

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:

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10 obligations law is REPEALED, and paragraphs (o), (p) and (q) are relet-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

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

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1 "Optional" that is not used may be omitted and replaced by the words
2 "Intentionally Omitted". [~~A mistake in wording, such as in spelling,~~
3 ~~punctuation or formatting, or the use of bold or italic type, shall not~~
4 ~~prevent a~~] A given power of attorney [~~from being deemed a statutory~~
5 ~~short form power of attorney, but the wording of the form~~] substantially
6 conforms to the form required pursuant to section 5-1513 of this title
7 notwithstanding that the form contains (i) an insignificant mistake in
8 wording, spelling, punctuation or formatting, or the use of bold or
9 italic type; or (ii) uses language that is essentially the same as, but
10 is not identical to, the statutory form, including utilizing language
11 from a previous statute. The determination of whether there is substan-
12 tial conformity with the form set forth in section 5-1513 of this title
13 [~~shall govern~~] shall not depend on the presence or absence of a partic-
14 ular clause. Failing to include clauses that are not relevant to a
15 given power of attorney shall not in itself cause such power of attorney
16 to be found to not substantially conform with the requirements of such
17 form. The use of the form set forth in section 5-1513 of this title is
18 lawful and when used, it shall be construed as a statutory short form
19 power of attorney. A statutory short form power of attorney may be used
20 to grant authority provided in sections 5-1502A through 5-1502N of this
21 title. A "statutory short form power of attorney" may contain modifica-
22 tions or additions as provided in section 5-1503 of this title[~~, but in~~
23 ~~no event may it be modified to grant any authority provided in section~~
24 ~~5-1514 of this title. If the authority (SCR) on the statutory short form~~
25 ~~is initialed by the principal, the statutory short form power of attor-~~
26 ~~ney must be executed in the manner provided in section 5-1501B of this~~
27 ~~title, simultaneously with the statutory gifts rider. A statutory short~~
28 ~~form power of attorney and a statutory gifts rider which supplements it~~
29 ~~must be read together as a single instrument~~].

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

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

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

41 (b) Be signed, initialed and dated by a principal with capacity, or in
42 the name of such principal by another person, other than a person desig-
43 nated as the principal's agent or successor agent, in the principal's
44 presence and at the principal's direction, in either case with the
45 signature of the [~~principal~~] person signing duly acknowledged in the
46 manner prescribed for the acknowledgment of a conveyance of real proper-
47 ty in the presence of the principal. When a person signs at the direc-
48 tion of a principal he or she shall sign by writing or printing the
49 principal's name, and printing and signing his or her own name.

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

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

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

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

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

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

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

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

18 the Principal" of paragraph (a) of subdivision one of section 5-1513 of
19 this title or of the "Important Information for the Agent" of paragraph
20 (n) of subdivision one of section 5-1513 of this title shall not prevent
21 a power of attorney from being deemed a statutory short form power of
22 attorney or a non-statutory power of attorney.

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

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

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

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

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

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

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

4 2. To sell (including short sales), to exchange, to transfer either
5 with or without a guaranty, to release, to surrender, to hypothecate, to
6 pledge, to create, modify or revoke a trust [~~unless such creation,
7 modification or revocation is a gift transaction governed by section
8 5-1514 of this title,~~] to grant options concerning, to loan, to trade
9 in, or otherwise to dispose of any bond, share, instrument of similar
10 character, commodity interest or any instrument with respect thereto;

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

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

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

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

39 (b) with respect to totten trust accounts existing at the creation of
40 the agency, the authority granted hereby shall not include the power to
41 add, delete, or otherwise change the designation of beneficiaries in
42 effect for any such accounts, unless the authority to make such addi-
43 tions, deletions or changes is [~~conveyed in a statutory gifts rider to~~]
44 expressly stated otherwise in the "Modifications" section of a statutory
45 short form power of attorney or in a non-statutory power of attorney
46 signed and dated by the principal with the signature of the principal
47 duly acknowledged in the manner prescribed for the acknowledgment of a
48 conveyance of real property, and which is executed pursuant to the
49 requirements of [~~paragraph (b) of subdivision nine of~~] section [~~5-1514~~]
50 5-1501B of this title.

