

An act to amend the general obligations law, in relation to powers of attorney, to provide definitions and general requirements for valid powers of attorney, provide for the duties of the agent, require the agent to sign the power of attorney form, provide procedures for the revocation of the power of attorney, and provide for civil proceedings with respect to powers of attorney.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN THE SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The title of title 15 of the general obligations law, as added by chapter 576 of the laws of 1963, is amended to read as follows: STATUTORY SHORT FORM AND OTHER POWERS OF ATTORNEY FOR FINANCIAL AND ESTATE PLANNING.

§2. Section 5-1501 of the general obligations law, as amended by chapter 499 of the laws of 1996, is REPEALED, and three new sections 5-1501, 5-1501A, and 5-1501B are added to read as follows:

§ 5-1501. Definitions

As used in this title the following terms shall have the following meanings:

1. “Agent” means a person granted authority to act as attorney-in-fact for the principal under a power of attorney, and includes the original agent and any co-agent or successor agent. Unless the context indicates otherwise, an “agent” designated in a power of attorney shall mean “attorney-in-fact” for the purposes of this title. An agent acting under a power of attorney has a fiduciary relationship with the principal.
2. “Benefits from governmental programs or civil or military service” means any benefit, program or assistance provided under a statute or governmental regulation including Social Security, Medicare, and Medicaid.
3. “Capacity” means the ability to comprehend the nature and consequences of the act of executing and granting, revoking, amending, or modifying a power of attorney, any provision in a power of attorney, or the authority of any person to act as agent under a power of attorney.
4. “Compensation” means reasonable compensation paid to the agent from assets of the principal for services actually rendered by the agent pursuant to the authority granted in a power of attorney.
5. “Financial institution” means a financial entity, including, but not limited to: a bank, trust company, national bank, savings bank, federal mutual savings bank, savings and loan association, federal savings and loan association, federal mutual savings and loan association, credit union, federal credit union, branch of a foreign banking corporation, public pension fund, retirement system, securities broker, securities dealer, securities firm, and insurance company.
6. “Incapacitated” means to be without capacity.
7. “Internal Revenue Code” means the United States Internal Revenue Code of 1986, as amended. Such references, however, shall be deemed to constitute references to any corresponding provisions of any subsequent federal tax code.
8. “Monitor” means a person appointed in the power of attorney who has the authority to request, receive, and seek to compel the agent to provide a record of all receipts, disbursements, and transactions entered into by the agent on behalf of the principal.

9. "Person" means an individual, whether acting for himself or herself, or as a fiduciary or as an official of any legal, government or commercial entity (including, but not limited to, any such entity identified in this definition), corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, government agency, government entity, government instrumentality, public corporation, or any other legal or commercial entity.

10. "Power of attorney" means a written document by which a principal with capacity designates an agent to act on his or her behalf.

11. "Principal" means an individual who is eighteen years of age or older who executes a power of attorney.

12. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

13. "Sign" means, with present intent to authenticate or adopt a record:

- (a) to execute or adopt a tangible symbol; or
- (b) to attach to or logically associate with the record an electronic sound, symbol, or process.

14. "Statutory major gifts rider" means a document by which the principal may supplement a statutory short form power of attorney to authorize major gift transactions and other transfers, that meets the requirements of subdivision (9) of section 5-1514 of this title, and that contains the exact wording of the form set forth in subdivision (10) of section 5-1514 of this title. A statutory major gifts rider may contain modifications or additions as provided in section 5-1503 of this title as such modifications or additions relate to major gift transactions and other transfers. A statutory major gifts rider and the statutory short form power of attorney it supplements must be read together as a single instrument. A statutory major gifts rider may be used to authorize powers provided in section 5-1514 of this title.

