STATE OF NEW YORK

3923--A

Cal. No. 589

2019-2020 Regular Sessions

IN SENATE

February 21, 2019

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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

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

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 Paragraph (n) of subdivision 2 of section 5-1501 of the general obligations law is REPEALED, and paragraphs (o), (p) and (q) are relettered paragraphs (n), (o) and (p).

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

(n) "Statutory short form power of attorney" means a power of attorney that meets the requirements of paragraphs (a), (b) and (c) of subdivision one of section 5-1501B of this title, and that [~~contains the exact~~] **substantially conforms to the** wording of the form set forth in section 5-1513 of this title**; provided however, that any section indicated as**

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

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"Optional" that is not used may be omitted and replaced by the words "Intentionally Omitted". [~~A mistake in wording, such as in spelling, punctuation or formatting, or the use of bold or italic type, shall not prevent a~~] A given power of attorney [~~from being deemed a statutory short form power of attorney, but the wording of the form~~] substantially conforms to the form required pursuant to section 5-1513 of this title notwithstanding that the form contains (i) an insignificant mistake in wording, spelling, punctuation or formatting, or the use of bold or italic type; or (ii) uses language that is essentially the same as, but is not identical to, the statutory form, including utilizing language from a previous statute. The determination of whether there is substantial conformity with the form set forth in section 5-1513 of this title [~~shall govern~~] shall not depend on the presence or absence of a particular clause. Failing to include clauses that are not relevant to a given power of attorney shall not in itself cause such power of attorney to be found to not substantially conform with the requirements of such form. The use of the form set forth in section 5-1513 of this title is lawful and when used, it shall be construed as a statutory short form power of attorney. A statutory short form power of attorney may be used to grant authority provided in sections 5-1502A through 5-1502N of this title. A "statutory short form power of attorney" may contain modifications or additions as provided in section 5-1503 of this title[~~, but in no event may it be modified to grant any authority provided in section 5-1514 of this title. If the authority (SGR) on the statutory short form is initialed by the principal, the statutory short form power of attorney must be executed in the manner provided in section 5-1501B of this title, simultaneously with the statutory gifts rider. A statutory short form power of attorney and a statutory gifts rider which supplements it must be read together as a single instrument~~].

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

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

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

(b) Be signed, initialed and dated by a principal with capacity, or in the name of such principal by another person, other than a person designated as the principal's agent or successor agent, in the principal's presence and at the principal's direction, in either case with the signature of the [~~principal~~] person signing duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property in the presence of the principal. When a person signs at the direction of a principal he or she shall sign by writing or printing the principal's name, and printing and signing his or her own name.

(c) Be signed and dated by any agent acting on behalf of the principal with the signature of the agent duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property. A power of attorney executed pursuant to this section is not invalid solely because there has been a lapse of time between the date of acknowledgment of the signature of the principal and the date or dates of acknowledgment of the signature or signatures of any agent or agents or

successor agent or successor agents authorized to act on behalf of the principal or because the principal became incapacitated during any such lapse of time.

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

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

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

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

~~(a) a statutory short form power of attorney must contain the authority (SGR) initialed by the principal and be accompanied by a valid statutory gifts rider; and~~

~~(b) a non-statutory power of attorney must be executed pursuant to the requirements of paragraph (b) of subdivision nine of section 5-1514 of this title.~~] **Insubstantial variation in the wording of the "Caution to the Principal" of paragraph (a) of subdivision one of section 5-1513 of this title or of the "Important Information for the Agent" of paragraph (n) of subdivision one of section 5-1513 of this title shall not prevent a power of attorney from being deemed a statutory short form power of attorney or a non-statutory power of attorney.**

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

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

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

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

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

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

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

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

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

§ 8. Subdivision 1 of section 5-1502D of the general obligations law, as amended by chapter 644 of the laws of 2008, paragraphs (a) and (b) as amended by chapter 340 of the laws of 2010, is amended to read as follows:

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

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

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

§ 8-a. Section 5-1502D of the general obligations law is amended by adding a new subdivision 18 to read as follows:

18. If a power of attorney requires that two or more agents act together as co-agents, one or more agents may delegate to the co-agent the authority to conduct banking transactions if the principal initialed

subject (o) in the grant of authority provisions of paragraph (f) of the statutory short form set forth in section 15-1513 of this title.