51 § 8-a. Section 5-1502D of the general obligations law is amended by
52 adding a new subdivision 18 to read as follows:

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

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

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

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

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

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

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

50 § 11. The section heading, opening paragraph and subdivision 1 of
51 section 5-1502K of the general obligations law, as amended by chapter
52 644 of the laws of 2008, are amended to read as follows:

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

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

6 1. [~~To access records relating to the provision of health care and to~~
7 ~~make decisions relating to the past, present or future payment for the~~
8 ~~provision of health care consented to by or on behalf of the principal~~
9 ~~or the principal's health care agent authorized under state law. In so~~
10 ~~doing the agent is acting as the principal's personal representative~~
11 ~~pursuant to sections 1171 through 1179 of the Social Security Act, as~~
12 ~~added by sections 262 and 264 of Public Law 104 191, and applicable~~
13 ~~regulations. This authority shall not include authorization for the~~
14 ~~agent to make other medical or health care decisions for the principal]~~

15 To be responsible for matters relating to the principal's health care,
16 including, but not limited to, benefit entitlements and payment obli-
17 gations, and in so doing, notwithstanding any law to the contrary, to
18 receive from "health care providers" and "health plans," information,
19 including, but not limited to, "protected health information" as defined
20 in federal and state law, rules and regulations, in order to ascertain
21 the benefits to which the principal is entitled and to determine the
22 legitimacy and accuracy of charges for health care provided to the prin-
23 cipal; to obtain for the principal the health care benefits to which the
24 principal is entitled; to meet the principal's financial obligations,
25 and pay bills due and owing, for health care provided to the principal;
26 and to represent the principal, and to act as the principal's personal
27 representative, with respect to matters pertaining to the principal's
28 health care. The authority granted by this subdivision is limited to
29 health care financial matters and shall not include authorization for
30 the agent to make health care decisions for the principal;

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

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

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

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

1 § 5-1503. Modifications of the statutory short form power of attorney
2 [~~and of the statutory gifts rider~~]. A power of attorney which satisfies
3 the requirements of paragraphs (a), (b) and (c) of subdivision one of
4 section 5-1501B and section 5-1513 of this title is not prevented from
5 being a "statutory short form power of attorney", [~~and a document which~~
6 ~~satisfies the requirements of section 5-1514 of this title is not~~
7 ~~prevented from being a "statutory gifts rider" as either of these terms~~
8 ~~is used in the sections of this title,~~] by the fact that it also
9 contains additional language at the section labeled "modifications"
10 which:

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

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

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

25 § 14. Section 5-1504 of the general obligations law, as amended by
26 chapter 644 of the laws of 2008, the opening paragraph, subparagraphs 1
27 and 9 of paragraph (a) and paragraph (b) of subdivision 1, subdivisions
28 2, 3 and 5 as amended and subdivision 7 as added by chapter 340 of the
29 laws of 2010, is amended to read as follows:

30 § 5-1504. Acceptance of and reliance upon acknowledged statutory short
31 form power of attorney. 1. (a) For purposes of this section, "acknowl-
32 edged" means purportedly verified before a notary public or other indi-
33 vidual authorized to take acknowledgements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 ~~[2-]~~ 3. (a) Not later than the tenth business day after presentation
8 of an original or attorney certified copy of a statutory short form
9 power of attorney properly executed in accordance with section 5-1501B
10 of this title or in accordance with the laws in effect at the time of
11 its execution to a third party for acceptance, such third party shall
12 either (a) honor the statutory short form power of attorney, or (b)
13 reject the statutory short form power of attorney in a writing that sets
14 forth the reasons for such rejection, which writing shall be sent to the
15 principal and the agent at the addresses on the power of attorney and
16 such other addresses as provided by the principal or the agent, or (c)
17 request the agent to execute an acknowledged affidavit pursuant to
18 subdivision seven of this section stating that the power of attorney is
19 in full force and effect if the statutory short form power of attorney
20 was not submitted for acceptance together with such an acknowledged
21 affidavit. Such reasons for rejection may include, but not be limited to
22 non-conforming form, missing or wrong signature, invalid notarization,
23 or unacceptable identification. In the event that the statutory short
24 form power of attorney presented is not an original or attorney certi-
25 fied copy, as part of the initial rejection, such short form power of
26 attorney may be rejected for such reason, provided, however, in explain-
27 ing the reason for rejecting the short form power of attorney, the third
28 party shall also identify such other provisions of the short form power
29 of attorney, if any, that would otherwise constitute cause for rejection
30 of the statutory short form power of attorney. If the third party
31 initially rejects the statutory short form power of attorney in a writ-
32 ing that sets forth the reasons for such rejection, the third party
33 shall within seven business days after receipt of a writing in response
34 to the reasons for such rejection (i) honor the statutory short form
35 power of attorney, or (ii) finally reject the statutory short form power
36 of attorney in a writing that sets forth the reasons for such rejection.
37 Such writing shall be sent to the address provided on the power of
38 attorney, to the address of the agent, if any, and may also be sent to
39 such other address as shall be provided on the account documents, or to
40 the address of the attorney as provided in an opinion of counsel pursu-
41 ant to this section. If the third party requests the agent to execute
42 such an acknowledged affidavit, the third party shall honor such statu-
43 tory short form power of attorney within seven business days after
44 receipt by the third party of an acknowledged affidavit which complies
45 with the provisions of subdivision seven of this section, stating that
46 the power of attorney is in full force and effect unless reasonable
47 cause exists as described in paragraph (a) of subdivision two of this
48 section. For the purposes of this subdivision, notice shall be consid-
49 ered delivered at the time such notice is mailed and the time require-
50 ments in which to honor or reject the statutory short form power of
51 attorney or request the agent to execute an acknowledged affidavit shall
52 not apply to the department of audit and control or a public retirement
53 system of the state as defined in subdivision six of section one hundred
54 fifty-two of the retirement and social security law.