15. "Statutory short form power of attorney" means a power of attorney that meets the requirements of paragraphs (a), (b) and (c) of subdivision (1) of section 5-1501B of this title, and that contains the exact wording of the form set forth in section 5-1513 of this title. A "statutory short form power of attorney" may contain modifications or additions as provided in section 5-1503 of this title, but in no event may it be modified to authorize any powers provided in section 5-1514 of this title. A statutory short form power of attorney and a statutory major gifts rider which supplements it must be read together as a single instrument. A statutory short form power of attorney may be used to authorize powers provided in sections 5-1502A through 5-1502N of this title.

16. "Third party" means a financial institution or person.

§ 5-1501A. Power of attorney not affected by incapacity

1. A power of attorney is durable unless it expressly provides that it is terminated by the incapacity of the principal.

2. The subsequent incapacity of a principal shall not revoke or terminate the authority of an agent who acts under a durable power of attorney. All acts done during any period of the principal's incapacity by an agent pursuant to a durable power of attorney shall have the same effect and inure to the benefit of and bind a principal and his or her distributees, devisees, legatees and personal representatives as if such principal had capacity. If a guardian is thereafter appointed for such principal, such agent, during the continuance of the appointment, shall account to the guardian rather than to such principal.

§ 5-1501B. Creation of a valid power of attorney; when effective

1. To be valid, a power of attorney must:

- (a) Be typed or printed using letters which are legible or of clear type no less than twelve point in size, or, if in writing, a reasonable equivalent thereof.
- (b) Purport to be signed and dated by a principal with capacity, with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property.
- (c) Be signed and dated by the agent, or agents if two or more agents are designated to act jointly, with the signature of the agent or agents duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property. A power of attorney executed pursuant to this section is not invalid solely because there has been a lapse of time between the date of acknowledgment of the signature of the principal and the date(s) of acknowledgment of the signature of the agent(s) or because the principal became incapacitated during any such lapse of time. If the principal designates one or more successor agents, the signature of a successor agent is not required until all preceding agents are unable or unwilling to serve.
- (d) Contain the exact wording of the “Caution to the Principal” and “Important Information for the Agent” as provided in the statutory short form power of attorney at section 5-1513.
- (e) Be executed pursuant to the requirements of paragraph (b) of subdivision (9) of section 5-1514 of this title if the power of attorney is not a statutory short form power of attorney and it authorizes the agent to make any gift or other transfer described in section 5-1514 of this title.

2. The date on which the agent’s signature is acknowledged is the effective date of the power of attorney as to that agent, provided however that if the power of attorney states that it takes effect when a date or a contingency specified in the document has occurred, then the power of attorney takes effect only when the date or contingency identified in the document has occurred, and the agent’s signature has been acknowledged. If the document requires that a person or persons named or otherwise identified therein declare, in writing, that the identified contingency has occurred, such a declaration satisfies the requirement of this subparagraph without regard to whether the specified contingency has occurred

§ 3. Subdivisions 2 and 9 of section 5-1502A of the general obligations law, as amended by chapter 576 of the laws of 1963, are amended to read as follows:

2. To sell, to exchange, to convey either with or without covenants, to quit-claim, to release, to surrender, to mortgage, to incumber, to partition or to consent to the partitioning, [to revoke, create or modify a trust,] to grant options concerning, to lease or to sublet, or otherwise to dispose of, any estate or interest in land;

9. To execute, to acknowledge, to seal and to deliver any deed, [revocation, declaration or modification of trust,] mortgage, lease, notice, check or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

§ 4. Subdivisions 2 and 7 of section 5-1502B of the general obligations law, as amended by chapter 576 of the laws of 1963, are amended to read as follows:

2. To sell, to exchange, to convey either with or without covenants, to release, to surrender, to mortgage, to incumber, to pledge, to hypothecate, to pawn, [to revoke, create or modify a trust,] to grant options concerning, to lease or to sublet to others, or otherwise to dispose of any chattel

or goods or any interest in any chattel or goods;

