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Examining the new Minnesota statutory short form power of attorney document

What's changed, and what it means

By Stuart C. Bear, J.D., Chestnut Cambronne PA

Minnesota's statutory short form power of attorney document has been around since 1984. The intent was for this document to be as consumer friendly as possible, providing an easy way for a person, identified as the principal, to appoint the principal's desired representative or representatives, known as the attorney-in-fact, should the principal become incapacitated.

Nevertheless, it is a legal document, and great care and consideration need to be made when one enters into establishing a statutory short form power of attorney document. In an effort to balance consumer accessibility with consumer protection, in its last legislative session, the Minnesota Legislature amended Minnesota's Statutory Short Form Power of Attorney document (and related statutes) to provide greater protective features to principals granting power of attorney. I'll examine this noteworthy amendment in this article and help you understand what it means for you and your clients.



Statutory Short Form Power of Attorney (Minn. Stat. § 523.23)

Effective Jan. 1, 2014, Minnesota's statutory short form power of attorney will change, pursuant to the amendments made by the Minnesota Legislature during its most recent legislative session. Any powers of attorney executed on or after Jan. 1, 2014, must use the new form, but the new form will not invalidate nor impair any power of attorney executed before January 2014 (Minn. Stat. § 523.23, subd. 6).

There are three significant amendments to the statutory short form power of attorney.

1. Notices to Principal and Attorney(s)-in-Fact

The current statutory short form power of attorney begins with a short introductory paragraph that warns of the "broad and sweeping" powers granted by the document and advises that "competent advice" be obtained if there are any questions regarding these powers.

Beginning Jan. 1, 2014, this short introduction will be replaced by two "Notices" (i.e., an "Important Notice to the Principal" and an "Important Notice to the Attorney(s)-in-Fact") that will describe more comprehensively the obligations and powers created by the document. Namely, the "Important Notice to the Principal" describes the purpose of the statutory short form power of attorney, the powers granted by the document, the process for terminating these powers, and the duties of the person(s) named to serve as attorney-in-fact. The principal granting power of attorney is required to read and initial the Important Notice to the Principal before signing the statutory short form power of attorney.

In addition, the person(s) named to serve as attorney-in-fact is required to read the "Important Notice to the Attorney(s)-in-Fact," which outlines the duties and obligations of the person named attorney-in-fact. Although the attorney-in-fact is not required to initial the Notice itself, in signing the statutory short form power of attorney, the attorney-in-fact acknowledges that he or she has read and understands the Important Notice to the Attorney(s)-in-Fact, and further that he or she understands and accepts the scope of any limitations to the powers and duties delegated by the document.¹

2. Powers granted by health care directives distinguished

The new statutory short form power of attorney will expressly distinguish the powers granted by the power of attorney form from the powers granted by a valid health care directive. In its first section, the statutory short form power of attorney contains a list of powers the principal may choose to grant to the attorney-in-fact. The last power listed on the statutory short form power of attorney is labeled "N" and currently reads, "all of the powers listed in (A) through (M) above and all other matters." Beginning on Jan. 1, 2014, this line will be updated to read, "all of the powers listed in (A) through (M) above and all other matters, other than health care decisions under a health care directive that complies with Minnesota Statutes,

“ It is a legal document, and great care and consideration needs to be made when one enters into establishing a statutory short form power of attorney document. ”

chapter 145C.” In addition, the new “Important Notice to the Principal” explains that the statutory short form power of attorney does not grant the attorney-in-fact any power to make health care decisions on behalf of the principal, as these powers may only be granted through a valid health care directive in compliance with Minnesota Statutes, chapter 145C.²

3. Self-dealing gifts

The third section of the statutory short form power of attorney addresses “self-dealing gifts,” which are gifts of the principal’s assets made by the attorney-in-fact to the attorney-in-fact himself. In this section of the statutory form, the principal must indicate whether his attorney-in-fact is authorized to make such gifts.³ If the principal names more than one attorney-in-fact in the statutory short form power of attorney, the principal must also indicate which attorneys-in-fact have the authority to make such self-dealing gifts.

Currently, Minnesota Statutes section 523.24, subdivision 8, provides that self-dealing gifts made by attorneys-in-fact are limited to “\$10,000 in value to each recipient” per year. On Jan. 1, 2014, however, this language will be stricken and new language will be added to limit the self-dealing gifts made by attorneys-in-fact to “the federal annual gift tax exclusion amount in the year of the gift.” The federal annual gift tax exclusion amount is currently \$14,000. Thus, instead of being able to gift \$10,000 to multiple eligible recipients each calendar year, an attorney-in-fact will now only be able to gift \$14,000 total each calendar year.

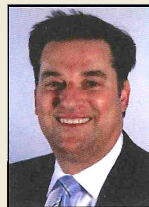
Judicial Relief (Minn. Stat. § 523.26)

On Aug. 1, 2013, Minnesota Statutes section 523.26 went into effect, applying to all powers of attorney executed before, on, or after Aug. 1, 2013. This statute (entitled “Judicial Relief”) permits a principal or any interested person⁴ to “petition the court for a protective order directing an attorney-in-fact to provide an accounting, on a schedule directed by the court, or for any other relief as provided in sections 524.5-401 to 524.5-502.”

In addition to this relief, the principal is entitled to recover reasonable attorneys’ fees and costs “if the court finds that the attorney-in-fact failed to render an accounting to the principal or any person named by the principal in the power of attorney form to receive accountings after the duty to render an accounting arose.” **See id.**

What it means

The newest amendments certainly provide more clarity and understanding regarding the use of statutory short form power of attorney document. Time will tell, however, if the new amendments result in a higher level of consumer protection for persons establishing a power of attorney. ■



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¹ Minnesota Statute section 523.20, which explains the liability of parties refusing the authority of an attorney-in-fact to act on a principal’s behalf, will be updated to reflect this required acknowledgment

² Furthermore, Minnesota Statutes section 523.24, which details construction requirements for drafting power of attorney forms, will be updated at subdivision 14 to read: “The language conferring general authority does not include any powers to make health care decisions for the principal.”

³ The language in the new statutory power of attorney form indicates that gifts are considered “self-dealing” if they are made by the attorney-in-fact to the attorney-in-fact himself or to anyone the attorney-in-fact is legally obligated to support (like a child).

⁴ “Interested persons” are those defined in Minnesota Statutes section 524.5-102, subdivision 7.

LAST CHANCE!

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E1. Minnesota Estate and Gift Tax Planning: Keep Your Clients From Leaving Town

It’s your last chance to register!

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