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MARITIME LAW

Changes to the Florida Power of Attorney Statutes

Earlier this year, the Florida Legislature passed Senate Bill 670 revising the Florida power of attorney statutes, Chapter 709, in an effort to conform Florida's power of attorney law to the Uniform Power of Attorney Act. The Uniform Power of Attorney Act is currently adopted by several other states and by the U.S. Virgin Islands.

A power of attorney is a legal document whereby the maker delegates specified authority to act to an agent.

The revisions to the statutes came into effect on October 1, 2011. Some of the more notable changes are as follows:

1. **Execution:** Except as otherwise specified, a power of attorney must be signed by the maker and two witnesses, and be acknowledged by the principal before a notary.¹
2. **Agent:** "The agent must be a natural person who is 18 years of age or older or a financial institution that has trust powers, has a place of business in Florida, and is authorized to conduct business in Florida."²
3. **Effectiveness:** To be effective in Florida, the powers created by a power of attorney on or after October 1, 2011, must be exercisable as of the date they are executed.³
4. **Co-Agents:** Co-Agents are no longer required to act concurrently (or with majority approval) and under the revised statutes, each agent designated under a power of attorney may act independently.⁴
5. **Agent's Authority:** The maker must specifically designate an agent's authority. General designations are no longer effective designations of authority.⁵
6. **Disallowed Designations:** "An agent may not:
 - a. Perform duties under a contract that requires the exercise of personal services of the maker;
 - b. Make any affidavits as to the personal knowledge of the maker;
 - c. Vote in any public election on behalf of the maker;
 - d. Execute or revoke any will or codicil for the maker; or
 - e. Exercise powers and authority granted to the maker as trustee or as court appointed fiduciary."⁶
7. **General Banking Transactions:** Section 709.2208(1), F.S. provides that a power of attorney that includes a statement that an agent has "authority to conduct banking transactions as provided in s. 709.2208(1), F.S." grants general authority to the agent to engage in banking transactions with financial institutions without the requirement that the maker enumerate the specific banking powers granted.⁷
8. **General Investment Transactions:** Section 709.2208(2), F.S. provides that a power of attorney that includes a statement that an agent has "authority to conduct investment transactions as provided in s. 709.2208(2), F.S." grants general authority to the agent to engage in investment transactions without requiring that the maker enumerate the specific banking powers granted.⁸

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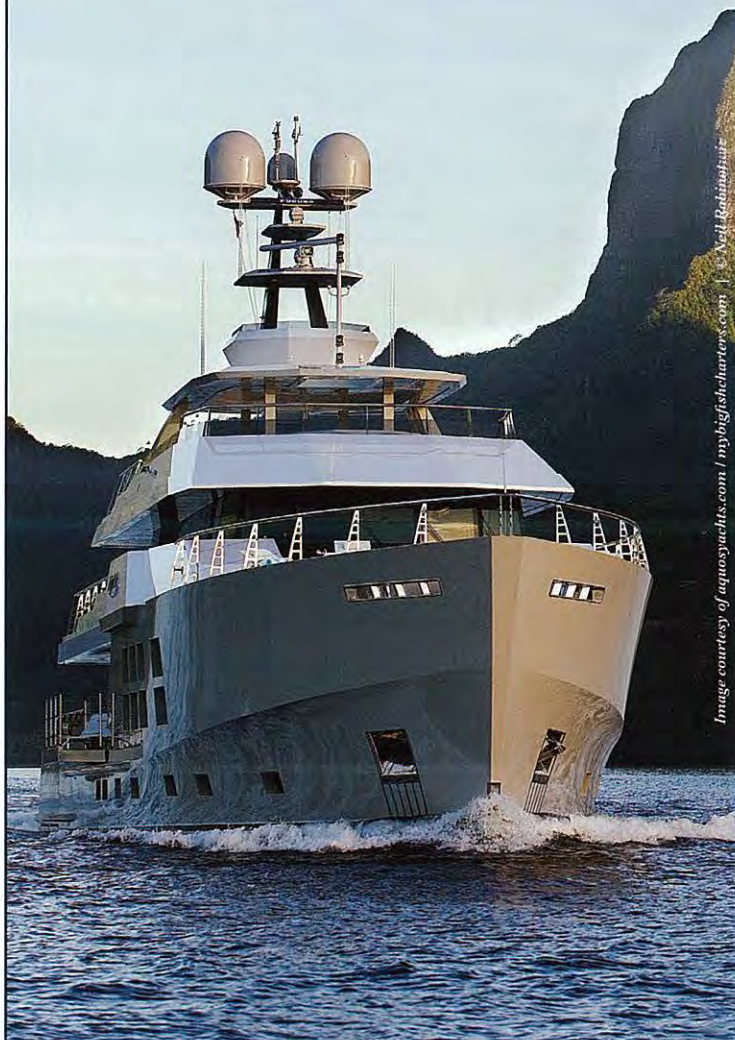


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9. **Breach of Fiduciary Duty:** An agent who has actual knowledge of a breach or imminent breach of fiduciary duty by another agent must take reasonable actions to protect the maker's interest and will be liable for the reasonably foreseeable damages for non-action.¹
10. **Powers of Attorney Prior Executed Prior to October 1, 2011:** Powers of attorney validly executed prior to October 1, 2011 will remain valid.²

Any power of attorney drafted executed after October 1, 2011, will have to comply with the new Florida power of attorney statutes, which can be found in Chapter 709 of the Florida Statutes.

**The information offered in this column is summary in nature and should not be considered a legal opinion. Erin J. Ackor is an attorney at Moore & Co., P.A. (www.moore-and-co.com), a law firm specializing in maritime and aviation law, located in Miami, Florida. Contact her at erin.ackor@moore-and-co.com or call 786.221.0600.*

¹ The Florida Senate, Bill Analysis and Fiscal Impact Statement, (visited October 9, 2011) <http://www.flsenate.gov/Session/Bill/2011/0670/Analyses/fcl00j1MhP61E0j/fv8H-PL=96at/M=%7C7/PUBLIC/Bills/0600-0699/0670/Analysis/2011s0670.ju.PDF> (hereinafter referred to as "Bill Analysis")

² Id., ³ Id., ⁴ Id., ⁵ Id.; Fla. Stat. § 709.2201, ⁶ Bill Analysis, ⁷ Id.; Fla. Stat. § 709.2208, ⁸ Bill Analysis; Fla. Stat. § 709.2208, ⁹ Bill Analysis; Fla. Stat. § 709.211, ¹⁰ Id.



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