7. To execute, to acknowledge, to seal and to deliver any conveyance, [revocation, declaration or modification of trust,] mortgage, lease, notice, check or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

§ 5. Subdivisions 2 and 9 of section 5-1502C of the general obligations law, as amended by chapter 576 of the laws of 1963, are amended to read as follows:

2. To sell (including short sales), to exchange, to transfer either with or without a guaranty, to release, to surrender, to hypothecate, to pledge, [to revoke, create or modify a trust,] to grant options concerning, to loan, to trade in, or otherwise to dispose of any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto;

9. To execute, to acknowledge, to seal and to deliver any consent, agreement, authorization, assignment, [revocation, declaration or modification of trust,] notice, waiver of notice, check, or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

§ 6. Subdivisions 1 and 2 of section 5-1502D of the general obligations law, as amended by chapter 576 of the laws of 1963, are amended to read as follows:

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

(a) with respect to joint accounts existing at the creation of the agency, the authority granted hereby shall not include the power to change the title of the account by the addition of a new joint tenant or the deletion of an existing joint tenant, unless the authority to make such changes is conveyed in a statutory major gifts rider to a statutory short form power of attorney or in a non-statutory power of attorney executed in the same manner as a will, and

(b) with respect to totten trust accounts existing at the creation of the agency, the authority granted hereby shall not include the power to add, delete, or otherwise change the designation of beneficiaries in effect for any such accounts, unless the authority to make such additions, deletions or changes is conveyed in a statutory major gifts rider to a statutory short form power of attorney or in a non-statutory power of attorney executed in the same manner as a will;

2. To open [either in the name of the agent alone, or] in the name of the principal or on behalf of the principal, [alone, or in both their names jointly or otherwise,] a deposit account of any type with any banker or in any banking institution selected by the agent, to make deposits to and withdrawals from any such deposit account, to hire such safe deposit box or vault space and to make such other contracts for the procuring of other services made available by any such banker or banking institution as the agent shall think to be desirable;

§ 7. Subdivisions 1, 2 and 3 of section 5-1502F of the general obligations law, as amended by chapter 576 of the laws of 1963, are amended to read as follows:

1. To continue, to pay the premium or assessment on, to modify, to rescind, to release or to terminate any contract of life, accident, health, disability or liability insurance or any combination of such insurance procured by or on behalf of the principal prior to the creation of the agency which insures either the principal or any other person, without regard to whether the principal is or is not a beneficiary thereunder, provided, however, with respect to life insurance

contracts existing at the creation of the agency, the authority granted hereby shall not include the power to add, delete, or otherwise change the designation of beneficiaries in effect for any such contract, unless the authority to make such additions, deletions or changes is conveyed in a statutory major gifts rider to a statutory short form power of attorney or in a non-statutory power of attorney executed in the same manner as a will;

2. To procure new, different or additional contracts of insurance [on the life of the principal, or] protecting the principal with respect to ill-health, disability, accident or liability of any sort, to select the amount, the type of insurance contract and the mode of payment under each such policy, to pay the premium or assessment on, to modify, to rescind, to release or to terminate, any contract so procured by the agent;[ and to designate the beneficiary of any such contract of insurance, provided, however, that the agent himself cannot be such beneficiary unless the agent is spouse, child, grandchild, parent, brother or sister of the principal;]

3. To apply for and to receive any available loan on the security of the contract of insurance, whether for the payment of a premium or for the procuring of cash, to surrender and thereupon to receive the cash surrender value, to exercise [any]an election as to beneficiary or mode of payment, to change the manner of paying premiums, and to change or to convert the type of insurance contract, with respect to any contract of life, accident, health, disability or liability insurance as to which the principal has, or claims to have, any one or more of the powers described in this section,[ and to change the beneficiary of any such contract of insurance, provided, however, that the agent himself cannot be such new beneficiary unless the agent is spouse, child, grandchild, parent, brother or sister of the principal;] provided, however, that the authority granted hereby shall not include the power to add, delete, or otherwise change the designation of beneficiaries in effect for any such contract, unless the authority to make such additions, deletions or changes is conveyed in a statutory major gifts rider to a statutory short form power of attorney or in a non-statutory power of attorney executed in the same manner as a will;

