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Amendments to Power-of-Attorney Regulations Address Concerns About Commercial Transactions

BY JOEL STASHENKO

ALBANY - Amendments to a 2008 statute changing power-of-attorney procedures in New York have addressed some of the major concerns expressed by lawyers who feared that the new rules would wreak havoc in commercial transactions.

Governor David A. Paterson signed the bill, A8392/S7288, making what he and sponsors called “technical” changes in the 2008 statute.

But practitioners said the new law makes important changes to the statute, such as eliminating a provision interpreted as voiding all previous power-of-attorney agreements extant when a person signed a new, longer power-of-attorney form starting last year.

Critics of the 2008 law say it was written with elder-law issues in mind and failed to take into account the frequency with which people designate power of attorney for other legal and business transactions.

Provisions appearing to undo all previous power-of-attorney agreements “betrayed thinking that showed that authors of the 2008 statute had not adequately polled the various fields of law to ascertain what the reverberations would be,” said **Dov Treiman of Adam Leitman Bailey, P.C.** in Manhattan, a Law Journal columnist. “The statute was so focused on assisting elderly folks and how they manage their affairs that they [sponsors] completely lost sight of how pervasive powers of attorneys have become and how many highly sophisticated transactions they affect.”

The sponsors of the 2008 legislation, Assemblywoman Helene Weinstein, D-Brooklyn, and Senator George Onorato, D-Queens, said power-of-attorney changes were needed to ensure that senior citizens were better informed about the rights they might be signing away.

Approved by the governor and Legislature in 2008, the changes to the law were initially to have gone into effect March 1, 2009, but were delayed until Sept. 1, 2009, to give the legal community more time to adjust to the changes.

In an analysis of the new law early this year, 51 law firms warned that the new power-of-attorney rules called into question the validity of a host of business-related transactions. They



Dov Treiman

include the signing of proxy cards to allow stockholders to let others vote their shares during corporate meetings and common commercial transactions such as the formation of non-New York limited liability companies by New Yorkers (NYLJ, Jan. 22).

Firms sounding the alarm about the new procedures included some of New York's largest, such as Cravath, Swaine & Moore; Cadawalder, Wickersham & Taft; Davis Polk & Wardwell; Chadbourne & Parke; Greenberg Traurig; Kaye Scholer and Bryan Cave.

The recent amendments add a new §5-1501C to the General Obligations Law, which explicitly states that some transactions are not covered by the new law. The exceptions include powers given for a business purpose; to facilitate the transfer of stocks, bonds or other assets; to allow a board to operate a condominium project; a proxy used for management or voting rights in a commercial entity and for powers in a limited liability company operating agreement.

The new law also creates a provision, §5-1511(1)(e), that newly drafted powers of attorney do not automatically revoke previously drafted powers.

Mr. Treiman said the largest failing of the amended legislation is that it does not revive use of a simplified short form for power of attorney in force before Sept. 1, 2009.

He said that will still leave only a limited number of New Yorkers well-versed in what the long form for power of attorney means.

“Prior to 2009, powers of attorney were simple, short documents that anyone with a C-plus average in high school could understand,” **Mr. Treiman** said. But the new documents are so complex that only a small group of attorneys in the state understand the document as a whole. This strikes me as

pro-consumer in intent but anti-consumer in effect.”

The law signed by Mr. Paterson goes into effect on Sept. 12, but its provisions are retroactive to Sept. 1, 2009.

The legislation also charges the state Law Revision Commission with studying the power-of-attorney issue and with reporting by next fall on the effects of the 2008 and 2010 statute changes.

Ms. Weinstein and Senator John Sampson, D-Brooklyn, sponsored the new bill.