

STATE OF NEW YORK

9033

IN ASSEMBLY

January 12, 2018

Introduced by M. of A. WEINSTEIN, LUPARDO, ZEBROWSKI, McDONALD -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to reforming the statutory short form and other powers of attorney for purposes of financial and estate planning; and to repeal certain provisions of such law relating to statutory gift riders

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (j) of subdivision 2 of section 5-1501 of the
2 general obligations law, as amended by chapter 340 of the laws of 2010,
3 is amended to read as follows:

4 (j) "Power of attorney" means a written document, other than a docu-
5 ment referred to in section 5-1501C of this title, by which a principal
6 with capacity designates an agent to act on his or her behalf and
7 includes both a statutory short form power of attorney and a non-statu-
8 tory power of attorney.

9 § 2. Paragraph (n) of subdivision 2 of section 5-1501 of the general
10 obligations law is REPEALED, and paragraphs (o), (p) and (q) are relet-
11 tered paragraphs (n), (o) and (p).

12 § 3. Paragraph (n) of subdivision 2 of section 5-1501 of the general
13 obligations law, as amended by chapter 340 of the laws of 2010 and as
14 relettered by section two of this act, is amended to read as follows:

15 (n) "Statutory short form power of attorney" means a power of attorney
16 that meets the requirements of paragraphs (a), (b) and (c) of subdivi-
17 sion one of section 5-1501B of this title, and that [~~contains the exact~~]
18 substantially conforms to the wording of the form set forth in section
19 5-1513 of this title; provided however, that any section indicated as
20 "Optional" that is not used may be omitted and replaced by the words
21 "Intentionally Omitted". [~~A mistake in wording, such as in spelling,~~
22 ~~punctuation or formatting, or the use of bold or italic type,] Any
23 insubstantial variations in the form shall not prevent a power of attor-
24 ney from being deemed a statutory short form power of attorney, but the
25 wording of the form set forth in section 5-1513 of this title shall
26 govern. The use of the form set forth in section 5-1513 of this title is~~

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

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1 lawful and when used, it shall be construed as a statutory short form
2 power of attorney. A statutory short form power of attorney may be used
3 to grant authority provided in sections 5-1502A through 5-1502N of this
4 title. A "statutory short form power of attorney" may contain modifica-
5 tions or additions as provided in section 5-1503 of this title~~[, but in
6 no event may it be modified to grant any authority provided in section
7 5-1514 of this title. If the authority (SCR) on the statutory short form
8 is initialed by the principal, the statutory short form power of attor-
9 ney must be executed in the manner provided in section 5-1501B of this
10 title, simultaneously with the statutory gifts rider. A statutory short
11 form power of attorney and a statutory gifts rider which supplements it
12 must be read together as a single instrument]~~.

13 § 4. Subdivisions 1 and 2 of section 5-1501B of the general obli-
14 gations law, as added by chapter 644 of the laws of 2008, the opening
15 paragraph and paragraphs (b) and (c) of subdivision 1, and the opening
16 paragraph and paragraph (a) of subdivision 2 as amended by chapter 340
17 of the laws of 2010, are amended to read as follows:

18 1. To be valid, except as otherwise provided in section 5-1512 of this
19 title, a statutory short form power of attorney, or a non-statutory
20 power of attorney, executed in this state by a principal, must:

21 (a) Be typed or printed using letters which are legible or of clear
22 type no less than twelve point in size, or, if in writing, a reasonable
23 equivalent thereof.

24 (b) Be signed, initialed and dated by a principal with capacity, or in
25 the name of such principal by another person, other than a person desig-
26 nated as the principal's agent or successor agent, in the principal's
27 presence and at the principal's direction, in either case with the
28 signature of the [~~principal~~] person signing duly acknowledged in the
29 manner prescribed for the acknowledgment of a conveyance of real proper-
30 ty in the presence of the principal. When a person signs at the direc-
31 tion of a principal he or she shall sign by writing or printing the
32 principal's name, and printing and signing his or her own name.

33 (c) Be signed and dated by any agent acting on behalf of the principal
34 with the signature of the agent duly acknowledged in the manner
35 prescribed for the acknowledgment of a conveyance of real property. A
36 power of attorney executed pursuant to this section is not invalid sole-
37 ly because there has been a lapse of time between the date of acknowl-
38 edgment of the signature of the principal and the date or dates of
39 acknowledgment of the signature or signatures of any agent or agents or
40 successor agent or successor agents authorized to act on behalf of the
41 principal or because the principal became incapacitated during any such
42 lapse of time.

43 (d) [~~Contain the exact~~] Substantially conform to the wording of the:

44 (1) "Caution to the Principal" in paragraph (a) of subdivision one of
45 section 5-1513 of this title; and

46 (2) "Important Information for the Agent" in paragraph (n) of subdivi-
47 sion one of section 5-1513 of this title.

48 2. [~~In addition to the requirements of subdivision one of this~~
49 ~~section, to be valid for the purpose of authorizing the agent to make~~
50 ~~certain gift transactions described in section 5-1514 of this title:~~

51 ~~(a) a statutory short form power of attorney must contain the authori-~~
52 ~~ty (SCR) initialed by the principal and be accompanied by a valid statu-~~
53 ~~tory gifts rider; and~~

54 ~~(b) a non-statutory power of attorney must be executed pursuant to the~~
55 ~~requirements of paragraph (b) of subdivision nine of section 5-1514 of~~
56 ~~this title.] Insubstantial variation in the wording of the "Caution to~~

1 the Principal" of paragraph (a) of subdivision one of section 5-1513 of
2 this title or of the "Important Information for the Agent" of paragraph
3 (n) of subdivision one of section 5-1513 of this title shall not prevent
4 a power of attorney from being deemed a statutory short form power of
5 attorney or a non-statutory power of attorney.