§ 8. The closing paragraph of section 5-1502G of the general obligations law, as amended by chapter 599 of the laws of 2003, is amended to read as follows:

All powers described in this section 5-1502G of the general obligations law shall be exercisable equally with respect to any estate of a decedent, absentee, infant or incompetent, or the administration of any trust or other fund, in which the principal is interested at the giving of the power of attorney or may thereafter become interested, regardless of whether the estate, trust or other fund is specifically identified at the giving of the power of attorney and whether located in the state of New York or elsewhere.

§ 9. The caption, introductory paragraph and subdivisions 13 and 14 of section 5-1502I of the general obligations law, as amended by chapter 576 of the laws of 1963, are amended to read as follows and a new subdivision 14 is added to read as follows:

**§5-1502I. Construction—personal [relationships and affairs] and family maintenance**

In a statutory short form power of attorney, the language conferring general authority with respect to “personal [relationships,]”and family maintenance” must be construed to mean that the principal authorizes the agent:

13. To hire, to discharge, and to compensate any attorney, accountant, expert witness, or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; [and]

14. To continue gifts that the principal customarily made to individuals and charitable organizations prior to the creation of the agency, provided that no person or charitable organization may be the recipient of gifts in any one calendar year which, in the aggregate, exceed \$500; and

[14.]15. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, for the welfare of the spouse, children or dependents of the principal or for the preservation and maintenance of the other personal relationships of the principal to parents, relatives, friends and organizations.

§ 10. Section 5-1502J of the general obligations law, as amended by chapter 576 of the laws of 1963, is amended to read as follows:

§ 5-1502J. Construction--benefits from governmental programs or civil or military service

In a statutory short form power of attorney, the language conferring general authority with respect to "benefits from governmental programs or civil or military service," must be construed to mean that the principal authorizes the agent:

1. To execute vouchers in the name of the principal for [any and all] allowances and reimbursements payable by the United States, or a foreign government or by [any]a state or subdivision [thereof] of a state, to the principal, including [by way of illustration and not of restriction,]but not limited to [all] allowances and reimbursements for transportation of the principal and of [his]the principal's spouse, children and other dependents, and for shipment of household effects, to receive, to indorse and to collect the proceeds of any check payable to the order of the principal drawn on the treasurer or other fiscal officer or depositary of the United States, or a foreign government or of any state or subdivision thereof;

2. To take possession and to order the removal and shipment[,] of [any] property of the principal from [any]a post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, and [to] execute and [to] deliver [any]a release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument [which the agent shall think to be desirable or necessary] for such purpose;

3. To enroll in, apply for, select, reject, change, amend, or discontinue a benefit or program on the principal's behalf:

[3.]4. To prepare, [to] file and [to] prosecute [the]a claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is, or claims to be, entitled, under [the provisions of any]a statute or governmental regulation, [existing at the creation of the agency or thereafter enacted by the United States or by any state or by any subdivision thereof, or by any foreign government, which] including any benefit or assistance which arises from or is based upon military service performed prior to or after the creation of the agency by the principal or by any person related by blood or by marriage to the principal, and to execute any receipt or other instrument which the agent shall think to be desirable or necessary for the enforcement or for the collection of such claim;

[4.]5. To receive the financial proceeds of any claim of the type described in this section, [to] conserve, [to] invest,[ to] disburse or [to utilize]use anything so received for a lawful purpose;s enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;]

[5.]6. To prosecute, [to] defend, [to] submit to [arbitration]alternative dispute resolution, [to] settle, and [to] propose or [to] accept a compromise with respect to[,] any [claim existing in

favor of, or against, the principal based on or involving any benefits from military service or to intervene in any action or proceeding relating thereto;]benefit or assistance described in subdivision (4) of this section;

