

FEDERAL STANDARD ABSTRACT

TITLE NEWS

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Title News

New Power of Attorney Legislation

New legislation on powers of attorney has been signed into law to become effective on September 1, 2009. The effective date was originally March 1, 2009, but was amended and postponed after the New York State Bar requested the extension to provide practitioners time to implement the changes.

The “attorney-in-fact” will now be called the “agent” and the law describes how the agent is to sign for the “principal (the donee of the power). The following are statutory forms:

- (a) “(agent) as agent for (principal)”
- (b) “(principal) by (agent), as agent”

The statute also allows for “any similar written disclosure of the principal and the agent relationship.” Nevertheless, we recommend sticking to the prescribed forms above.

The new statute introduces many changes and definitions. We will only mention what we believe most important for the real estate industry.

The statute prohibits parties from refusing to accept a power of attorney in proper form without “reasonable cause.” Specifically, it also prohibits “the refusal by a title insurance company to underwrite title insurance for a transfer of real property made pursuant to a major gifts rider or non-statutory power of attorney that does not contain express instructions or purposes of the principal.” Given the many fraudulent transactions that our industry has seen in the recent years, this section appears misguided. Oftentimes insurers reject powers of attorney because of circumstantial reasons, because there is something about the transactions that doesn’t fit, but does not amount to actual knowledge that the transaction is fraudulent. Insurers

taking a conservative stance could now be threatened with liability.

Powers of attorney valid under the current law will continue to be valid after September 1, 2009. Powers of attorney validly executed under the law of another state will be given full faith and credit. The new law introduces a new statutory form, which will be available on our website as we approach the effective date. The text of the new law can be found at <http://www.nysba.org/Content/NavigationMenu23/PowerofAttorneyLegislation/PowerofAttorneyLegislation.pdf>.

New Attorney Ethics Rulebook

The New York Code of Profession Responsibility will become void effective April 1, 2009 to be replaced by the newly-adopted Rules of Professional Conduct. The new ethics rules are none other than the Model Rules of Professional Conduct promulgated by the American Bar Association; the same ones that every bar applicant studies and is tested on in the Multistate Profession Responsibility Examination.

There are, reportedly, two reasons for the adoption of the Rules by New York. First, it will facilitate communications with attorneys from other states who frequently make reference to the Model Rules. Now that New York has adopted the Rules, the only states in the union that have not adopted them are California and Maine. On the other hand, for all the ease of communication they will provide, New York attorneys are likely to suffer the transition period until they become acquainted with the new code and the new numbering of the sections.

The second reason for the adoption has been called “finetuning.” Like every field of law,

legal ethics must keep up with changing times. While adoption of the Rules is not planned to introduce new standards, it does carry the existing ones into our current times. For example, and most easily discernable, an attorney representing a party against a former client is now required to obtain consent *in writing* from both parties. Under the former New York Code of Professional Responsibility, oral consent would have sufficed, though most attorneys might have procured consent in writing anyway. The adoption of the Rules creates an easy way to update current ethics rules, and the changes become more politically palatable thanks to the sponsorship of the American Bar Association. The new Rules can be found at <http://www.nycourts.gov/rules/jointappellate/NY%20Rules%20of%20Prof%20Conduct.pdf>. Most providers of Continuing Legal Education are now including courses to discuss the new rules.

New York City Building Diagrams, Online

Effective March 9, 2009, the New York City Department of Buildings will require that every application for a new building or major enlargements to include a diagram of where the building is to be located in relation to the

street and the property lines. The diagrams will be posted online, on the DOB's website. Their purpose is to allow the public to understand where the building will be situated and raise objections prior to its completion. After the work permit is posted at the site and the diagram on the website, the public will have thirty days to raise any objections to the project. Closing attorneys questioning the legality of improvements on new projects will only have to check current surveys with the online diagrams.

Rent Stabilization

Landlords have a new weapon against rent-stabilized tenants; at least against illegal aliens. The rent stabilization laws protect only a tenant's principal residence. On the other hand, applicants for tourist visas have to disclose where their primary residence is, which is by necessity outside of the United States. The Court of Appeals has held that one who declares her primary residence to be outside of the United States for visa purposes cannot benefit from rent stabilization laws claiming that her principal residence is in New York. *Katz Park Avenue Corp. v. Jagger*, 11 N.Y.3d 314, 869 N.Y.S.2d 4 (Oct. 23, 2008).

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