6 § 5. Subdivisions 2 and 9 of section 5-1502A of the general obli-
7 gations law, as amended by chapter 340 of the laws of 2010, are amended
8 to read as follows:

9 2. To sell, to exchange, to convey either with or without covenants,
10 to quit-claim, to release, to surrender, to mortgage, to incumber, to
11 partition or to consent to the partitioning, to create, modify or revoke
12 a trust [~~unless such creation, modification or revocation is a gift~~
13 ~~transaction governed by section 5-1514 of this title,~~] to grant options
14 concerning, to lease or to sublet, or otherwise to dispose of, any
15 estate or interest in land;

16 9. To execute, to acknowledge, to seal and to deliver any deed,
17 creation, modification or revocation of a trust [~~unless such creation,~~
18 ~~modification or revocation is a gift transaction governed by section~~
19 ~~5-1514 of this title], mortgage, lease, notice, check or other instru-~~
20 ~~ment which the agent may think useful for the accomplishment of any of~~
21 ~~the purposes enumerated in this section;~~

22 § 6. Subdivisions 2 and 7 of section 5-1502B of the general obli-
23 gations law, as amended by chapter 340 of the laws of 2010, are amended
24 to read as follows:

25 2. To sell, to exchange, to convey either with or without covenants,
26 to release, to surrender, to mortgage, to incumber, to pledge, to
27 hypothecate, to pawn, to create, modify or revoke a trust [~~unless such~~
28 ~~creation, modification or revocation is a gift transaction governed by~~
29 ~~section 5-1514 of this title]~~ to grant options concerning, to lease or
30 to sublet to others, or otherwise to dispose of any chattel or goods or
31 any interest in any chattel or goods;

32 7. To execute, to acknowledge, to seal and to deliver any conveyance,
33 mortgage, lease, creation, revocation or modification of a trust [~~unless~~
34 ~~such creation, modification or revocation is a gift transaction governed~~
35 ~~by section 5-1514 of this title], notice, check or other instrument~~
36 ~~which the agent may think useful for the accomplishment of any of the~~
37 ~~purposes enumerated in this section;~~

38 § 7. Subdivisions 2 and 9 of section 5-1502C of the general obli-
39 gations law, as amended by chapter 340 of the laws of 2010, are amended
40 to read as follows:

41 2. To sell (including short sales), to exchange, to transfer either
42 with or without a guaranty, to release, to surrender, to hypothecate, to
43 pledge, to create, modify or revoke a trust [~~unless such creation,~~
44 ~~modification or revocation is a gift transaction governed by section~~
45 ~~5-1514 of this title,~~] to grant options concerning, to loan, to trade
46 in, or otherwise to dispose of any bond, share, instrument of similar
47 character, commodity interest or any instrument with respect thereto;

48 9. To execute, to acknowledge, to seal and to deliver any consent,
49 agreement, authorization, creation, modification or revocation of a
50 trust [~~unless such creation, declaration, modification or revocation is~~
51 ~~a gift transaction governed by section 5-1514 of this title], assign-~~
52 ~~ment, notice, waiver of notice, check, or other instrument which the~~
53 ~~agent may think useful for the accomplishment of any of the purposes~~
54 ~~enumerated in this section;~~

55 § 8. Subdivision 1 of section 5-1502D of the general obligations law,
56 as amended by chapter 644 of the laws of 2008, paragraphs (a) and (b) as

1 amended by chapter 340 of the laws of 2010, is amended to read as
2 follows:

3 1. To continue, to modify, to terminate and to make deposits to and
4 withdrawals from any deposit account, including any joint account with
5 the agent or totten trust for the benefit of the agent, or other banking
6 arrangement made by or on behalf of the principal prior to the creation
7 of the agency, provided, however, that:

8 (a) with respect to joint accounts existing at the creation of the
9 agency, the authority granted hereby shall not include the power to
10 change the title of the account by the addition of a new joint tenant or
11 the deletion of an existing joint tenant, unless the authority to make
12 such changes is [~~conveyed in a statutory gifts rider to~~] stated other-
13 wise in the "Modifications" section of a statutory short form power of
14 attorney or in a non-statutory power of attorney signed and dated by the
15 principal with the signature of the principal duly acknowledged in the
16 manner prescribed for the acknowledgement of a conveyance of real prop-
17 erty, and which is executed pursuant to the requirements of [~~paragraph~~
18 ~~(b) of subdivision nine of~~] section [~~5-1514~~] 5-1501B of this title, and

19 (b) with respect to totten trust accounts existing at the creation of
20 the agency, the authority granted hereby shall not include the power to
21 add, delete, or otherwise change the designation of beneficiaries in
22 effect for any such accounts, unless the authority to make such addi-
23 tions, deletions or changes is [~~conveyed in a statutory gifts rider to~~]
24 stated otherwise in the "Modifications" section of a statutory short
25 form power of attorney or in a non-statutory power of attorney signed
26 and dated by the principal with the signature of the principal duly
27 acknowledged in the manner prescribed for the acknowledgment of a
28 conveyance of real property, and which is executed pursuant to the
29 requirements of [~~paragraph (b) of subdivision nine of~~] section [~~5-1514~~]
30 5-1501B of this title.

