

STATE OF NEW YORK

3923

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

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10 obligations law is REPEALED, and paragraphs (o), (p) and (q) are relet-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-~~

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

LBD00875-01-9

1 ney from being deemed a statutory short form power of attorney, but the
2 wording of the form set forth in section 5-1513 of this title shall
3 govern. The use of the form set forth in section 5-1513 of this title is
4 lawful and when used, it shall be construed as a statutory short form
5 power of attorney. A statutory short form power of attorney may be used
6 to grant authority provided in sections 5-1502A through 5-1502N of this
7 title. A "statutory short form power of attorney" may contain modifica-
8 tions or additions as provided in section 5-1503 of this title~~[, but in
9 no event may it be modified to grant any authority provided in section
10 5-1514 of this title. If the authority (SCR) on the statutory short form
11 is initialed by the principal, the statutory short form power of attor-
12 ney must be executed in the manner provided in section 5-1501B of this
13 title, simultaneously with the statutory gifts rider. A statutory short
14 form power of attorney and a statutory gifts rider which supplements it
15 must be read together as a single instrument]~~.

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

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

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

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

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

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

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

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

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

54 ~~(a) a statutory short form power of attorney must contain the authori-~~
55 ~~ty (SCR) initialed by the principal and be accompanied by a valid statu-~~
56 ~~tory gifts rider, and~~

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

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

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

19 9. To execute, to acknowledge, to seal and to deliver any deed,
20 creation, modification or revocation of a trust [~~unless such creation,~~
21 ~~modification or revocation is a gift transaction governed by section~~
22 ~~5-1514 of this title], mortgage, lease, notice, check or other instru-~~
23 ~~ment which the agent may think useful for the accomplishment of any of~~
24 ~~the purposes enumerated in this section;~~

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

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

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

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

44 2. To sell (including short sales), to exchange, to transfer either
45 with or without a guaranty, to release, to surrender, to hypothecate, to
46 pledge, to create, modify or revoke a trust [~~unless such creation,~~
47 ~~modification or revocation is a gift transaction governed by section~~
48 ~~5-1514 of this title,]~~ to grant options concerning, to loan, to trade
49 in, or otherwise to dispose of any bond, share, instrument of similar
50 character, commodity interest or any instrument with respect thereto;

51 9. To execute, to acknowledge, to seal and to deliver any consent,
52 agreement, authorization, creation, modification or revocation of a
53 trust [~~unless such creation, declaration, modification or revocation is~~
54 ~~a gift transaction governed by section 5-1514 of this title], assign-~~
55 ~~ment, notice, waiver of notice, check, or other instrument which the~~

1 agent may think useful for the accomplishment of any of the purposes
2 enumerated in this section;

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

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

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

23 (b) with respect to totten trust accounts existing at the creation of
24 the agency, the authority granted hereby shall not include the power to
25 add, delete, or otherwise change the designation of beneficiaries in
26 effect for any such accounts, unless the authority to make such addi-
27 tions, deletions or changes is [~~conveyed in a statutory gifts rider to~~]
28 stated otherwise in the "Modifications" section of a statutory short
29 form power of attorney or in a non-statutory power of attorney signed
30 and dated by the principal with the signature of the principal duly
31 acknowledged in the manner prescribed for the acknowledgment of a
32 conveyance of real property, and which is executed pursuant to the
33 requirements of [~~paragraph (b) of subdivision nine of~~] section [~~5-1514~~]
34 5-1501B of this title.

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

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

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

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

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

27 § 11. The section heading, opening paragraph and subdivision 1 of
28 section 5-1502K of the general obligations law, as amended by chapter
29 644 of the laws of 2008, are amended to read as follows:

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

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

1 benefits to which the principal is entitled; to meet the principal's
2 financial obligations, and pay bills due and owing, for health care
3 provided to the principal; and to represent the principal, and to act as
4 the principal's personal representative, with respect to financial
5 matters pertaining to the principal's health care. This authority is
6 limited to health care financial matters and shall not include authori-
7 zation for the agent to make health care decisions for the principal;

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

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

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

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

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

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

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

54 3. Makes some additional provision which is not inconsistent with the
55 other provisions of the statutory short form power of attorney ~~[or of~~

1 ~~the statutory gifts rider~~, including a provision revoking one or more
2 powers of attorney previously executed by the principal.