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

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

3. To apply for and to receive any available loan on the security of the contract of insurance, whether for the payment of a premium or for the procuring of cash, to surrender and thereupon to receive the cash surrender value, to exercise an election as to beneficiary or mode of payment, to change the manner of paying premiums, and to change or to convert the type of insurance contract, with respect to any contract of life, accident, health, disability or liability insurance as to which the principal has, or claims to have, any one or more of the powers described in this section; provided, however, that the authority granted hereby shall not include the power to add, delete or otherwise change the designation of beneficiaries in effect for any such contract, unless the authority to make such additions, deletions or changes is [~~conveyed in a statutory gifts rider to~~] expressly stated otherwise in the "Modifications" section of a statutory short form power of attorney or in a non-statutory power of attorney signed and dated by the principal with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property, and which is executed pursuant to the requirements of [~~paragraph (b) of subdivision nine of~~] section [~~5-1514~~] 5-1501B of this title;

§ 10. Subdivision 14 of section 5-1502I of the general obligations law, as amended by chapter 340 of the laws of 2010, 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 in any one calendar year all such gifts shall not exceed five [~~hundred~~] thousand dollars in the aggregate; and

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

Construction--matters related to health care [~~billing and payment matters; records, reports and statements~~]. In a statutory short form power of attorney, the language conferring general authority with respect to "matters related to health care [~~billing and payment matters;~~

~~records, reports and statements~~]," or in a statutory short form power of attorney properly executed in accordance with the laws in effect at the time of its execution, the language conferring authority with respect to "records, reports and statements," must be construed to mean that the principal authorizes the agent:

1. [~~To access records relating to the provision of health care and to make decisions relating to the past, present or future payment for the provision of health care consented to by or on behalf of the principal or the principal's health care agent authorized under state law. In so doing the agent is acting as the principal's personal representative pursuant to sections 1171 through 1179 of the Social Security Act, as added by sections 262 and 264 of Public Law 104-191, and applicable regulations. This authority shall not include authorization for the agent to make other medical or health care decisions for the principal~~] **To be responsible for matters relating to the principal's health care, including, but not limited to, benefit entitlements and payment obligations, and in so doing, notwithstanding any law to the contrary, to receive from "health care providers" and "health plans," information, including, but not limited to, "protected health information" as defined in federal and state law, rules and regulations, in order to ascertain the benefits to which the principal is entitled and to determine the legitimacy and accuracy of charges for health care provided to the principal; to obtain for the principal the health care benefits to which the principal is entitled; to meet the principal's financial obligations, and pay bills due and owing, for health care provided to the principal; and to represent the principal, and to act as the principal's personal representative, with respect to matters pertaining to the principal's health care. The authority granted by this subdivision is limited to health care financial matters and shall not include authorization for the agent to make health care decisions for the principal**;

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

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

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

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

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

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

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

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

§ 14. Section 5-1504 of the general obligations law, as amended by chapter 644 of the laws of 2008, the opening paragraph, subparagraphs 1 and 9 of paragraph (a) and paragraph (b) of subdivision 1, subdivisions 2, 3 and 5 as amended and subdivision 7 as added by chapter 340 of the laws of 2010, is amended to read as follows:

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

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

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

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

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

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

(e) An opinion of counsel requested under this section must be provided at the principal's expense unless the request is made more than ten business days after the power of attorney is presented for acceptance.

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

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

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

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

(2) the third party's good faith referral of the principal and the agent or a person acting for or with the agent to the local adult protective services unit;

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

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

(5) actual knowledge of the incapacity of the principal or a reasonable basis for believing that the principal is incapacitated where the power of attorney tendered is a nondurable power of attorney;

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

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

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

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

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

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

(1) the 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 power of attorney.