31 § 9. Subdivisions 1 and 3 of section 5-1502F of the general obli-
32 gations law, as amended by chapter 340 of the laws of 2010, are amended
33 to read as follows:

34 1. To continue, to pay the premium or assessment on, to modify, to
35 rescind, to release or to terminate any contract of life, accident,
36 health, disability or liability insurance or any combination of such
37 insurance procured by or on behalf of the principal prior to the
38 creation of the agency which insures either the principal or any other
39 person, without regard to whether the principal is or is not a benefi-
40 ciary thereunder; provided, however, with respect to life insurance
41 contracts existing at the creation of the agency, the authority granted
42 hereby shall not include the power to add, delete or otherwise change
43 the designation of beneficiaries in effect for any such contract, unless
44 the authority to make such additions, deletions or changes is [~~conveyed~~
45 ~~in a statutory gifts rider to~~] stated otherwise in the "Modifications"
46 section of a statutory short form power of attorney or in a non-statuto-
47 ry power of attorney signed and dated by the principal with the signa-
48 ture of the principal duly acknowledged in the manner prescribed for the
49 acknowledgment of a conveyance of real property, and which is executed
50 pursuant to the requirements of [~~paragraph (b) of subdivision nine of~~]
51 section [~~5-1514~~] 5-1501B of this title;

52 3. To apply for and to receive any available loan on the security of
53 the contract of insurance, whether for the payment of a premium or for
54 the procuring of cash, to surrender and thereupon to receive the cash
55 surrender value, to exercise an election as to beneficiary or mode of
56 payment, to change the manner of paying premiums, and to change or to

1 convert the type of insurance contract, with respect to any contract of
2 life, accident, health, disability or liability insurance as to which
3 the principal has, or claims to have, any one or more of the powers
4 described in this section; provided, however, that the authority granted
5 hereby shall not include the power to add, delete or otherwise change
6 the designation of beneficiaries in effect for any such contract, unless
7 the authority to make such additions, deletions or changes is [~~conveyed~~
8 ~~in a statutory gifts rider to~~] stated otherwise in the "Modifications"
9 section of a statutory short form power of attorney or in a non-statuto-
10 ry power of attorney signed and dated by the principal with the signa-
11 ture of the principal duly acknowledged in the manner prescribed for the
12 acknowledgment of a conveyance of real property, and which is executed
13 pursuant to the requirements of [~~paragraph (b) of subdivision nine of~~]
14 section [~~5-1514~~] 5-1501B of this title;

15 § 10. Subdivision 14 of section 5-1502I of the general obligations
16 law, as amended by chapter 340 of the laws of 2010, is amended to read
17 as follows:

18 14. To continue gifts that the principal customarily made to individ-
19 uals and charitable organizations prior to the creation of the agency,
20 provided that in any one calendar year all such gifts shall not exceed
21 five [~~hundred~~] thousand dollars in the aggregate; and

22 § 11. The section heading, opening paragraph and subdivision 1 of
23 section 5-1502K of the general obligations law, as amended by chapter
24 644 of the laws of 2008, are amended to read as follows:

25 Construction--financial matters related to health care [~~billing and~~
26 ~~payment matters, records, reports and statements~~]. In a statutory short
27 form power of attorney, the language conferring general authority with
28 respect to "financial matters related to health care [~~billing and~~
29 ~~payment matters, records, reports and statements~~]," or in a statutory
30 short form power of attorney properly executed in accordance with the
31 laws in effect at the time of its execution, the language conferring
32 authority with respect to "records, reports and statements," must be
33 construed to mean that the principal authorizes the agent:

34 1. [~~To access records relating to the provision of health care and to~~
35 ~~make decisions relating to the past, present or future payment for the~~
36 ~~provision of health care consented to by or on behalf of the principal~~
37 ~~or the principal's health care agent authorized under state law. In so~~
38 ~~doing the agent is acting as the principal's personal representative~~
39 ~~pursuant to sections 1171 through 1179 of the Social Security Act, as~~
40 ~~added by sections 262 and 264 of Public Law 104 191, and applicable~~
41 ~~regulations. This authority shall not include authorization for the~~
42 ~~agent to make other medical or health care decisions for the principal]~~
43 To be responsible for financial matters relating to the principal's
44 health care, including, but not limited to, benefit entitlements and
45 payment obligations, and in so doing, notwithstanding any law to the
46 contrary, to receive from "health care providers" and "health plans,"
47 information, including, but not limited to, "protected health informa-
48 tion" as defined in federal and state law, rules and regulations, in
49 order to ascertain the benefits to which the principal is entitled and
50 to determine the legitimacy and accuracy of charges for health care
51 provided to the principal; to obtain for the principal the health care
52 benefits to which the principal is entitled; to meet the principal's
53 financial obligations, and pay bills due and owing, for health care
54 provided to the principal; and to represent the principal, and to act as
55 the principal's personal representative, with respect to financial
56 matters pertaining to the principal's health care. This authority is

1 limited to health care financial matters and shall not include authori-
2 zation for the agent to make health care decisions for the principal;

3 § 12. Subdivisions 2 and 4 of section 5-1502L of the general obli-
4 gations law, as amended by chapter 340 of the laws of 2010, are amended
5 to read as follows:

