

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:

1 Section 1. Subdivision 3 of section 5-1511 of the general obligations
2 law, as added by chapter 644 of the laws of 2008, is amended to read as
3 follows:
4 3. A principal may revoke a power of attorney;
5 (a) in accordance with the terms of the power of attorney; OR
6 (b) by delivering a written[, signed and dated] revocation of the
7 power of attorney [as follows:
8 (1)] to the agent, and the agent must comply with the principal's
9 revocation notwithstanding the actual or perceived incapacity of the
10 principal unless the principal is subject to a guardianship under arti-
11 cle eighty-one of the mental hygiene law[; and
12 (2) to any third party that the principal has reason to believe has
13 received, retained or acted upon, the power of attorney].
14 S 2. Subdivision 6 of section 5-1511 of the general obligations law,
15 as added by chapter 644 of the laws of 2008, is amended to read as
16 follows:
17 6. [Unless the principal expressly provides otherwise, the execution
18 of a power of attorney revokes any and all prior powers of attorney
19 executed by the principal] THE EXECUTION OF A POWER OF ATTORNEY DOES NOT
20 REVOKE ANY POWER OF ATTORNEY PREVIOUSLY EXECUTED BY THE PRINCIPAL UNLESS
21 THE PRINCIPAL GIVES WRITTEN NOTICE OF REVOCATION TO THE AGENT OF ANY
22 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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1 S 3. Paragraph (e) of subdivision 1 of section 5-1513 of the general
2 obligations law, as added by chapter 644 of the laws of 2008, is amended
3 to read as follows:

4 (e) This POWER OF ATTORNEY [REVOKES] DOES NOT REVOKE any [and all
5 prior] Powers of Attorney PREVIOUSLY executed by me unless I [have stat-
6 ed otherwise below, under "Modifications."] GIVE WRITTEN NOTICE OF REVO-
7 CATION TO THE AGENT OF ANY PREVIOUSLY EXECUTED POWER OF ATTORNEY.

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

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

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

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

24 14. "Statutory major gifts rider" or "SMGR" means a document by which
25 the principal may supplement a statutory short form power of attorney to
26 authorize [major] ALL gift transactions and other transfers, [that
27 meets] OTHER THAN THOSE PERMITTED BY SUBDIVISION FOURTEEN OF SECTION
28 5-1502I OF THIS TITLE. THE DOCUMENT MUST MEET the requirements of subdi-
29 vision nine of section 5-1514 of this title, and that contains the exact
30 wording of the form set forth in subdivision ten of section 5-1514 of
31 this title. The use of the form set forth in subdivision ten of section
32 5-1514 of this title is lawful and when used, it shall be construed as a
33 statutory major gifts rider. A statutory major gifts rider may contain
34 modifications or additions as provided in section 5-1503 of this title
35 as such modifications or additions relate to major gift transactions and
36 other transfers. The statutory major gifts rider must be executed in the
37 manner provided in section 5-1514 of this title, simultaneously with the
38 statutory short form power of attorney in which the authority (SMGR) is
39 initialed by the principal. A statutory major gifts rider and the statu-
40 tory short form power of attorney it supplements must be read together
41 as a single instrument.

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

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

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

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

55 In order to authorize your agent to make [major] gifts IN EXCESS OF AN
56 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 of 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

1 AUTHORIZATION TO MAKE MAJOR GIFTS OR OTHER TRANSFERS

2 CAUTION TO THE PRINCIPAL: This OPTIONAL rider allows you to authorize
3 your agent to make [major] gifts IN EXCESS OF AN ANNUAL TOTAL OF \$500
4 FOR ALL GIFTS DESCRIBED IN (I) OF THE GRANT OF AUTHORITY SECTION OF THE
5 STATUTORY SHORT FORM POWER OF ATTORNEY (UNDER PERSONAL AND FAMILY MAIN-
6 TENANCE), or other transfers of your money or other property during your
7 lifetime. YOU DO NOT HAVE TO EXECUTE THIS RIDER IF YOU ONLY WANT YOUR
8 AGENT TO MAKE GIFTS DESCRIBED IN (I) OF THE GRANT OF AUTHORITY SECTION
9 OF THE STATUTORY SHORT FORM POWER OF ATTORNEY AND YOU INITIALED "(I)" ON
10 THAT SECTION OF THAT FORM. Granting any of the following authority to
11 your agent gives your agent the authority to take actions which could
12 significantly reduce your property or change how your property is
13 distributed at your death. "Major gifts or other transfers" are
14 described in section 5-1514 of the General Obligations Law. This Major
15 Gifts Rider does not require your agent to exercise granted authority,
16 but when he or she exercises this authority, he or she must act accord-
17 ing to any instructions you provide, or otherwise in your best interest.
18 This Major Gifts Rider and the Power of Attorney it supplements must
19 be read together as a single instrument.

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

23 (a) GRANT OF LIMITED AUTHORITY TO MAKE GIFTS

24 Granting gifting authority to your agent gives your agent the authori-
25 ty to take actions which could significantly reduce your property.

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

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

30 () I grant authority to my agent to make gifts to my spouse, children
31 and more remote descendants, and parents, not to exceed, for each donee,
32 the annual federal gift tax exclusion amount pursuant to the Internal
33 Revenue Code. For gifts to my children and more remote descendants, and
34 parents, the maximum amount of the gift to each donee shall not exceed
35 twice the gift tax exclusion amount, if my spouse agrees to split gift
36 treatment pursuant to the Internal Revenue Code.
37 This authority must be exercised pursuant to my instructions, or other-
38 wise for purposes which the agent reasonably deems to be in my best
39 interest.

40 (b) MODIFICATIONS:

41 Use this section if you wish to authorize gifts in excess of the above
42 amount, gifts to other beneficiaries or other types of transfers.
43 Granting such authority to your agent gives your agent the authority to
44 take actions which could significantly reduce your property and/or
45 change how your property is distributed at your death. If you wish to
46 authorize your agent to make gifts or transfers to himself or herself,
47 you must separately grant that authority in subdivision (c) below.

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

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

53 If you wish to authorize your agent to make gifts or transfers to
54 himself or herself, you must grant that authority in this section, indi-
55 cating to which agent(s) the authorization is granted, and any limita-
56 tions 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):

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

4 () My successor agents may act SEPARATELY.

5 S 11. Subparagraph 1 of paragraph (a) of subdivision 1 of section
6 5-1504 of the general obligations law, as amended by chapter 644 of the
7 laws of 2008, is amended to read as follows:

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

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

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

18 (2) there has been a lapse of time since the execution of the STATUTO-
19 RY SHORT FORM power of attorney.

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

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

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

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

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

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

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

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

1 ties regularly engaged in the utilization of such title, and those indi-
2 viduals and entities affected by the provisions of such title.

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

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