7. To communicate with any representative or employee of a government, governmental subdivision, agency, or instrumentality on behalf of the principal;

[6.]8. To hire, [to] discharge, and [to] compensate any attorney, accountant, expert witness, or other assistant or assistants when the agent shall think such action to be desirable for the proper execution [by him] of any of the powers described in this section; and

[7.]9. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, and which the agent shall think to be desirable or necessary, to assure to the principal, and to the dependents of the principal, the maximum possible benefit from governmental programs or from civil or [the] military service performed prior to or after the creation of the agency by the principal or by any person related by blood or marriage to the principal.

All powers described in this section 5-1502J of the general obligations law shall be exercisable equally with respect to any benefits from governmental programs or civil or military service existing at the giving of the power of attorney or thereafter accruing, and whether accruing in the state of New York or elsewhere.

§ 11. Section 5-1502K of the general obligations law, as amended by chapter 576 of the laws of 1963, is amended to read as follows:

§ 5-1502K. Construction– health care billing and payment matters; records, reports and statements

In a statutory short form power of attorney, the language conferring general authority with respect to “records, reports and statements” or “health care billing and payment matters; records, reports and statements,” must be construed to mean that the principal authorizes the agent:

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

[1] 2. To keep records of all cash received and disbursed for or on account of the principal, of all credits and debits to the account of the principal, and of all transactions affecting in any way the assets and liabilities of the principal;

[2.] 3. To prepare, to execute and to file all tax, social security, unemployment insurance and information returns, required by the laws of the United States, of any state or of any subdivision thereof or of any foreign government, to prepare, to execute and to file all other papers and instruments which the agent shall think to be desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation;

[3.] 4. To prepare, to execute and to file any record, report, [or] statement, or other document, [which the agent shall think to be desirable or necessary for the ]to safeguard[ing or maintenance of]or promote the principal’s interest[, with respect to price, rent, wage or rationing control, or other governmental activity;]under a statute or governmental regulation;

[4.] 5. To hire, to discharge, and to compensate any attorney, accountant, or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section; and

[5] 6. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with the preparation, execution, filing, storage or other utilization of any records, reports or statements of or concerning the principal's affairs.

All powers described in this section 5-1502K of the general obligations law shall be exercisable equally with respect to any health care billing and payment matters, and records, reports or statements of or concerning the affairs of the principal existing at the giving of the power of attorney or thereafter arising, and whether arising in the state of New York or elsewhere.

§ 12. Subdivision 2 of section 5-1502L of the general obligations law, as amended by chapter 500 of the laws of 1996, is amended to read as follows:

2. To make investment directions, to select and change payment options, [to designate a beneficiary or beneficiaries, provided, however, that the agent may not designate herself or himself as a beneficiary unless the agent is a spouse, child, grandchild, parent, brother or sister of the principal or unless the short form power of attorney permits the agent to designate himself or herself,] and to exercise any other election for the principal with regard to any retirement benefit or plan in which the principal has an interest, provided, however, that the authority granted hereby shall not include the power to add, delete, or otherwise change the designation of beneficiaries in effect for any such retirement benefit or plan, unless the authority to make such additions, deletions or changes is conveyed in a statutory major gifts rider to a statutory short form power of attorney or in a non-statutory power of attorney executed in the same manner as a will;

§ 13. Subdivision 4 of section 5-1502L of the general obligations law, as added by chapter 499 of the laws of 1996 and amended by chapter 500 of the laws of 1996, is amended to read as follows:

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

§ 14. Section 5-1502M of the general obligations law, as added by chapter 499 of the laws of 1996, is REPEALED.

§ 15. Section 5-1502N of the general obligations law, as added by chapter 499 of the laws of 1996, is renumbered section 5-1502M and the caption and final paragraphs are amended to read as follows:

§ 5-1502[N]M. Construction – tax matters.