6 2. To make investment directions, to select and change payment
7 options, and to exercise any other election for the principal with
8 regard to any retirement benefit or plan in which the principal has an
9 interest, provided, however, that the authority granted hereby shall not
10 include the authority to add, delete, or otherwise change the desig-
11 nation of beneficiaries in effect for any such retirement benefit or
12 plan, unless the authority to make such additions, deletions or changes
13 is ~~[conveyed in a statutory gifts rider to]~~ stated otherwise in the
14 "Modifications" section of a statutory short form power of attorney or
15 in a non-statutory power of attorney signed and dated by the principal
16 with the signature of the principal duly acknowledged in the manner
17 prescribed for the acknowledgment of a conveyance of real property, and
18 which is executed pursuant to the requirements of ~~[paragraph (b) of~~
19 ~~subdivision nine of]~~ section ~~[5-1514]~~ 5-1501B of this title;

20 4. To prepare, execute and deliver any application, agreement, trust
21 agreement ~~[unless such trust agreement is a gift transaction governed by~~
22 ~~section 5-1514 of this title]~~, authorization, check or other instrument
23 or document which may be required under the terms of any retirement
24 benefit or plan in which the principal has an interest or by the admin-
25 istrator thereof, or which the agent deems useful for the accomplishment
26 of any of the purposes enumerated in this section;

27 § 13. Section 5-1503 of the general obligations law, as amended by
28 chapter 340 of the laws of 2010, is amended to read as follows:

29 § 5-1503. Modifications of the statutory short form power of attorney
30 ~~[and of the statutory gifts rider]~~. A power of attorney which satisfies
31 the requirements of paragraphs (a), (b) and (c) of subdivision one of
32 section 5-1501B and section 5-1513 of this title is not prevented from
33 being a "statutory short form power of attorney", ~~[and a document which~~
34 ~~satisfies the requirements of section 5-1514 of this title is not~~
35 ~~prevented from being a "statutory gifts rider" as either of these terms~~
36 ~~is used in the sections of this title,]~~ by the fact that it also
37 contains additional language at the section labeled "modifications"
38 which:

39 1. Eliminates from the statutory short form power of attorney ~~[or from~~
40 ~~the statutory gifts rider]~~ one or more of the powers enumerated in one
41 or more of the constructional sections of this title with respect to a
42 subdivision of the statutory short form power of attorney ~~[or of the~~
43 ~~statutory gifts rider]~~, affirmatively chosen by the principal; or

44 2. Supplements one or more of the powers enumerated in one or more of
45 the constructional sections in this title with respect to a subdivision
46 of the statutory short form power of attorney ~~[or of the statutory gifts~~
47 ~~rider]~~, affirmatively chosen by the principal, by specifically listing
48 additional powers of the agent; or

49 3. Makes some additional provision which is not inconsistent with the
50 other provisions of the statutory short form power of attorney ~~[or of~~
51 ~~the statutory gifts rider]~~, including a provision revoking one or more
52 powers of attorney previously executed by the principal.

53 § 14. Section 5-1504 of the general obligations law, as amended by
54 chapter 644 of the laws of 2008, the opening paragraph, subparagraphs 1
55 and 9 of paragraph (a) and paragraph (b) of subdivision 1, subdivisions

1 2, 3 and 5 as amended and subdivision 7 as added by chapter 340 of the
2 laws of 2010, is amended to read as follows:

3 § 5-1504. Acceptance of and reliance upon acknowledged statutory short
4 form power of attorney. 1. (a) For purposes of this section, "acknowl-
5 edged" means purportedly verified before a notary public or other indi-
6 vidual authorized to take acknowledgements.

7 (b) A person that in good faith accepts an acknowledged power of
8 attorney without actual knowledge that the signature is not genuine may
9 rely upon the presumption that the signature is genuine.

10 (c) A person that in good faith accepts an acknowledged power of
11 attorney without actual knowledge that the power of attorney is void,
12 invalid, or terminated, that the purported agent's authority is void,
13 invalid, or terminated, or that the agent is exceeding or improperly
14 exercising the agent's authority may rely upon the power of attorney as
15 if the power of attorney were genuine, valid and still in effect, the
16 agent's authority were genuine, valid and still in effect, and the agent
17 had not exceeded and had properly exercised the authority.

18 (d) A person that is asked to accept an acknowledged power of attorney
19 may request, and rely upon, without further investigation:

20 (1) an agent's certification under penalty of perjury of any factual
21 matter concerning the principal, agent or power of attorney; and

22 (2) an opinion of counsel as to any matter of law concerning the power
23 of attorney if the person making the request provides in a writing or
24 other record the reason for the request.

25 (e) An opinion of counsel requested under this section must be
26 provided at the principal's expense unless the request is made more than
27 seven business days after the power of attorney is presented for accept-
28 ance.

29 (f) For purposes of this section, a person that conducts activities
30 through employees is without actual knowledge of a fact relating to a
31 power of attorney, a principal, or an agent if the employee conducting
32 the transaction involving the power of attorney is without actual know-
33 ledge of the fact after making reasonable inquiry with respect thereto.

34 2. No third party located or doing business in this state shall
35 refuse, without reasonable cause, to honor a statutory short form power
36 of attorney properly executed in accordance with section 5-1501B of this
37 title, [~~including a statutory short form power of attorney which is~~
38 ~~supplemented by a statutory gifts rider,~~] or a statutory short form
39 power of attorney properly executed in accordance with the laws in
40 effect at the time of its execution.

