



ILLINOIS STATE BAR ASSOCIATION

# TRUSTS & ESTATES

*The newsletter of the Illinois State Bar Association's Section on Trusts & Estates*

## Illinois legislative update: Power of attorney updates & alerts

By Mary Cascino

### Property Powers

The Illinois Statutory Short Form Powers of Attorney for Property (IPOAs) will need a short "fix" for the period July 1, 2011 to January 1, 2012. The revised Power of Attorney Act that goes into effect July 1st revises the statutory form in Section 3.3(c) of the new Act to state in paragraph 1 of the form: "I...hereby revoke all prior powers of attorney..." All prior powers of attorney include, not only prior statutory forms, but also special or limited powers of attorney such as those on file at a bank, investment house or corporation records.

Efforts were made to fix this problem. HB 1712, identifying powers of attorney that would be excluded from such revocation, passed both houses but with an effective date of January 1, 2012. (It has not yet been signed by the Governor) Therefore, IPOAs executed during that six-month window need a slight interim revision to avoid unintended repercussions.

A suggested interim fix is to revise the statutory form to state "I...hereby revoke all prior statutory powers of attorney...."

Also, a provision in the New Act, Section 3.3(b) indicates non-statutory powers of attorney must be witnessed and notarized. It is unclear whether this applies to limited powers of attorney, such as those identified in HB 1712. We suggest that financial institutions and corporations take the precaution of having all internal powers of attorney executed by clients during the six-month period (assuming HB 1712 will be signed by the governor) to be witnessed and notarized.

### Health Care Powers

SB 1877 passed both houses and, if signed by the governor, will change the statutory form that is to go into effect on July 1, 2011. It removes the grant of an immediate power of the agent to have access to the principal's medical records. Proposed by hospital and health care groups, there was a consensus that individuals would be unwilling to sign a power of attorney that gave the agent immediate access to medical records. In effect, the agent will have immediate access if the principal does not specify a triggering event for the POA to take effect. However, if the principal wants to delay the agent's access, he or she will need to specify the triggering event. If the governor signs SB 1877, the statutory form will need to reflect those revisions

As before, and as highlighted in the recent Carlson case, if the principal specifies his or her death as the triggering event for the agency to end, the agent will not have the authority to dispose of remains, authorize an autopsy or donate organs, even if that power is granted in the POA. ■

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