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THE 2011 FLORIDA POWER OF ATTORNEY ACT

On October 1, 2011, the new Florida Power of Attorney Act (the “Act”) will go into effect. Major changes under the Act include the following: (i) banking and investment powers do not need to be enumerated to be authorized; (ii) the authority to amend a trust on behalf of the principal will need to be specifically enumerated; (iii) a "springing" power of attorney, signed after October 1, 2011, will no longer be effective; and (iv) a legal process to require a third party to honor a power of attorney.

Banking and Investment Powers:

With regard to banking and investment powers, the Act no longer requires a principal to specify all of the powers to be authorized for their designated agent to act. An attorney-in-fact will be able to buy, sell, and exchange investment instruments, open or terminate an account, borrow, pay, renew, or extend a debt, exercise voting rights, and purchase and sell commodity futures contracts and call and put options.

Authority:

The Act no longer requires an attorney-in-fact to act with respect to all powers granted to them in the document by the principal. They may select only those powers he or she wishes to accept authority for. An attorney-in-fact may commence a legal action to challenge a third party's refusal to honor the power of attorney.

The Act also provides a mechanism for an “attorney-in-fact” to resign their authority. This may be accomplished under the terms of the instrument, by giving notice to the principal or the next successor agent.

Estate Planning:

With regard to a revocable trust, the attorney-in-facts authority must be specifically enumerated by the principal in order for them to act. The authority that may be empowered in the attorney-in-fact include to create,

amend, modify, revoke or terminate a revocable trust on behalf of the principal, subject to instrument limitations.

The attorney-in-fact may be authorized to make a gift on behalf of a principal, subject to restrictions. They may also (i) create or change rights of survivorship and a beneficiary designation; (ii) waive a principal's right to be a beneficiary of an annuity or a retirement plan; and (iii) disclaim property and powers of appointment.

Springing Power:

A "springing" power of attorney executed after October 1, 2011 will no longer be effective. This change is significant in that individuals had utilized a springing power to delay the effectiveness of the power of attorney until the springing event occurred. As a result, individuals will only be able to execute a power of attorney that is immediately empowering.

Recommendation:

To take full advantage of the Act it is recommended that all individuals (i) update their revocable trust documents to permit amendment by an attorney-in-fact acting under a power of attorney; and (ii) select a fiduciary who will manage all of their financial affairs and sign an acceptance with respect to all the powers contained in the power of attorney, if necessary. Appointing co-attorneys-in-facts may serve as a good checks and balances to insure they utilize the authority in their best interest