41 (a) Reasonable cause under this subdivision shall include, but not be
42 limited to:

43 (1) the refusal by the agent to provide an original power of attorney
44 or a copy certified by an attorney pursuant to section twenty-one
45 hundred five of the civil practice law and rules, or by a court or other
46 government entity;

47 (2) the third party's good faith referral of the principal and the
48 agent to the local adult protective services unit;

49 (3) actual knowledge of a report having been made by any person to the
50 local adult protective services unit alleging physical or financial
51 abuse, neglect, exploitation or abandonment of the principal by the
52 agent or a person acting for or with the agent;

53 (4) actual knowledge of the principal's death or a reasonable basis
54 for believing the principal has died;

1 (5) actual knowledge of the incapacity of the principal or a reason-
2 able basis for believing that the principal is incapacitated where the
3 power of attorney tendered is a nondurable power of attorney;

4 (6) actual knowledge or a reasonable basis for believing that the
5 principal was incapacitated at the time the power of attorney was
6 executed;

7 (7) actual knowledge or a reasonable basis for believing that the
8 power of attorney was procured through fraud, duress or undue influence;

9 (8) actual notice, pursuant to subdivision [~~three~~] five of this
10 section, of the termination or revocation of the power of attorney; [~~or~~]

11 (9) the refusal by a title insurance company to underwrite title
12 insurance for a gift of real property made pursuant to a statutory
13 [~~gifts rider~~] short form power of attorney or non-statutory power of
14 attorney that does not contain express instructions or purposes of the
15 principal with respect to gifts in the modifications section of the
16 statutory short form power of attorney or in the non-statutory power of
17 attorney; or

18 (10) the refusal of a request for a certification or an opinion of
19 counsel under paragraph (d) of subdivision one of this section.

20 (b) It shall be deemed unreasonable for a third party to refuse to
21 honor a statutory short form power of attorney[~~, including a statutory~~
22 ~~short form power of attorney which is supplemented by a statutory gifts~~
23 ~~rider,~~] properly executed in accordance with section 5-1501B of this
24 title or a statutory short form power of attorney properly executed in
25 accordance with the laws in effect at the time of its execution, if the
26 only reason for the refusal is any of the following:

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

29 (2) there has been a lapse of time since the execution of the power of
30 attorney.

31 (3) on the face of the statutory short form power of attorney, there
32 is a lapse of time between the date of acknowledgment of the signature
33 of the principal and the date of acknowledgment of the signature of any
34 agent.

35 [~~2-~~] 3. Not later than the seventh business day after presentation of
36 a statutory short form power of attorney properly executed in accordance
37 with section 5-1501B of this title or in accordance with the laws in
38 effect at the time of its execution to a third party for acceptance,
39 such third party shall either (a) honor the statutory short form power
40 of attorney, or (b) reject the statutory short form power of attorney in
41 a writing that sets forth the reasons for such rejection, which writing
42 shall be sent to the principal and the agent at the addresses on the
43 power of attorney and such other addresses as provided by the principal
44 or the agent, or (c) request the agent to execute an acknowledged affi-
45 davit pursuant to subdivision seven of this section stating that the
46 power of attorney is in full force and effect if the statutory short
47 form power of attorney was not submitted for acceptance together with
48 such an acknowledged affidavit. If the third party initially rejects the
49 statutory short form power of attorney in a writing that sets forth the
50 reasons for such rejection, the third party shall within five business
51 days after receipt of a writing in response to the reasons for such
52 rejection (i) honor the statutory short form power of attorney, or (ii)
53 finally reject the statutory short form power of attorney in a writing
54 that sets forth the reasons for such rejection. If the third party
55 requests the agent to execute such an acknowledged affidavit, the third
56 party shall honor such statutory short form power of attorney within

1 five business days after receipt by the third party of an acknowledged
2 affidavit which complies with the provisions of subdivision seven of
3 this section, stating that the power of attorney is in full force and
4 effect unless reasonable cause exists as described in paragraph (a) of
5 subdivision two of this section. For the purposes of this subdivision,
6 the time requirements in which to honor or reject the statutory short
7 form power of attorney or request the agent to execute an acknowledged
8 affidavit shall not apply to the department of audit and control or a
9 public retirement system of the state as defined in subdivision six of
10 section one hundred fifty-two of the retirement and social security law.

11 4. Except as provided in subdivision [~~three~~] five of this section, it
12 shall be deemed unlawful for a third party to unreasonably refuse to
13 honor a properly executed statutory short form power of attorney[~~,~~
14 ~~including a statutory short form power of attorney which is supplemented~~
15 ~~by a statutory gifts rider,~~] executed in accordance with section 5-1501B
16 of this title or a statutory short form power of attorney properly
17 executed in accordance with the laws in effect at the time of its
18 execution. [A] If a special proceeding as authorized by section 5-1510
19 of this title is brought to compel the third party to honor the statuto-
20 ry short form power of attorney, the court may award damages, including
21 reasonable attorney's fees and costs, if the court finds that the third
22 party acted unreasonably in refusing to honor the agent's authority
23 under the statutory short form power of attorney. Such special proceed-
24 ing shall be the exclusive remedy for a violation of this section.