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

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

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

8 (b) Except as provided in subdivision [three] five of this section, it
9 shall be deemed unlawful for a third party to unreasonably refuse to
10 honor a properly executed statutory short form power of attorney[~~7~~
11 ~~including a statutory short form power of attorney which is supplemented~~
12 ~~by a statutory gifts rider,~~ executed in accordance with section 5-1501B
13 of this title or a statutory short form power of attorney properly
14 executed in accordance with the laws in effect at the time of its
15 execution. [A] If a special proceeding as authorized by section 5-1510
16 of this title is brought to compel the third party to honor the statuto-
17 ry short form power of attorney, the court may award damages, including
18 reasonable attorney's fees and costs, if the court finds that the third
19 party acted unreasonably in refusing to honor the agent's authority
20 under the statutory short form power of attorney. Such special proceed-
21 ing shall be the exclusive remedy for a violation of this section.

22 [3-] 5. In the absence of actual knowledge that the principal lacked
23 capacity to execute a statutory short form power of attorney or that the
24 statutory short form power of attorney was procured through fraud,
25 duress or undue influence, no third party receiving and retaining a
26 [properly executed] statutory short form power of attorney properly
27 executed in accordance with section 5-1501B of this title, [~~including a~~
28 ~~statutory short form power of attorney which is supplemented by a statu-~~
29 ~~tory gifts rider]~~ or a statutory short form power of attorney properly
30 executed in accordance with the laws in effect at the time of its
31 execution, or a complete photostatic copy of the properly executed
32 original thereof, nor any officer, agent, attorney-in-fact or employee
33 of such third party shall incur any liability by reason of acting upon
34 the authority thereof unless the third party shall have received actual
35 notice of the revocation or termination of such power of attorney.

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

41 [4-] 6. If the application of the provisions of subdivision [~~one or~~
42 two or four] of this section shall be held invalid to any third party the
43 application of such provisions to any third party other than those to
44 which it is held invalid, shall not be affected thereby.

45 [5-] 7. When the power of attorney is presented to a third party, it
46 shall not be deemed unreasonable for a third party to require the agent
47 to execute an acknowledged affidavit pursuant to this subdivision stat-
48 ing that the power of attorney is in full force and effect. Such an
49 affidavit is conclusive proof to the third party relying on the power of
50 attorney that the power of attorney is valid and effective, and has not
51 been terminated, revoked or modified, except as to any third party who
52 had actual notice that the power of attorney had terminated, been
53 revoked or been modified prior to the execution of the affidavit. Such
54 affidavit shall state that:

55 (a) the agent does not have, at the time of the transaction, actual
56 notice of the termination or revocation of the power of attorney, or

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

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

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

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

18 [~~6-~~] 8. Nothing in this section shall require the acceptance of a form
19 that is not a statutory short form power of attorney.

20 [~~7-~~] 9. A statutory short form power of attorney or a non-statutory
21 power of attorney that meets the requirements of subdivision one of
22 section 5-1501B of this title shall be accepted for recording so long as
23 it has been signed by one agent named therein whose signature has been
24 acknowledged. If two or more agents acting on behalf of the principal
25 are required to act together, the power of attorney shall be accepted
26 for recording as long as their signatures have been acknowledged. When a
27 successor or co-agent authorized to act separately from any other agents
28 presents a certified copy of a recorded statutory short form power of
29 attorney or non-statutory power of attorney with the agent's signature
30 acknowledged, the instrument shall be accepted for recording.