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

[~~2.~~] 3. (a) Not later than the tenth business day after presentation of an original or attorney certified copy of a statutory short form power of attorney properly executed in accordance with section 5-1501B of this title or in accordance with the laws in effect at the time of its execution to a third party for acceptance, such third party shall either (a) honor the statutory short form power of attorney, or (b) reject the statutory short form power of attorney in a writing that sets forth the reasons for such rejection, which writing shall be sent to the principal and the agent at the addresses on the power of attorney and such other addresses as provided by the principal or the agent, or (c) request the agent to execute an acknowledged affidavit pursuant to subdivision seven of this section stating that the power of attorney is in full force and effect if the statutory short form power of attorney was not submitted for acceptance together with such an acknowledged affidavit. Such reasons for rejection may include, but not be limited to non-conforming form, missing or wrong signature, invalid notarization, or unacceptable identification. In the event that the statutory short form power of attorney presented is not an original or attorney certified copy, as part of the initial rejection, such short form power of attorney may be rejected for such reason, provided, however, in explaining the reason for rejecting the short form power of attorney, the third party shall also identify such other provisions of the short form power of attorney, if any, that would otherwise constitute cause for rejection of the statutory short form power of attorney. If the third party initially rejects the statutory short form power of attorney in a writing that sets forth the reasons for such rejection, the third party shall within seven business days after receipt of a writing in response to the reasons for such rejection (i) honor the statutory short form power of attorney, or (ii) finally reject the statutory short form power of attorney in a writing that sets forth the reasons for such rejection. Such writing shall be sent to the address provided on the power of attorney, to the address of the agent, if any, and may also be sent to such other address as shall be provided on the account documents, or to the address of the attorney as provided in an opinion of counsel pursuant to this section. If the third party requests the agent to execute such an acknowledged affidavit, the third party shall honor such statutory short form power of attorney within seven business days after receipt by the third party of an acknowledged affidavit which complies with the provisions of subdivision seven of this section, stating that the power of attorney is in full force and effect unless reasonable cause exists as described in paragraph (a) of subdivision two of this section. For the purposes of this subdivision, notice shall be considered delivered at the time such notice is mailed and the time requirements in which to honor or reject the statutory short form power of attorney or request the agent to execute an acknowledged affidavit shall not apply to the department of audit and control or a public retirement system of the state as defined in subdivision six of section one hundred fifty-two of the retirement and social security law.

(b) Notice to the agent as required by paragraph (a) of this subdivision shall not be sent until after a determination is made by adult

protective services if the reason for rejection is a reason set forth in subdivision two of this section and is otherwise prohibited by law or regulation.

4. (a) Once reasonably accepted, if a third party conducts a transaction in reliance on a properly executed statutory short form power of attorney, the third party shall be held harmless from liability for the transaction.

(b) Except as provided in subdivision [~~three~~] five of this section, it shall be deemed unlawful for a third party to unreasonably refuse to honor a properly executed statutory short form power of attorney[~~, including a statutory short form power of attorney which is supplemented by a statutory gifts rider,~~] executed in accordance with section 5-1501B of this title or a statutory short form power of attorney properly executed in accordance with the laws in effect at the time of its execution. [~~A~~] If a special proceeding as authorized by section 5-1510 of this title is brought to compel the third party to honor the statutory short form power of attorney, the court may award damages, including reasonable attorney's fees and costs, if the court finds that the third party acted unreasonably in refusing to honor the agent's authority under the statutory short form power of attorney. Such special proceeding shall be the exclusive remedy for a violation of this section.

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

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

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

[~~5.~~] 7. When the 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 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, revoked or modified, except as to any third party who had actual notice that the power of attorney had terminated, been revoked or been modified 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 power of attorney, or

notice of any facts indicating that the power of attorney has been terminated or revoked;

(b) the agent does not have, at the time of the transaction, actual notice that the 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 power of attorney has been so modified;

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

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

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

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

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

(2) To keep the principal's property separate and distinct from any other property owned or controlled by the agent, except for property that is jointly owned by the principal and agent at the time of the execution of the power of attorney, and property that becomes jointly owned after the execution of the power of attorney as the result of the agent's acquisition of an interest in the principal's property by reason of the agent's exercise of authority granted in **the modifications section of** a statutory [~~gifts rider~~] **short form power of attorney** or in a non-statutory power of attorney [~~signed and dated by the principal with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property, and which is executed pursuant to the requirements of paragraph (b) of subdivision nine of section 5-1514 of this title~~]. The agent may not make gifts [~~to~~] **of** the principal's property to himself or herself without specific authorization in a power of attorney.

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

(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)

If you designate more than one agent above **and you do not initial a statement below**, they must act together [~~unless you initial the statement below~~].

( ) My agents must act TOGETHER.

( ) My successor agents may act SEPARATELY.

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

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

( ) My agents must act TOGETHER.

( ) My successor agents may act SEPARATELY.

