

HANCOCK & ESTABROOK

**NEW POWER OF ATTORNEY
LEGISLATION**
August 11, 2009

Hancock & Estabrook, LLP
1500 AXA Tower I
100 Madison Street
Syracuse, New York 13202

HANCOCK & ESTABROOK

NEW POWER OF ATTORNEY

- ❖ January 27, 2009 – Gov. David Paterson signed Chapter 644 of the Laws of 2008, amending General Obligations Law to provide significant reforms to use of Powers of Attorney in NY
- ❖ Revised Power of Attorney Law was originally effective March 1, 2009. Effective date was delayed until September 1, 2009 after extension was passed by Senate and Assembly
- ❖ On or after September 1, 2009, Powers of Attorney must meet requirements of General Obligations Law Section 5-1513
- ❖ Powers of Attorney executed prior to September 1, 2009 will continue to be valid if in accordance with the laws in effect at time of execution

HANCOCK & ESTABROOK

MAJOR GIFTS

- ❖ Authority to make major gifts and other asset transfers has to be set out in Major Gifts Rider to the statutory Power of Attorney
 - Requires principal sign in the presence of notary public and must be witnessed by two disinterested persons
 - Allows principal to make informed decision as to whether agent may make gifts or other transfers of principal's property to third parties as well as to agent
 - Principal can authorize agent to make gifts from principal's assets to a defined list of individuals – up to twice the amount of the annual gift tax exclusion with consent of principal's spouse

THIRD PARTIES

- ❖ Amendment provides third parties have ability to refuse to accept Powers of Attorney based on reasonable cause
- ❖ When third party unreasonably refuses to accept the Power of Attorney, statute authorizes agent to seek court order compelling acceptance of Power of Attorney

OTHER PROVISIONS

- ❖ Power of Attorney does not become legally effective document until both principal and agent sign
- ❖ Basis for termination and revocation of Power of Attorney and resignation of agent are described in the Power of Attorney form