25 [~~3-~~] 5. In the absence of actual knowledge that the principal lacked
26 capacity to execute a statutory short form power of attorney or that the
27 statutory short form power of attorney was procured through fraud,
28 duress or undue influence, no third party receiving and retaining a
29 [~~properly executed~~] statutory short form power of attorney properly
30 executed in accordance with section 5-1501B of this title, [~~including a~~
31 ~~statutory short form power of attorney which is supplemented by a statu-~~
32 ~~tory gifts rider~~] or a statutory short form power of attorney properly
33 executed in accordance with the laws in effect at the time of its
34 execution, or a complete photostatic copy of the properly executed
35 original thereof, nor any officer, agent, attorney-in-fact or employee
36 of such third party shall incur any liability by reason of acting upon
37 the authority thereof unless the third party shall have received actual
38 notice of the revocation or termination of such power of attorney.

39 If a principal maintains an account at a financial institution, the
40 financial institution is deemed to have actual notice after it has had a
41 reasonable opportunity to act on a written notice of the revocation or
42 termination following its receipt of the same at its office where such
43 account is located.

44 [~~4-~~] 6. If the application of the provisions of subdivision [~~one-or~~]
45 two or four of this section shall be held invalid to any third party the
46 application of such provisions to any third party other than those to
47 which it is held invalid, shall not be affected thereby.

48 [~~5-~~] 7. When the power of attorney is presented to a third party, it
49 shall not be deemed unreasonable for a third party to require the agent
50 to execute an acknowledged affidavit pursuant to this subdivision stat-
51 ing that the power of attorney is in full force and effect. Such an
52 affidavit is conclusive proof to the third party relying on the power of
53 attorney that the power of attorney is valid and effective, and has not
54 been terminated, revoked or modified, except as to any third party who
55 had actual notice that the power of attorney had terminated, been

1 revoked or been modified prior to the execution of the affidavit. Such
2 affidavit shall state that:

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

7 (b) the agent does not have, at the time of the transaction, actual
8 notice that the power of attorney has been modified in any way that
9 would affect the ability of the agent to authorize or engage in the
10 transaction, or notice of any facts indicating that the power of attor-
11 ney has been so modified;

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

14 (d) if the agent has been the principal's spouse, the power of attor-
15 ney expressly provides that divorce or annulment as defined in subpara-
16 graph two of paragraph (f) of section 5-1.4 of the estates, powers and
17 trusts law does not terminate the agent's authority thereunder, or the
18 agent does not have actual notice that the marriage has been terminated
19 by divorce or annulment as defined in subparagraph two of paragraph (f)
20 of section 5-1.4 of the estates, powers and trusts law at the time of
21 the transaction.

22 ~~[6-]~~ 8. Nothing in this section shall require the acceptance of a form
23 that is not a statutory short form power of attorney.

24 ~~[7-]~~ 9. A statutory short form power of attorney or a non-statutory
25 power of attorney that meets the requirements of subdivision one of
26 section 5-1501B of this title shall be accepted for recording so long as
27 it has been signed by one agent named therein whose signature has been
28 acknowledged. If two or more agents acting on behalf of the principal
29 are required to act together, the power of attorney shall be accepted
30 for recording as long as their signatures have been acknowledged. When a
31 successor or co-agent authorized to act separately from any other agents
32 presents a certified copy of a recorded statutory short form power of
33 attorney or non-statutory power of attorney with the agent's signature
34 acknowledged, the instrument shall be accepted for recording.

35 § 15. Subparagraph 2 of paragraph (a) of subdivision 2 of section
36 5-1505 of the general obligations law, as amended by chapter 340 of the
37 laws of 2010, is amended to read as follows:

38 (2) To keep the principal's property separate and distinct from any
39 other property owned or controlled by the agent, except for property
40 that is jointly owned by the principal and agent at the time of the
41 execution of the power of attorney, and property that becomes jointly
42 owned after the execution of the power of attorney as the result of the
43 agent's acquisition of an interest in the principal's property by reason
44 of the agent's exercise of authority granted in the modifications
45 section of a statutory ~~[gifts rider]~~ short form power of attorney or in
46 a non-statutory power of attorney ~~[signed and dated by the principal~~
47 ~~with the signature of the principal duly acknowledged in the manner~~
48 ~~prescribed for the acknowledgment of a conveyance of real property, and~~
49 ~~which is executed pursuant to the requirements of paragraph (b) of~~
50 ~~subdivision nine of section 5-1514 of this title]~~. The agent may not
51 make gifts ~~[to]~~ of the principal's property to himself or herself with-
52 out specific authorization in a power of attorney.

53 § 16. Paragraphs (h) and (i) of subdivision 2 of section 5-1510 of the
54 general obligations law, as added by chapter 644 of the laws of 2008,
55 are amended to read as follows:

56 (h) to construe any provision of a power of attorney; or

(i) to compel acceptance of the power of attorney [~~in which event the relief to be granted is limited to an order compelling acceptance~~].

§ 17. Section 5-1513 of the general obligations law, as amended by chapter 340 of the laws of 2010, is amended to read as follows:

§ 5-1513. Statutory short form power of attorney. [~~1-~~] The use of the following form, or one which substantially conforms to the following form, in the creation of a power of attorney is lawful, and, when used, and executed in accordance with subdivision one of section 5-1501B of this title, it shall be construed as a statutory short form power of attorney in accordance with the provisions of this title; provided however, that any section indicated as "Optional" which is not used may be omitted and replaced by the words "Intentionally Omitted":

"POWER OF ATTORNEY

NEW YORK STATUTORY SHORT FORM

(a) CAUTION TO THE PRINCIPAL: Your Power of Attorney is an important document. As the "principal," you give the person whom you choose (your "agent") authority to spend your money and sell or dispose of your property during your lifetime without telling you. You do not lose your authority to act even though you have given your agent similar authority.