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

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

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

[~~If you do NOT intend to revoke your prior Powers of Attorney, and if you have granted the same authority in 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" that the agents with the same authority are to act together.~~]

(f) GRANT OF AUTHORITY:

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

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

(2) Write or type the letters for each authority you grant on the blank line at (P), and initial the bracket at (P). If you initial (P), you do not need to initial the other lines.

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

( ) (A) real estate transactions;

( ) (B) chattel and goods transactions;

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

( ) (D) banking transactions;

( ) (E) business operating transactions;

( ) (F) insurance transactions;

( ) (G) estate transactions;

( ) (H) claims and litigation;

( ) (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 five [~~hundred~~] **thousand** dollars;

( ) (J) benefits from governmental programs or civil or military service;

( ) (K) **financial matters related to** health care [~~billing and payment matters~~]; records, reports, and statements;

( ) (L) retirement benefit transactions;

( ) (M) tax matters;

( ) (N) all other matters;
( ) (O) full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) select;
( ) (P) EACH of the matters identified by the following letters_____.
You need not initial the other lines if you initial line (P).

(g) [~~MODIFICATIONS: (OPTIONAL)~~
~~In this section, you may make additional provisions, including language to limit or supplement authority granted to your agent.~~
~~However, you cannot use this Modifications section to grant your agent authority to make gifts or changes to interests in your property. If you wish to grant your agent such authority, you MUST complete the Statutory Gifts Rider.~~
~~(h)~~] CERTAIN GIFT TRANSACTIONS: [~~STATUTORY GIFTS RIDER~~] (OPTIONAL)
In order to authorize your agent to make gifts in excess of an annual total of [~~$500~~] $5,000 for all gifts described in (I) of the grant of authority section of this document (under personal and family maintenance), and/or to make changes to interest in your property, you must [~~initial the statement below and execute a Statutory Gifts Rider at the same time as this instrument. Initialing the statement below by itself does not authorize your agent to make gifts. The preparation of the Statutory Gifts Rider~~] expressly grant that authorization in the Modifications section below. If you wish to authorize your agent to make gifts to himself or herself, you must expressly grant such authorization in the Modifications section below. 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. Your choice to grant such authority should be [~~supervised by~~] discussed with a lawyer.
( ) [~~(SGR)~~] I grant my agent authority to make gifts in accordance with the terms and conditions of the [~~Statutory Gifts Rider~~] Modifications that [~~supplements~~] supplement this Statutory Power of Attorney.
(h) MODIFICATIONS: (OPTIONAL)
In this section, you may make additional provisions, including, but not limited to, language to limit or supplement authority granted to your agent, language to grant your agent the specific authority to make gifts to himself or herself, and/or language to grant your agent the specific authority to make other gift transactions and/or changes to interests in your property. Your agent is entitled to be reimbursed from your assets for reasonable expenses incurred on your behalf. In this section, you may make additional provisions if you ALSO wish your agent(s) to be compensated from your assets for services rendered on your behalf, and you may define "reasonable compensation."

(i) DESIGNATION OF MONITOR(S): (OPTIONAL)
If you wish to appoint monitor(s), initial and fill in the section below:
( ) I wish to designate _____, whose address(es) is (are) _____, as monitor(s). Upon the request of the monitor(s), my agent(s) must provide the monitor(s) with a copy of the power of attorney and a record of all transactions done or made on my behalf. Third parties holding

records of such transactions shall provide the records to the monitor(s) upon request.

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

Your agent is entitled to be reimbursed from your assets for reasonable expenses incurred on your behalf. If you ALSO wish your agent(s) to be compensated from your assets for services rendered on your behalf, [~~initial the statement below. If you~~] **and/or you** wish to define "reasonable compensation", you may do so above, under "Modifications"[~~.~~

~~( ) My agent(s) shall be entitled to reasonable compensation for services rendered.~~]

(k) 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 Power of Attorney. I understand that any termination of this Power of Attorney, whether the result of my revocation of the Power of Attorney or otherwise, is not effective as to a third party until the third party has actual notice or knowledge of the termination.

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

Section 5-1511 of the General Obligations Law describes the manner in which you may revoke your Power of Attorney, and the events which terminate the Power of Attorney.

(m) SIGNATURE AND ACKNOWLEDGMENT:

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

PRINCIPAL signs here: ==>_____

(acknowledgment)

(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~~] **of** all [~~receipts, payments, and~~] transactions conducted for the principal **or keep all receipts of 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 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:==>_____

(acknowledgment(s))"

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

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