31 § 15. Subparagraph 2 of paragraph (a) of subdivision 2 of section
32 5-1505 of the general obligations law, as amended by chapter 340 of the
33 laws of 2010, is amended to read as follows:

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

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

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

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

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

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

9 "POWER OF ATTORNEY
 10 NEW YORK STATUTORY SHORT FORM

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

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

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

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

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

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

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

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

41 (b) DESIGNATION OF AGENT(S):

42 I, _____, hereby appoint:
 43 _____
 44 _____ as my agent(s)
 45 _____
 46 name(s) and address(es) of agent(s)

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

49 () My agents must act TOGETHER.

1 () My successor agents may act SEPARATELY.

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

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

5 _____
6 name(s) and address(es) of successor agent(s)

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

10 () My agents must act TOGETHER.

11 () My successor agents may act SEPARATELY.

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

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

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

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

24 (f) GRANT OF AUTHORITY:

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

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

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

- 33 () (A) real estate transactions;
34 () (B) chattel and goods transactions;
35 () (C) bond, share, and commodity transactions;
36 () (D) banking transactions;
37 () (E) business operating transactions;
38 () (F) insurance transactions;
39 () (G) estate transactions;
40 () (H) claims and litigation;
41 () (I) personal and family maintenance. If you grant your agent
42 this authority, it will allow the agent to make gifts
43 that you customarily have made to individuals, including
44 the agent, and charitable organizations. The total
45 amount of all such gifts in any one calendar year cannot
46 exceed five [~~hundred~~] thousand dollars;
47 () (J) benefits from governmental programs or civil or military
48 service;
49 () (K) financial matters related to health care [~~billing and~~
50 ~~payment matters~~]; records, reports, and statements;
51 () (L) retirement benefit transactions;
52 () (M) tax matters;

1 () (N) all other matters;
 2 () (O) full and unqualified authority to my agent(s) to dele-
 3 gate any or all of the foregoing powers to any person or
 4 persons whom my agent(s) select;
 5 () (P) EACH of the matters identified by the following
 6 letters_____.

7 You need not initial the other lines if you initial line (P).

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

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

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

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

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

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

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

4 Your agent is entitled to be reimbursed from your assets for reason-
5 able expenses incurred on your behalf. If you ALSO wish your agent(s) to
6 be compensated from your assets for services rendered on your behalf,
7 [~~initial the statement below. If you~~] and/or you wish to define "reason-
8 able compensation", you may do so above, under "Modifications" [~~-~~
9 ~~() My agent(s) shall be entitled to reasonable compensation for~~
10 ~~services rendered.~~]

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

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

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

23 (m) SIGNATURE AND ACKNOWLEDGMENT:

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

25 PRINCIPAL signs here: ==>_____

26 (acknowledgment)

27 (n) IMPORTANT INFORMATION FOR THE AGENT:

28 When you accept the authority granted under this Power of Attorney, a
29 special legal relationship is created between you and the principal.
30 This relationship imposes on you legal responsibilities that continue
31 until you resign or the Power of Attorney is terminated or revoked. You
32 must:

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

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

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

39 (4) keep a record [~~or~~] of all [receipts, payments, and] transactions
40 conducted for the principal or keep all receipts of payments and trans-
41 actions conducted for the principal; and

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

47 You may not use the principal's assets to benefit yourself or anyone
48 else or make gifts to yourself or anyone else unless the principal has
49 specifically granted you that authority in the modifications section of

1 this document[~~, which is either a Statutory Gifts Rider attached to a~~
 2 ~~Statutory Short Form Power of Attorney~~] or a Non-Statutory Power of
 3 Attorney. If you have that authority, you must act according to any
 4 instructions of the principal or, where there are no such instructions,
 5 in the principal's best interest. You may resign by giving written
 6 notice to the principal and to any co-agent, successor agent, monitor if
 7 one has been named in this document, or the principal's guardian if one
 8 has been appointed. If there is anything about this document or your
 9 responsibilities that you do not understand, you should seek legal
 10 advice.

11 Liability of agent:

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

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

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

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

23 I/we acknowledge my/our legal responsibilities.

24 In Witness Whereof I have hereunto signed my name on
 25 20_____.

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

27 (acknowledgment(s))

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

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

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

37 In Witness Whereof I have hereunto signed my name on
 38 20_____.

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

40 (acknowledgment(s))"

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

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