3 § 14. Section 5-1504 of the general obligations law, as amended by
4 chapter 644 of the laws of 2008, the opening paragraph, subparagraphs 1
5 and 9 of paragraph (a) and paragraph (b) of subdivision 1, subdivisions
6 2, 3 and 5 as amended and subdivision 7 as added by chapter 340 of the
7 laws of 2010, is amended to read as follows:

8 § 5-1504. Acceptance of and reliance upon acknowledged statutory short
9 form power of attorney. 1. (a) For purposes of this section, "acknowl-
10 edged" means purportedly verified before a notary public or other indi-
11 vidual authorized to take acknowledgements.

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

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

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

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

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

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

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

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

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

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

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

54 (3) actual knowledge of a report having been made by any person to the
55 local adult protective services unit alleging physical or financial

1 abuse, neglect, exploitation or abandonment of the principal by the
2 agent or a person acting for or with the agent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 [~~4-~~] 6. If the application of the provisions of subdivision [~~one or~~]
49 two or four of this section shall be held invalid to any third party the
50 application of such provisions to any third party other than those to
51 which it is held invalid, shall not be affected thereby.

52 [~~5-~~] 7. When the power of attorney is presented to a third party, it
53 shall not be deemed unreasonable for a third party to require the agent
54 to execute an acknowledged affidavit pursuant to this subdivision stat-
55 ing that the power of attorney is in full force and effect. Such an
56 affidavit is conclusive proof to the third party relying on the power of

1 attorney that the power of attorney is valid and effective, and has not
2 been terminated, revoked or modified, except as to any third party who
3 had actual notice that the power of attorney had terminated, been
4 revoked or been modified prior to the execution of the affidavit. Such
5 affidavit shall state that:

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

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

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

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

25 ~~[6-]~~ 8. Nothing in this section shall require the acceptance of a form
26 that is not a statutory short form power of attorney.

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

38 § 15. Subparagraph 2 of paragraph (a) of subdivision 2 of section
39 5-1505 of the general obligations law, as amended by chapter 340 of the
40 laws of 2010, is amended to read as follows:

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

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

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

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

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

9 § 5-1513. Statutory short form power of attorney. [~~1.~~] The use of the
10 following form, or one which substantially conforms to the following
11 form, in the creation of a power of attorney is lawful, and, when used,
12 and executed in accordance with subdivision one of section 5-1501B of
13 this title, it shall be construed as a statutory short form power of
14 attorney in accordance with the provisions of this title; provided
15 however, that any section indicated as "Optional" which is not used may
16 be omitted and replaced by the words "Intentionally Omitted":

17 "POWER OF ATTORNEY

18 NEW YORK STATUTORY SHORT FORM

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

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

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

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

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

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

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

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

49 (b) DESIGNATION OF AGENT(S):

50 I, _____, hereby appoint:

1 name and address of principal

2 _____ as my agent(s)

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

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

7 () My agents must act TOGETHER.

8 () My successor agents may act SEPARATELY.

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

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

12 _____
 13 name(s) and address(es) of successor agent(s)

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

17 () My successor agents must act TOGETHER.

18 () My successor agents may act SEPARATELY.

