S T A T E O F N E W Y O R K

5589

2009-2010 Regular Sessions

I N S E N A T E

May 20, 2009

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to powers of attorney for financial estate planning; and directing the law revision commission to study the implementation of such powers of attorney

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 3 of section 5-1511 of the general obligations law, as added by chapter 644 of the laws of 2008, is amended to read as follows:

3. A principal may revoke a power of attorney;

(a) in accordance with the terms of the power of attorney; OR

(b) by delivering a written[, signed and dated] revocation of the power of attorney [as follows:

(1)] to the agent, and the agent must comply with the principal's revocation notwithstanding the actual or perceived incapacity of the principal unless the principal is subject to a guardianship under article eighty-one of the mental hygiene law[; and

(2) to any third party that the principal has reason to believe has received, retained or acted upon, the power of attorney].

S 2. Subdivision 6 of section 5-1511 of the general obligations law, as added by chapter 644 of the laws of 2008, is amended to read as follows:

6. [Unless the principal expressly provides otherwise, the execution of a power of attorney revokes any and all prior powers of attorney executed by the principal] THE EXECUTION OF A POWER OF ATTORNEY DOES NOT REVOKE ANY POWER OF ATTORNEY PREVIOUSLY EXECUTED BY THE PRINCIPAL UNLESS THE PRINCIPAL GIVES WRITTEN NOTICE OF REVOCATION TO THE AGENT OF ANY PREVIOUSLY EXECUTED POWER OF ATTORNEY.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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S 3. Paragraph (e) of subdivision 1 of section 5-1513 of the general obligations law, as added by chapter 644 of the laws of 2008, is amended to read as follows:

(e) This POWER OF ATTORNEY [REVOKES] DOES NOT REVOKE any [and all prior] Powers of Attorney PREVIOUSLY executed by me unless I [have stated otherwise below, under "Modifications."] GIVE WRITTEN NOTICE OF REVOCATION TO THE AGENT OF ANY PREVIOUSLY EXECUTED POWER OF ATTORNEY.

IF YOU ARE REVOKING A PREVIOUSLY EXECUTED POWER OF ATTORNEY, YOU SHOULD NOTIFY IN WRITING ANY THIRD PARTIES YOU BELIEVE HAVE RECEIVED, RETAINED OR ACTED ON THE POWER OF ATTORNEY.

If [your are NOT revoking] YOU DO NOT INTEND TO REVOKE your prior Powers of Attorney, and if you [are granting] HAVE GRANTED the same authority in [two or more Powers of Attorney, you must also] THIS POWER OF ATTORNEY AS YOU GRANTED TO ANOTHER AGENT IN A PRIOR POWER OF ATTORNEY, EACH AGENT CAN ACT SEPARATELY UNLESS YOU indicate under "Modifications" [whether] THAT the agents given these powers are to act together [or separately].

S 4. Subdivisions 10 and 14 of section 5-1501 of the general obligations law, as added by chapter 644 of the laws of 2008, are amended to read as follows:

10. "Power of attorney" means a written document, OTHER THAN A DOCUMENT REQUIRED BY A GOVERNMENTAL AUTHORITY, by which a principal with capacity designates an agent to act on his or her behalf.

14. "Statutory major gifts rider" or "SMGR" means a document by which the principal may supplement a statutory short form power of attorney to authorize [major] ALL gift transactions and other transfers, [that meets] OTHER THAN THOSE PERMITTED BY SUBDIVISION FOURTEEN OF SECTION 5-1502I OF THIS TITLE. THE DOCUMENT MUST MEET the requirements of subdivision nine of section 5-1514 of this title, and that contains the exact wording of the form set forth in subdivision ten of section 5-1514 of this title. The use of the form set forth in subdivision ten of section 5-1514 of this title is lawful and when used, it shall be construed as a statutory major gifts rider. A statutory major gifts rider may contain modifications or additions as provided in section 5-1503 of this title as such modifications or additions relate to major gift transactions and other transfers. The statutory major gifts rider must be executed in the manner provided in section 5-1514 of this title, simultaneously with the statutory short form power of attorney in which the authority (SMGR) is initialed by the principal. A statutory major gifts rider and the statutory short form power of attorney it supplements must be read together as a single instrument.