The powers explicitly authorized in this section 5-1502[N]M of the general obligations law shall not be construed to diminish any like powers authorized in any other section of title 15 of article 5 of the general obligations law, such as, but not limited to, those authorized in subdivision 9 of section 5-1502I of this title. Accordingly, such powers as are authorized in any other section of title 15 of article 5 of the general obligations law shall be construed as if the provisions of this section do not exist.

§ 16. Section 5-1502O of the general obligations law, as amended by chapter 499 of the laws of 1996, is renumbered 5-1502N and amended to read as follows:

§ 5-1502[O]N. Construction--all other matters

In a statutory short form power of attorney, the language conferring general authority with respect to "all other matters" must be construed to mean that the principal authorizes the agent to act as an alter ego of the principal with respect to any and all possible matters and affairs which are not enumerated in sections 5-1502A to 5-1502[N]M, inclusive, of this [chapter]title, and which the principal can do through an agent, provided, however, [except] that such authority shall not include authorization for the agent to designate a third party to act as agent for the principal or to make medical or other health care decisions for the principal except as otherwise provided in subdivision one of section 5-1502K of this title,

§ 17. Section 5-1503 of the general obligations law, as amended by chapter 499 of the laws of 1996, is amended to read as follows:

§ 5-1503. Modifications of the statutory short form power of attorney and of the statutory major gifts rider

A power of attorney which satisfies the requirements of [subdivision two of section 5-1501 of this chapter or of subdivision six of section 5-1506 of this chapter] paragraphs (a), (b), and (c) of subdivision one of section 5-1501B and of section 5-1513 of this title is not prevented from being a "statutory short form power of attorney",[ or a "statutory short form power of attorney effective at a future time",] and a document which satisfies the requirements of section 5-1514 of this title is not prevented from being a "statutory major gifts rider" as either of these [phrases] terms is used in the sections of this title, by the fact that it also contains additional language at the section labeled "modifications" which:

1. eliminates from the statutory short form power of attorney or from the statutory major gifts rider one or more of the powers enumerated in one or more of the constructional sections of this title with respect to a subdivision of the statutory short form power of attorney[, or of the statutory short form power of attorney effective at a future time,] or of the statutory major gifts rider, affirmatively chosen by the principal; or
2. supplements one or more of the powers enumerated in one or more of the constructional sections in this title with respect to a subdivision of the statutory short form power of attorney[, or of the statutory short form power of attorney effective at a future time,] or of the statutory major gifts rider, affirmatively chosen by the principal, by specifically listing additional powers of the agent; or
3. makes some additional provision which is not inconsistent with the other provisions of the statutory short form power of attorney or of the statutory major gifts rider[; or of the statutory short form power of attorney effective at a future time.]

§ 18. Section 5-1504 of the general obligations law, as amended by chapter 499 of the laws of 1996, is amended to read as follows:

§ 5-1504. Acceptance of statutory short form power of attorney

[1. As used in this section, the term "financial institution" means each of the following: a bank, trust company, national bank, savings bank, federal mutual savings bank, savings and loan association, federal savings and loan association, federal mutual savings and loan association, credit union, federal credit union, branch of a foreign banking corporation, public pension fund, retirement system.]

[2] 1. No [financial institution] third party located in this state shall refuse, without reasonable cause, to honor a statutory short form power of attorney properly executed in accordance with section [5-1501 or 5-1506] 5-1501B of this title, including a statutory short form power of

attorney which is supplemented by a statutory major gifts rider, or a statutory short form power of attorney properly executed in accordance with the laws in effect at the time of its execution.

