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

5906

2009-2010 Regular Sessions

I N A S S E M B L Y

February 23, 2009

Introduced by M. of A. TITONE -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to the use of powers of attorney in banking transactions

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

Section 1. The banking law is amended by adding two new sections 9-v and 9-w to read as follows:

S 9-V. ACCEPTANCE OF STATUTORY SHORT FORM POWER OF ATTORNEY. 1. NO BANK, TRUST COMPANY, NATIONAL BANK, SAVINGS BANK, FEDERAL MUTUAL SAVINGS BANK LOCATED IN THIS STATE, SAVINGS AND LOAN ASSOCIATION, FEDERAL SAVINGS AND LOAN ASSOCIATION, FEDERAL MUTUAL SAVINGS AND LOAN ASSOCIATION, CREDIT UNION OR FEDERAL CREDIT UNION OR BRANCH OF A FOREIGN BANKING CORPORATION OR ANY OTHER CORPORATION AUTHORIZED TO CONDUCT BANKING BUSINESS IN THIS STATE (EACH OF THE FOREGOING REFERRED TO IN THIS SECTION AS "BANKING INSTITUTION") LOCATED IN THIS STATE SHALL REFUSE TO HONOR A STATUTORY SHORT FORM POWER OF ATTORNEY PROPERLY EXECUTED IN ACCORDANCE WITH SECTION 5-1501B OF THE GENERAL OBLIGATIONS LAW.

2. THE FAILURE OF A BANKING INSTITUTION TO HONOR A PROPERLY EXECUTED STATUTORY SHORT FORM POWER OF ATTORNEY SHALL BE DEEMED UNLAWFUL.

3. NO BANKING INSTITUTION RECEIVING AND RETAINING A STATUTORY SHORT FORM POWER OF ATTORNEY PRESENTED TO IT AS PROVIDED IN SUBDIVISION ONE OF THIS SECTION NOR ANY OFFICER, AGENT OR EMPLOYEE OF SUCH INSTITUTION SHALL INCUR ANY LIABILITY BY REASON OF ACTING UPON THE AUTHORITY THEREOF UNLESS THE INSTITUTION SHALL HAVE ACTUALLY RECEIVED, AT THE OFFICE WHERE THE ACCOUNT IS LOCATED, WRITTEN NOTICE OF THE REVOCATION OR TERMINATION OF SUCH POWER OF ATTORNEY.

4. IF THE APPLICATION OF THE PROVISIONS OF SUBDIVISION ONE OR TWO OF THIS SECTION SHALL BE HELD INVALID TO ANY BANKING INSTITUTION, THE APPLICATION OF SUCH PROVISIONS TO ANY OTHER BANKING INSTITUTION OTHER THAN THOSE TO WHICH IT IS HELD INVALID, SHALL NOT BE AFFECTED THEREBY.

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

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S 9-W. POWERS OF ATTORNEY WHICH SURVIVE DISABILITY OR INCOMPETENCE. 1. THE SUBSEQUENT DISABILITY OR INCOMPETENCE OF A PRINCIPAL SHALL NOT REVOKE OR TERMINATE THE AUTHORITY OF AN ATTORNEY-IN-FACT WHO ACTS UNDER A POWER OF ATTORNEY IN A WRITING EXECUTED BY SUCH PRINCIPAL WHICH CONTAINS THE WORDS "THIS POWER OF ATTORNEY SHALL NOT BE AFFECTED BY THE SUBSEQUENT DISABILITY OR INCOMPETENCE OF THE PRINCIPAL," OR WORDS OF SIMILAR IMPORT SHOWING THE INTENT OF SUCH PRINCIPAL THAT THE AUTHORITY CONFERRED SHALL BE EXERCISABLE NOTWITHSTANDING HIS SUBSEQUENT DISABILITY OR INCOMPETENCE.

2. ALL ACTS DONE BY AN ATTORNEY-IN-FACT PURSUANT TO A POWER GRANTED PURSUANT TO SUBDIVISION ONE OF THIS SECTION DURING ANY PERIOD OF DISABILITY OR INCOMPETENCE SHALL HAVE THE SAME EFFECT AND INURE TO THE BENEFIT OF AND BIND A PRINCIPAL AND HIS DISTRIBUTEES, DEVISEES, LEGATEES AND PERSONAL REPRESENTATIVES AS IF SUCH PRINCIPAL WERE COMPETENT AND NOT DISABLED. IF A COMMITTEE OR CONSERVATOR THEREAFTER IS APPOINTED FOR SUCH PRINCIPAL, SUCH ATTORNEY-IN-FACT, DURING THE CONTINUANCE OF THE APPOINTMENT, SHALL ACCOUNT TO THE COMMITTEE OR CONSERVATOR RATHER THAN TO SUCH PRINCIPAL. THE COMMITTEE OR CONSERVATOR SHALL HAVE THE SAME POWER SUCH PRINCIPAL WOULD HAVE HAD IF HE WERE NOT DISABLED OR INCOMPETENT TO REVOKE, SUSPEND OR TERMINATE ALL OR ANY PART OF SUCH POWER OF ATTORNEY.

S 2. This act shall take effect immediately.