# STATE OF NEW YORK

888

2021-2022 Regular Sessions

# IN SENATE

**(Prefiled)**

January 6, 2021

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general obligations law, in relation to the statutory short form and other powers of attorney for purposes of financial and estate planning

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

Section 1. Paragraph (b) of subdivision 1 of section 5-1501B of the general obligations law, as amended by a chapter of the laws of 2020 amending the general obligations law relating to reforming the statutory short form and other powers of attorney for purposes of financial and estate planning, as proposed in legislative bills numbers S. 3923-a and A. 5630-a, is amended to read as follows:

(b) Be signed, initialed and dated by a principal with capacity, or in the name of such principal by another person, other than a person designated as the principal's agent or successor agent, in the principal's presence and at the principal's direction, in either case with the signature of the person signing duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property **and witnessed by two persons who are not named in the instrument as agents or as permissible recipients of gifts, in the manner described in subparagraph two of paragraph (a) of section 3-2.1 of the estate, powers and trusts law** in the presence of the principal. **The person who takes the acknowledgement under this paragraph may also serve as one of the witnesses.** When a person signs at the direction of a principal he or she shall sign by writing or printing the principal's name, and printing and signing his or her own name.

§ 2. The section heading and subdivisions 1 and 3 of section 5-1504 of the general obligations law, as amended by a chapter of the laws of 2020 amending the general obligations law relating to reforming the statutory

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

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short form and other powers of attorney for purposes of financial and estate planning, as proposed in legislative bills numbers S. 3923-a and A. 5630-a, are amended to read as follows:

Acceptance of and reliance upon acknowledged **and witnessed** statutory short form power of attorney. 1. (a) For purposes of this section, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgements. **For purposes of this section, "witnessed" means purportedly witnessed by two persons who are not named in the instrument as agents or as permissible recipients of gifts.**

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

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

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

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

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

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

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

3. (a) Not later than the tenth business day after presentation of an original or attorney certified copy of a statutory short form power of attorney properly executed in accordance with section 5-1501B of this title or in accordance with the laws in effect at the time of its execution to a third party for acceptance, such third party shall either (a) honor the statutory short form power of attorney, or (b) reject the statutory short form power of attorney in a writing that sets forth the reasons for such rejection, which writing shall be sent to the principal and the agent at the addresses on the power of attorney and such other addresses as provided by the principal or the agent, or (c) request the agent to execute an acknowledged affidavit pursuant to subdivision seven of this section stating that the power of attorney is in full force and effect if the statutory short form power of attorney was not submitted for acceptance together with such an acknowledged affidavit. Such reasons for rejection may include, but not be limited to non-conforming form, missing or wrong signature, invalid notarization, or unacceptable identification. In the event that the statutory short form power of attorney presented is not an original or attorney certified copy, as

part of the initial rejection, such short form power of attorney may be rejected for such reason, provided, however, in explaining the reason for rejecting the short form power of attorney, the third party shall also identify such other provisions of the short form power of attorney, if any, that would otherwise constitute cause for rejection of the statutory short form power of attorney. If the third party initially rejects the statutory short form power of attorney in a writing that sets forth the reasons for such rejection, the third party shall within seven business days after receipt of a writing in response to the reasons for such rejection (i) honor the statutory short form power of attorney, or (ii) finally reject the statutory short form power of attorney in a writing that sets forth the reasons for such rejection. Such writing shall be sent to the address provided on the power of attorney, to the address of the agent, if any, and may also be sent to such other address as shall be provided on the account documents, or to the address of the attorney as provided in an opinion of counsel pursuant to this section. If the third party requests the agent to execute such an acknowledged affidavit, the third party shall honor such statutory short form power of attorney within seven business days after receipt by the third party of an acknowledged affidavit which complies with the provisions of subdivision seven of this section, stating that the power of attorney is in full force and effect unless reasonable cause exists as described in paragraph (a) of subdivision two of this section. For the purposes of this subdivision, notice shall be considered delivered at the time such notice is mailed and the time requirements in which to honor or reject the statutory short form power of attorney or request the agent to execute an acknowledged affidavit shall not apply to the department of audit and control [~~or~~], a public retirement system of the state as defined in subdivision six of section one hundred fifty-two of the retirement and social security law**, or the department of health, including social services districts, in the administration of the medical assistance "Medicaid" program pursuant to title XIX of the federal social security act or other public health insurance programs**.

(b) Notice to the agent as required by paragraph (a) of this subdivision shall not be sent until after a determination is made by adult protective services if the reason for rejection is a reason set forth in subdivision two of this section and is otherwise prohibited by law or regulation.