When your agent exercises this authority, he or she must act according to any instructions you have provided or, where there are no specific instructions, in your best interest. "Important Information for the Agent" at the end of this document describes your agent's responsibilities.

Your agent can act on your behalf only after signing the Power of Attorney before a notary public.

You can request information from your agent at any time. If you are revoking a prior Power of Attorney, you should provide written notice of the revocation to your prior agent(s) and to any third parties who may have acted upon it, including the financial institutions where your accounts are located.

You can revoke or terminate your Power of Attorney at any time for any reason as long as you are of sound mind. If you are no longer of sound mind, a court can remove an agent for acting improperly.

Your agent cannot make health care decisions for you. You may execute a "Health Care Proxy" to do this.

The law governing Powers of Attorney is contained in the New York General Obligations Law, Article 5, Title 15. This law is available at a law library, or online through the New York State Senate or Assembly websites, [~~www.senate.state.ny.us~~] www.nysenate.gov or [~~www.assembly.state.ny.us~~] www.nyassembly.gov.

If there is anything about this document that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

(b) DESIGNATION OF AGENT(S):

I, _____, hereby appoint:

name and address of principal

_____ as my agent(s)

name(s) and address(es) of agent(s)

1 If you designate more than one agent above and you do not initial a
2 statement below, they must act together [~~unless you initial the state-~~
3 ~~ment below~~].

4 () My agents must act TOGETHER.

5 () My successor agents may act SEPARATELY.

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

7 If any agent designated above is unable or unwilling to serve, I
8 appoint as my successor agent(s):

9 _____
10 name(s) and address(es) of successor agent(s)

11 [~~Successor~~] If you do not initial a statement below, successor agents
12 designated above must act together [~~unless you initial the statement~~
13 ~~below~~].

14 () My successor agents must act TOGETHER.

15 () My successor agents may act SEPARATELY.

16 You may provide for specific succession rules in this section. Insert
17 specific succession provisions here:

18 (d) This POWER OF ATTORNEY shall not be affected by my subsequent inca-
19 pacity unless I have stated otherwise below, under "Modifications".

20 (e) This POWER OF ATTORNEY DOES NOT REVOKE any Powers of Attorney previ-
21 ously executed by me unless I have stated otherwise below, under
22 "Modifications."

23 [~~If you do NOT intend to revoke your prior Powers of Attorney, and if~~
24 ~~you have granted the same authority in this Power of Attorney as you~~
25 ~~granted to another agent in a prior Power of Attorney, each agent can~~
26 ~~act separately unless you indicate under "Modifications" that the agents~~
27 ~~with the same authority are to act together.~~]

28 (f) GRANT OF AUTHORITY:

29 To grant your agent some or all of the authority below, either

30 (1) Initial the bracket at each authority you grant, or

31 (2) Write or type the letters for each authority you grant on the
32 blank line at (P), and initial the bracket at (P). If you initial

33 (P), you do not need to initial the other lines.

34 I grant authority to my agent(s) with respect to the following
35 subjects as defined in sections 5-1502A through 5-1502N of the New York
36 General Obligations Law:

37 () (A) real estate transactions;

38 () (B) chattel and goods transactions;

39 () (C) bond, share, and commodity transactions;

40 () (D) banking transactions;

41 () (E) business operating transactions;

42 () (F) insurance transactions;

43 () (G) estate transactions;

44 () (H) claims and litigation;

45 () (I) personal and family maintenance. If you grant your agent
46 this authority, it will allow the agent to make gifts
47 that you customarily have made to individuals, including
48 the agent, and charitable organizations. The total
49 amount of all such gifts in any one calendar year cannot
50 exceed five [~~hundred~~] thousand dollars;

- 1 () (J) benefits from governmental programs or civil or military
- 2 service;
- 3 () (K) financial matters related to health care [~~billing and~~
- 4 ~~payment matters~~]; records, reports, and statements;
- 5 () (L) retirement benefit transactions;
- 6 () (M) tax matters;
- 7 () (N) all other matters;
- 8 () (O) full and unqualified authority to my agent(s) to dele-
- 9 gate any or all of the foregoing powers to any person or
- 10 persons whom my agent(s) select;
- 11 () (P) EACH of the matters identified by the following
- 12 letters_____.
- 13 You need not initial the other lines if you initial line (P).

14 (g) [~~MODIFICATIONS: (OPTIONAL)~~
 15 ~~In this section, you may make additional provisions, including~~
 16 ~~language to limit or supplement authority granted to your agent.~~
 17 ~~However, you cannot use this Modifications section to grant your agent~~
 18 ~~authority to make gifts or changes to interests in your property. If~~
 19 ~~you wish to grant your agent such authority, you MUST complete the Stat-~~
 20 ~~utory Gifts Rider.~~

21 ~~(h)~~ CERTAIN GIFT TRANSACTIONS: [~~STATUTORY GIFTS RIDER~~] (OPTIONAL)
 22 In order to authorize your agent to make gifts in excess of an annual
 23 total of [~~\$500~~] \$5,000 for all gifts described in (I) of the grant of
 24 authority section of this document (under personal and family mainte-
 25 nance), and/or to make changes to interest in your property, you must
 26 [~~initial the statement below and execute a Statutory Gifts Rider at the~~
 27 ~~same time as this instrument. Initialing the statement below by itself~~
 28 ~~does not authorize your agent to make gifts. The preparation of the~~
 29 ~~Statutory Gifts Rider~~] expressly grant that authorization in the Modifi-
 30 cations section below. If you wish to authorize your agent to make gifts
 31 to himself or herself, you must expressly grant such authorization in
 32 the Modifications section below. Granting such authority to your agent
 33 gives your agent the authority to take actions which could significantly
 34 reduce your property and/or change how your property is distributed at
 35 your death. Your choice to grant such authority should be [~~supervised~~
 36 ~~by~~] discussed with a lawyer.