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

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

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

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

31 (f) GRANT OF AUTHORITY:

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

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

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

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

40 () (A) real estate transactions;

41 () (B) chattel and goods transactions;

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

43 () (D) banking transactions;

44 () (E) business operating transactions;

45 () (F) insurance transactions;

46 () (G) estate transactions;

47 () (H) claims and litigation;

48 () (I) personal and family maintenance. If you grant your agent
 49 this authority, it will allow the agent to make gifts
 50 that you customarily have made to individuals, including
 51 the agent, and charitable organizations. The total

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

16 (g) [~~MODIFICATIONS: (OPTIONAL)~~]

17 ~~In this section, you may make additional provisions, including~~
 18 ~~language to limit or supplement authority granted to your agent.~~

19 ~~However, you cannot use this Modifications section to grant your agent~~
 20 ~~authority to make gifts or changes to interests in your property. If~~
 21 ~~you wish to grant your agent such authority, you MUST complete the Stat-~~
 22 ~~utory Gifts Rider.~~

23 ~~(h)~~ CERTAIN GIFT TRANSACTIONS: [~~STATUTORY GIFTS RIDER~~] (OPTIONAL)

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

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

43 (h) MODIFICATIONS: (OPTIONAL)

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

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

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

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

25 (l) TERMINATION: This Power of Attorney continues until I revoke it or
 26 it is terminated by my death or other event described in section 5-1511
 27 of the General Obligations Law.
 28 Section 5-1511 of the General Obligations Law describes the manner in
 29 which you may revoke your Power of Attorney, and the events which termi-
 30 nate the Power of Attorney.

31 (m) SIGNATURE AND ACKNOWLEDGMENT:
 32 In Witness Whereof I have hereunto signed my name on _____, 20__.

33 PRINCIPAL signs here: ==>_____

34 (acknowledgment)

35 (n) IMPORTANT INFORMATION FOR THE AGENT:
 36 When you accept the authority granted under this Power of Attorney, a
 37 special legal relationship is created between you and the principal.
 38 This relationship imposes on you legal responsibilities that continue
 39 until you resign or the Power of Attorney is terminated or revoked. You
 40 must:
 41 (1) act according to any instructions from the principal, or, where
 42 there are no instructions, in the principal's best interest;
 43 (2) avoid conflicts that would impair your ability to act in the prin-
 44 cipal's best interest;
 45 (3) keep the principal's property separate and distinct from any
 46 assets you own or control, unless otherwise permitted by law;
 47 (4) keep a record [~~or~~ of all [~~receipts, payments, and~~ transactions
 48 conducted for the principal or keep all receipts of payments and trans-
 49 actions conducted for the principal; and

1 (5) disclose your identity as an agent whenever you act for the prin-
2 cipal by writing or printing the principal's name and signing your own
3 name as "agent" in either of the following manners: (Principal's Name)
4 by (Your Signature) as Agent, or (your signature) as Agent for (Princi-
5 pal's Name).

6 You may not use the principal's assets to benefit yourself or anyone
7 else or make gifts to yourself or anyone else unless the principal has
8 specifically granted you that authority in the modifications section of
9 this document[~~, which is either a Statutory Gifts Rider attached to a~~
10 ~~Statutory Short Form Power of Attorney~~] or a Non-Statutory Power of
11 Attorney. If you have that authority, you must act according to any
12 instructions of the principal or, where there are no such instructions,
13 in the principal's best interest. You may resign by giving written
14 notice to the principal and to any co-agent, successor agent, monitor if
15 one has been named in this document, or the principal's guardian if one
16 has been appointed. If there is anything about this document or your
17 responsibilities that you do not understand, you should seek legal
18 advice.

19 Liability of agent:

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

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

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

28 I/we, _____, have read the forego-
29 ing Power of Attorney. I am/we are the person(s) identified therein as
30 agent(s) for the principal named therein.

31 I/we acknowledge my/our legal responsibilities.

32 In Witness Whereof I have hereunto signed my name on
33 20 _____.

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

35 (acknowledgment(s))

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

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

42 I/we, _____, have read the forego-
43 ing Power of Attorney. I am/we are the person(s) identified therein as
44 SUCCESSOR agent(s) for the principal named therein.

45 In Witness Whereof I have hereunto signed my name on
46 20 _____.

47 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.