE, OUR RECOMMENDATION THAT THE NEW STATUTORY FORM BE USED IN ALL REAL PROPERTY TRANSACTIONS.** If you have a closing pending (or anticipated future transaction closing) with Capitol Title, please contact us so we can assist you by preparing and providing the new, statutory form for use in your transaction.

As always, our staff of experienced attorneys and settlement officers stand ready to assist you and to answer any questions that you have regarding this new law or with respect to other aspects of your transactions.

Settle On Our Experience[®] ...