



## **Florida Wills & Trusts January 2012 Update**

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### **Updated Product Features**

#### **Revisions to Durable Power of Attorney**

- *New Short Form* – Based on customer comments, the editors decided to include a shorter version of the Durable Power of Attorney for use in those very specific situations where the much longer version is clearly not needed or tolerated by the client. It is NOT recommended for routine use because it does not contain the degree of specificity that the regular form exhibits. Until we have a better feel for what the new law means by "specifically granted," the better approach is to enumerate as many powers as is reasonable to avoid omitting one that might be needed. Because of the potential for confusion which might cause this form to be overused, this question is pre-answered and does not appear in the normal sequence of the DPA preparation. It can be selected directly from the Navigator or made into a template for special situations. *New Question 5*
- *New 'Long Form' Option to Include Provisions* - This question, like the long form vs. short form choice, is not intended to be the normal way to create Powers of Attorney. Rather, it is more likely to be used to create a special-purpose power of attorney, such as one for financial transactions only or for sale of a specific piece of real estate. It includes all of the major sections of the long form, allowing the drafter to deselect those portions of the Power of Attorney not needed for the particular transaction (or client). As with the new Short Form question, this question is pre-answered but can be selected from the Navigator or incorporated into a template. *New Question 6*
- *New 'Entity' choice at Attorneys-in-Fact 'Type' Question* – Based on customer requests we have added a new 'Entity' answer choice to the Attorneys-in-Fact Info REPEAT question. *Question 1200*
- *New Gifts Made Equally Among Classes Option* - If the attorney-in-fact is allowed to make gifts to descendants, an issue arises when the family line is unequal, i.e., the children have differing numbers of offspring. This question adds a restriction that such gifts must be made equally among classes of beneficiaries, so that each child's family gets the same amount, regardless of the number of grandchildren. *New Question 1209*
- *New Suspension of Rights Option* - Based on customer requests, this question provides more flexibility to omit the entire Suspension of Rights provision, and also includes a new 'If confirmed by Agent's Physician Only' choice. *New Question 1220*

- *Use of Copies Question Clarified* - The answer choices in this update are reversed from the prior update (September 2011) since it was confusing to say "Yes" to something that the law already allowed, so the choices and related text have been restructured in the negative. The current default answer is "No" but was previously "Yes" which had the opposite result. The text has not changed. *Question 1224*
- *New Military Power of Attorney Option* – A new military power option pursuant to Title 10, United States Code, section 1044b has been added, including options on whether or not the power is contingent upon deployment and how the power will be acknowledged. *New Questions 1225-1231.*
- *New DPA Expiration Date Option* - Based on customer requests, an option to specify the DPA expiration date has been added. Normally a Durable Power of Attorney is intended to remain effective throughout the Principal's lifetime, but in some cases, such as a power specifically intended for a narrow purpose (such as a sale of real estate), should be given an expiration date. *New Questions 1232 and 1233*
- *DPA Powers Revised* – Power #53 in the BUSINESSES AND CONTRACTS section was revised to clarify that personal service contracts with the agent (which can be important for Medicaid purposes) are authorized; minor changes were made in the Protection for Agents provision in the ADDITIONAL PROVISIONS section, including an elaboration (in subparagraph e) of the statutory provisions regarding breaches of fiduciary duty.

See also the "Florida 2011 POA Q&A" topic posted in the Estate Planning Forum of the Lawgic Discussion Board at [www.lawgic.com](http://www.lawgic.com) for further clarification on the new Durable Power of Attorney.

### **Revisions to DPA Revocation**

- *New Revoke All Prior DPAs Option*– Based on customer requests a new 'revoke all prior DPAs regardless to whom given' question has been added at the beginning of the DPA Revocation Q&A process. If selected it will suppress all revocation questions except for the 'execution' ones and insert the following text: "I hereby revoke all Durable Powers of Attorney and all power and authority given to any person to act on my behalf that were executed before this date." *Question 7*
- *4 Digit SSN Replaces Full SSN* - This conforms to the Durable Power of Attorney which uses the 4 digit SSN. *Questions 33, 34, 43, 44*
- *Agent Identity Question No Longer Asked for Single DPA With Successors* – If one DPA is created with agents serving "jointly" or with successors, the new Durable Power of Attorney prohibits the ability to revoke only one agent; it requires that all agents be revoked. Therefore, the "Agent Identity" question is no longer asked if 'Successively, single DPA' is selected at the "Multiple Attorneys-in-Fact" question. *Question 1262*

### **New Power Added to Medical Power of Attorney for Minor Child**

The following power was added to the 'long form' (in keeping with the statutory provision): "To sign in my place any waiver and release of liability relating to activities involving a commercial activity provider, as described in Fla. Stat §744.301(3)." *Question 1274*

### **Revision to Irrevocable Life Insurance Trust**

A new reference has been added to the trust powers for life insurance policies held in trust confirming nonapplicability of prudent investor rule pursuant to Fla. Stat §736.0902.

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To view those questions that are new in this update, or where **Law & Strategy**, choices, or default answers have changed, use the "**Up\_Jan12**" flag file. From inside Lawgic, open any existing answer file; on the **Flags** menu, click **Open Flags**, select the appropriate Title (click **OK**), and next select the "**Up\_Jan12**" flag file (and click **OK**). To view all flagged questions, click **Expand All** on the **Answers** menu and scroll the Navigator. Flagged questions will be indicated with **bold text**.

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