§ 3. Section 5-1513 of the general obligations law, as amended by a chapter of the laws of 2020 amending the general obligations law relating to reforming the statutory short form and other powers of attorney for purposes of financial and estate planning, as proposed in legislative bills numbers S. 3923-a and A. 5630-a, is amended to read as follows:

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

"POWER OF ATTORNEY
NEW YORK STATUTORY SHORT FORM

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

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

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

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

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

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

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

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

(b) DESIGNATION OF AGENT(S):

I, _____, hereby appoint:
name and address of principal

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

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

[~~( ) My agents must act TOGETHER.~~]

( ) My [~~successor~~] agents may act SEPARATELY.

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

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

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

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

[~~( ) My agents must act TOGETHER.~~]

( ) My successor agents may act SEPARATELY.

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

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

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

(f) GRANT OF AUTHORITY:

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

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

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

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

( ) (A) real estate transactions;

( ) (B) chattel and goods transactions;

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

( ) (D) banking transactions;

( ) (E) business operating transactions;

( ) (F) insurance transactions;

( ) (G) estate transactions;

( ) (H) claims and litigation;

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

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

( )(K) financial matters related to health care; records, reports, and statements;

( )(L) retirement benefit transactions;

( )(M) tax matters;

( )(N) all other matters;

( )(O) full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) select;

( )(P) EACH of the matters identified by the following letters_____.

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

(g) CERTAIN GIFT TRANSACTIONS: (OPTIONAL)

In order to authorize your agent to make gifts in excess of an annual total of $5,000 for all gifts described in (I) of the grant of authority section of this document (under personal and family maintenance), and/or to make changes to interest in your property, you must expressly grant that authorization in the Modifications section below. If you wish to authorize your agent to make gifts to himself or herself, you must expressly grant such authorization in the Modifications section below. Granting such authority to your agent gives your agent the authority to take actions which could significantly reduce your property and/or change how your property is distributed at your death. Your choice to grant such authority should be discussed with a lawyer.

( ) I grant my agent authority to make gifts in accordance with the terms and conditions of the Modifications that supplement this Statutory Power of Attorney.

(h) MODIFICATIONS: (OPTIONAL)

In this section, you may make additional provisions, including, but not limited to, language to limit or supplement authority granted to your agent, language to grant your agent the specific authority to make gifts to himself or herself, and/or language to grant your agent the specific authority to make other gift transactions and/or changes to interests in your property. Your agent is entitled to be reimbursed from your assets for reasonable expenses incurred on your behalf. In this

section, you may make additional provisions if you ALSO wish your agent(s) to be compensated from your assets for services rendered on your behalf, and you may define "reasonable compensation."

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

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

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

(j) COMPENSATION OF AGENT(S):

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

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

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

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

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

PRINCIPAL signs here: ==>_____

(acknowledgment)

(n) **SIGNATURES OF WITNESSES:**

**By signing as a witness, I acknowledge that the principal signed the Power of Attorney in my presence and in the presence of the other witness, or that the principal acknowledged to me that the principal's signature was affixed by him or her or at his or her direction. I also acknowledge that the principal has stated that this Power of Attorney reflects his or her wishes and that he or she has signed it voluntarily. I am not named herein as an agent or as a permissible recipient of gifts.**

_____

**Signature of Witness 1** **Signature of Witness 2**

_____ _____

**Date** **Date**

_____ _____

**Print name** **Print name**

_____ _____

**Address** **Address**

_____ _____

**City, State, Zip Code** **City, State, Zip Code**

**(o)** IMPORTANT INFORMATION FOR THE AGENT:

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

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

(2) avoid conflicts that would impair your ability to act in the principal's best interest;

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

(4) keep a record of all transactions conducted for the principal or keep all receipts of payments and transactions conducted for the principal; and

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

You may not use the principal's assets to benefit yourself or anyone else or make gifts to yourself or anyone else unless the principal has specifically granted you that authority in the modifications section of this document or a Non-Statutory Power of Attorney. If you have that authority, you must act according to any instructions of the principal or, where there are no such instructions, in the principal's best interest. You may resign by giving written notice to the principal and to any co-agent, successor agent, monitor if one has been named in this document, or the principal's guardian if one has been appointed. If there is anything about this document or your responsibilities that you do not understand, you should seek legal advice.

Liability of agent:

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

[~~(o)~~] **(p)** AGENT'S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT:

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

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

I/we acknowledge my/our legal responsibilities.

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

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

(acknowledgment(s))

[~~(p)~~] **(q)** SUCCESSOR AGENT'S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT:

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

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

In Witness Whereof I have hereunto signed my name on _____ 20_____.
Successor Agent(s) sign(s) here:==>_____
(acknowledgment(s))"

§ 4. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2020 amending the general obligations law relating to reforming the statutory short form and other powers of attorney for purposes of financial and estate planning, as proposed in legislative bills numbers S. 3923-a and A. 5630-a, takes effect.