S 5. Clause (I) of subparagraph 2 of paragraph (f) of subdivision 1 of section 5-1513 of the general obligations law, as added by chapter 644 of the laws of 2008, is amended to read as follows:

( ) (I) personal and family maintenance. IF YOU GRANT YOUR AGENT THIS AUTHORITY, IT WILL ALLOW THE AGENT TO MAKE GIFTS THAT YOU CUSTOMARILY HAVE MADE TO INDIVIDUALS, INCLUDING THE AGENT, AND CHARITABLE ORGANIZATIONS. THE TOTAL AMOUNT OF ALL SUCH GIFTS IN ANY ONE CALENDAR YEAR CANNOT EXCEED $500;

S 6. Paragraphs (h) and (n) of subdivision 1 of section 5-1513 of the general obligations law, as added by chapter 644 of the laws of 2008, are amended to read as follows:

(h) MAJOR GIFTS AND OTHER TRANSFERS: STATUTORY MAJOR GIFTS RIDER (OPTIONAL)

In order to authorize your agent to make [major] gifts IN EXCESS OF AN ANNUAL TOTAL OF $500 FOR ALL GIFTS DESCRIBED IN (I) OF THE GRANT OF

AUTHORITY SECTION OF THIS DOCUMENT (UNDER PERSONAL AND FAMILY MAINTENANCE), and other transfers of your property, you must initial the statement below and execute a Statutory Major Gifts Rider at the same time as this instrument. Initialing the statement below by itself does not authorize your agent to make major gifts and other transfers. The preparation of the Statutory Major Gifts Rider should be supervised by a lawyer.

( )(SMGR) I grant my agent authority to make major gifts and other transfers of my property, in accordance with the terms and conditions of the Statutory Major Gifts Rider that supplements this Power of Attorney.

(n) IMPORTANT INFORMATION FOR THE AGENT:

When you accept the authority granted under this Power of Attorney, a special legal relationship is created between you and the principal. This relationship imposes on you legal responsibilities that continue until you resign or the Power of Attorney is terminated or revoked. You must:

(1) act according to any instructions from the principal, or, where there are no instructions, in the principal's best interest;

(2) avoid conflicts that would impair your ability to act in the principal's best interest;

(3) keep the principal's property separate and distinct from any assets you own or control, unless otherwise permitted by law;

(4) keep a record or all receipts, payments, and transactions conducted for the principal; and

(5) disclose your identity as an agent whenever you act for the principal by writing or printing the principal's name and signing your own name as "agent" in either of the following manner: (Principal's Name) by (Your Signature) as Agent, or (your signature) as Agent for (Principal's Name).

You may not use the principal's assets to benefit yourself OR ANYONE ELSE or [give major] MAKE gifts to yourself or anyone else unless the principal has specifically granted you that authority in this Power of Attorney [or] AND in a Statutory Major Gifts Rider attached to this Power of Attorney, OR IN A NON-STATUTORY POWER OF ATTORNEY. If you have that authority, you must act according to any instructions of the principal or, where there are no such instructions, in the principal's best interest. You may resign by giving written notice to the principal and to any co-agent, successor agent, monitor if one has been named in this document, or the principal's guardian if one has been appointed. If there is anything about this document or your responsibilities that you do not understand, you should seek legal advice.

Liability of agent:

The meaning of the authority given to you is defined in New York's General Obligations Law, Article 5, Title 15. If it is found that you have violated the law or acted outside the authority granted to you in the Power of Attorney, you may be liable under the law for your violation.

S 7. Subdivision 10 of section 5-1514 of the general obligations law, as added by chapter 644 of the laws of 2008, is amended to read as follows:

10. The use of the following shall be construed as the "Statutory Major Gifts Rider" for a statutory short form power of attorney:

"POWER OF ATTORNEY
NEW YORK STATUTORY MAJOR GIFTS RIDER

AUTHORIZATION TO MAKE MAJOR GIFTS OR OTHER TRANSFERS

CAUTION TO THE PRINCIPAL: This OPTIONAL rider allows you to authorize your agent to make [major] gifts IN EXCESS OF AN ANNUAL TOTAL OF $500 FOR ALL GIFTS DESCRIBED IN (I) OF THE GRANT OF AUTHORITY SECTION OF THE STATUTORY SHORT FORM POWER OF ATTORNEY (UNDER PERSONAL AND FAMILY MAINTENANCE), or other transfers of your money or other property during your lifetime. YOU DO NOT HAVE TO EXECUTE THIS RIDER IF YOU ONLY WANT YOUR AGENT TO MAKE GIFTS DESCRIBED IN (I) OF THE GRANT OF AUTHORITY SECTION OF THE STATUTORY SHORT FORM POWER OF ATTORNEY AND YOU INITIALED "(I)" ON THAT SECTION OF THAT FORM. Granting any of the following authority to your agent gives your agent the authority to take actions which could significantly reduce your property or change how your property is distributed at your death. "Major gifts or other transfers" are described in section 5-1514 of the General Obligations Law. This Major Gifts Rider does not require your agent to exercise granted authority, but when he or she exercises this authority, he or she must act according to any instructions you provide, or otherwise in your best interest.

This Major Gifts Rider and the Power of Attorney it supplements must be read together as a single instrument.

Before signing this document authorizing your agent to make major gifts and other transfers, you should seek legal advice to ensure that your intentions are clearly and properly expressed.

(a) GRANT OF LIMITED AUTHORITY TO MAKE GIFTS

Granting gifting authority to your agent gives your agent the authority to take actions which could significantly reduce your property.

If you wish to allow your agent to make gifts to himself or herself, you must separately grant that authority in subdivision (c) below.

To grant your agent the gifting authority provided below, initial the bracket to the left of the authority.

( ) I grant authority to my agent to make gifts to my spouse, children and more remote descendants, and parents, not to exceed, for each donee, the annual federal gift tax exclusion amount pursuant to the Internal Revenue Code. For gifts to my children and more remote descendants, and parents, the maximum amount of the gift to each donee shall not exceed twice the gift tax exclusion amount, if my spouse agrees to split gift treatment pursuant to the Internal Revenue Code.

This authority must be exercised pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest.

(b) MODIFICATIONS:

Use this section if you wish to authorize gifts in excess of the above amount, gifts to other beneficiaries or other types of transfers.

Granting such authority to your agent gives your agent the authority to take actions which could significantly reduce your property and/or change how your property is distributed at your death. If you wish to authorize your agent to make gifts or transfers to himself or herself, you must separately grant that authority in subdivision (c) below.

( ) I grant the following authority to my agent to make gifts or transfers pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest[.]:

(c) GRANT OF SPECIFIC AUTHORITY FOR AN AGENT TO MAKE MAJOR GIFTS OR OTHER TRANSFERS TO HIMSELF OR HERSELF: (OPTIONAL)

If you wish to authorize your agent to make gifts or transfers to himself or herself, you must grant that authority in this section, indicating to which agent(s) the authorization is granted, and any limitations and guidelines.

( ) I grant specific authority for the following agent(s) to make the following major gifts or other transfers to himself or herself: This authority must be exercised pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest.

(d) ACCEPTANCE BY THIRD PARTIES: I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this Major Gifts Rider.

(e) SIGNATURE OF PRINCIPAL AND ACKNOWLEDGMENT:

In Witness Whereof I have hereunto signed my name on _____, 20____.

PRINCIPAL signs here:

_____

(acknowledgement)

(f) SIGNATURES OF WITNESSES:

By signing as a witness, I acknowledge that the principal signed the Major Gifts Rider in my presence and the presence of the other witness, or that the principal acknowledged to me that the principal's signature was affixed by him or her or at his or her direction. I also acknowledge that the principal has stated that this Major Gifts Rider reflects his or her wishes and that he or she has signed it voluntarily. I am not named herein as a permissible recipient of major gifts.