37 () [~~(SGR)~~] I grant my agent authority to make gifts in accord-
 38 ance with the terms and conditions of the [~~Statutory Gifts Rider~~]
 39 Modifications that [~~supplements~~] supplement this Statutory Power of
 40 Attorney.

41 (h) MODIFICATIONS: (OPTIONAL)
 42 In this section, you may make additional provisions, including, but
 43 not limited to, language to limit or supplement authority granted to
 44 your agent, language to grant your agent the specific authority to make
 45 gifts to himself or herself, and/or language to grant your agent the
 46 specific authority to make other gift transactions and/or changes to
 47 interests in your property. Your agent is entitled to be reimbursed from
 48 your assets for reasonable expenses incurred on your behalf. In this
 49 section, you may make additional provisions if you ALSO wish your
 50 agent(s) to be compensated from your assets for services rendered on
 51 your behalf, and you may define "reasonable compensation."

52 (i) DESIGNATION OF MONITOR(S): (OPTIONAL)

1 If you wish to appoint monitor(s), initial and fill in the section
2 below:

3 () I wish to designate _____, whose address(es)
4 is (are) _____,
5 as monitor(s). Upon the request of the monitor(s), my agent(s) must
6 provide the monitor(s) with a copy of the power of attorney and a record
7 of all transactions done or made on my behalf. Third parties holding
8 records of such transactions shall provide the records to the monitor(s)
9 upon request.

10 (j) COMPENSATION OF AGENT(S): [~~OPTIONAL~~]

11 Your agent is entitled to be reimbursed from your assets for reason-
12 able expenses incurred on your behalf. If you ALSO wish your agent(s) to
13 be compensated from your assets for services rendered on your behalf,
14 [~~initial the statement below. If you~~] and/or you wish to define "reason-
15 able compensation", you may do so above, under "Modifications" [~~-~~
16 ~~() My agent(s) shall be entitled to reasonable compensation for~~
17 ~~services rendered.~~]

18 (k) ACCEPTANCE BY THIRD PARTIES: I agree to indemnify the third party
19 for any claims that may arise against the third party because of reli-
20 ance on this Power of Attorney. I understand that any termination of
21 this Power of Attorney, whether the result of my revocation of the Power
22 of Attorney or otherwise, is not effective as to a third party until the
23 third party has actual notice or knowledge of the termination.

24 (l) TERMINATION: This Power of Attorney continues until I revoke it or
25 it is terminated by my death or other event described in section 5-1511
26 of the General Obligations Law.

27 Section 5-1511 of the General Obligations Law describes the manner in
28 which you may revoke your Power of Attorney, and the events which termi-
29 nate the Power of Attorney.

30 (m) SIGNATURE AND ACKNOWLEDGMENT:

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

32 PRINCIPAL signs here: ==> _____

33 (acknowledgment)

34 (n) IMPORTANT INFORMATION FOR THE AGENT:

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

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

42 (2) avoid conflicts that would impair your ability to act in the prin-
43 cipal's best interest;

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

46 (4) keep a record [~~or~~] of all [receipts, payments, and] transactions
47 conducted for the principal or keep all receipts of payments and trans-
48 actions 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 manners: (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 make gifts to yourself or anyone else unless the principal has specifically granted you that authority in the modifications section of this document~~[, which is either a Statutory Gifts Rider attached to a Statutory Short Form Power of Attorney]~~ or 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.

(o) AGENT'S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT:

It is not required that the principal and the agent(s) sign at the same time, nor that multiple agents sign at the same time.

I/we, _____, have read the foregoing Power of Attorney. I am/we are the person(s) identified therein as agent(s) for the principal named therein.

I/we acknowledge my/our legal responsibilities.

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

Agent(s) sign(s) here:==>_____

(acknowledgment(s))

(p) SUCCESSOR AGENT'S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT:

It is not required that the principal and the SUCCESSOR agent(s), if any, sign at the same time, nor that multiple SUCCESSOR agents sign at the same time. Furthermore, successor agents can not use this power of attorney unless the agent(s) designated above is/are unable or unwilling to serve.

I/we, _____, have read the foregoing Power of Attorney. I am/we are the person(s) identified therein as SUCCESSOR agent(s) for the principal named therein.

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

Successor Agent(s) sign(s) here:==>_____

1 (acknowledgment(s))"

2 § 18. Section 5-1514 of the general obligations law is REPEALED.

3 § 19. This act shall take effect on the one hundred eightieth day
4 after it shall have become a law, provided, that any statutory short
5 form power of attorney and any statutory gifts rider executed by a prin-
6 cipal and valid at the time executed by such principal shall remain
7 valid, as will any revocation of a prior power of attorney that was
8 delivered to an agent prior to the effective date of this act.