_____	_____
Signature of witness 1	Signature of witness 2
_____	_____
Date	Date
_____	_____
Print name	Print name
_____	_____
Address	Address
_____	_____
City, State, Zip code	City, State, Zip code

(g) This document prepared by: _____"

S 8. Subdivision 14 of section 5-1502I of the general obligations law, as amended by chapter 644 of the laws of 2008, is amended to read as follows:

14. To continue gifts that the principal customarily made to individuals and charitable organizations prior to the creation of the agency, provided that [no person or charitable organization may be the recipient of gifts] in any one calendar year [which, in the aggregate,] ALL SUCH GIFTS SHALL NOT exceed five hundred dollars IN THE AGGREGATE; and

S 9. Subdivision 2 of section 5-1508 of the general obligations law, as added by chapter 644 of the laws of 2008, is amended to read as follows:

2. A principal may designate one or more successor agents to serve, if [every] ANY initial or predecessor agent resigns, dies, becomes incapacitated, is not qualified to serve or declines to serve. Unless the principal provides otherwise in the power of attorney, a successor agent has the same authority as that granted to an initial agent.

S 10. Paragraph (c) of subdivision 1 of section 5-1513 of the general obligations law, as added by chapter 644 of the laws of 2008, is amended to read as follows:

(c) DESIGNATION OF SUCCESSOR AGENT(S): (OPTIONAL)

If [every] ANY agent designated above is unable or unwilling to serve, I appoint as my successor agent(s):

_____

name(s) and address(es) of successor agent(s)
Successor agents designated above must act together unless you initial the statement below.

( ) My successor agents may act SEPARATELY.

S 11. Subparagraph 1 of paragraph (a) of subdivision 1 of section 5-1504 of the general obligations law, as amended by chapter 644 of the laws of 2008, is amended to read as follows:

(1) the refusal by the agent to provide an original STATUTORY SHORT FORM power of attorney or a copy certified by an attorney pursuant to [rule] SECTION twenty-one hundred five of the civil practice law and rules, or by a court or other government entity;

S 12. Subparagraphs 1 and 2 of paragraph (b) of subdivision 1 of section 5-1504 of the general obligations law, as amended by chapter 644 of the laws of 2008, are amended to read as follows:

(1) the STATUTORY SHORT FORM power of attorney is not on a form prescribed by the third party to whom the power of attorney is presented.

(2) there has been a lapse of time since the execution of the STATUTORY SHORT FORM power of attorney.

S 13. Subdivision 5 of section 5-1504 of the general obligations law, as added by chapter 644 of the laws of 2008, is amended to read as follows:

5. When the STATUTORY SHORT FORM power of attorney is presented to a third party, it shall not be deemed unreasonable for a third party to require the agent to execute an acknowledged affidavit pursuant to this subdivision stating that the STATUTORY SHORT FORM power of attorney is in full force and effect. Such an affidavit is conclusive proof to the third party relying on the power of attorney that the power of attorney is valid and effective, and has not been terminated or revoked, except as to any third party who had actual notice that the STATUTORY SHORT FORM power of attorney had terminated or been revoked prior to the execution of the affidavit. Such affidavit shall state that:

(a) the agent does not have, at the time of the transaction, actual notice of the termination or revocation of the STATUTORY SHORT FORM power of attorney, or notice of any facts indicating that the STATUTORY SHORT FORM power of attorney has been terminated or revoked;

(b) the agent does not have, at the time of the transaction, actual notice that the STATUTORY SHORT FORM power of attorney has been modified in any way that would affect the ability of the agent to authorize or engage in the transaction, or notice of any facts indicating that the STATUTORY SHORT FORM power of attorney has been so modified; and

(c) if the agent was named as a successor agent, the prior agent is no longer able or willing to serve.

S 14. Subdivision 4 of section 5-1501B of the general obligations law, as added by chapter 644 of the laws of 2008, is amended to read as follows:

4. Nothing in this title shall be construed to bar the use of any other or different form of power of attorney desired by a [person other than an individual as the term person is defined in section 5-1501 of this title] PRINCIPAL WHO IS NOT AN INDIVIDUAL.

S 15. The law revision commission shall, over a period of two years, study all aspects of the implementation of title 15 of article 5 of the general obligations law, as amended by chapter 644 of the laws of 2008 and this act. Such commission shall consult with individuals and enti-

ties regularly engaged in the utilization of such title, and those individuals and entities affected by the provisions of such title.

The law revision commission shall, on or before the first of January of the third calendar year commencing after the effective date of this section, submit a report of its findings, conclusions and recommendations to the governor and the legislature.

S 16. This act shall take effect on the same date and in the same manner as chapter 644 of the laws of 2008, as amended, takes effect.