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

- (1) the refusal by the agent to provide an original power of attorney or a copy certified by an attorney pursuant to section 2105 of the civil practice law and rules of the state of New York, or by a court or other government entity;
- (2) the third party's good faith referral of the principal and the agent to the local adult protective services unit;
- (3) actual knowledge of a report having been made by any person to the local adult protective services unit alleging physical or financial abuse, neglect, exploitation or abandonment of the principal by the agent;
- (4) actual knowledge of the principal's death or a reasonable basis for believing the principal has died;
- (5) actual knowledge of the incapacity of the principal or a reasonable basis for believing that the principal is incapacitated where the power of attorney tendered is a nondurable power of attorney;
- (6) actual knowledge or a reasonable basis for believing that the principal was incapacitated at the time the power of attorney was executed;
- (7) actual knowledge or a reasonable basis for believing that the power of attorney was procured through fraud, duress or undue influence; or
- (8) actual notice, pursuant to subdivision (3) of this section, of the termination or revocation of the power of attorney.

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

- (1) the power of attorney is not on a form prescribed by the third party to whom the power of attorney is presented.
- (2) there has been a lapse of time since the execution of the power of attorney.
- (3) on the face of the statutory form power of attorney, there is a lapse of time between the date of acknowledgment of the signature of the principal and the date of acknowledgment of the signature of any agent.

[3] 2. Except as provided in subdivision three of this section, [The failure of a financial institution] a third party who unreasonably refuses to honor a properly executed statutory short form power of attorney, including a statutory short form power of attorney which is supplemented by a statutory major gifts rider, or a statutory short form power of attorney properly executed in accordance with the laws in effect at the time of its execution, [shall be deemed unlawful] may be subject to a court order mandating acceptance of the power of attorney.

[4] 3. In the absence of actual knowledge that the principal lacked capacity to execute a statutory short form power of attorney or that the statutory short form power of attorney was procured through fraud, duress or undue influence, no [financial institution] third party receiving and retaining a properly executed statutory short form power of attorney, [properly executed in accordance with section 5-1501 or 5-1506 of this title] including a statutory short form power of

attorney which is supplemented by a statutory major gifts rider or a statutory short form power of attorney properly executed in accordance with the laws in effect at the time of its execution, or a complete photostatic copy of the properly executed original thereof nor any officer, agent, attorney-in-fact or employee of such [financial institution] third party shall incur any liability by reason of acting upon the authority thereof unless the [financial institution] third party shall have [actually] received[, at the office where the account is located, written] actual notice of the revocation or termination of such power of attorney. A financial institution is deemed to have actual notice after it has had a reasonable opportunity to act on a written notice of the revocation or termination following its receipt of the same at its office where such account is located.

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

5. When the power of attorney is presented to a third party, it is not unreasonable for a third party to require the agent to execute an acknowledged affidavit pursuant to this subdivision stating that the power of attorney is in full force and effect. Such an affidavit is conclusive proof to the third party relying on the power of attorney that the power of attorney is valid and effective, and has not been terminated or revoked, except as to any third party who had actual notice that the power of attorney had terminated or been revoked prior to the execution of the affidavit. Such affidavit shall state that:

- (a) the agent does not have, at the time of the transaction, actual notice of the termination or revocation of the power of attorney, or notice of any facts indicating that the power of attorney has been terminated or revoked;
- (b) the agent does not have, at the time of the transaction, actual notice that the power of attorney has been modified in any way that would affect the ability of the agent to authorize or engage in the transaction, or notice of any facts indicating that the power of attorney has been so modified; and
- (c) if the agent was named as a successor agent, the prior agent is no longer able or willing to serve.

6. Nothing herein shall require the acceptance of a form that is not a statutory short form power of attorney.

§ 19. Sections 5-1505 and 5-1506 of the general obligations law, as amended by chapter 499 of the laws of 1996, are REPEALED, and ten new sections 5-1505, 5-1506, 5-1507, 5-1508, 5-1509, 5-1510, 5-1511, 5-1512, 5-1513 and 5-1514 are added to read as follows:

§ 5-1505. Standard of care; fiduciary duty; compelling disclosure of record

1. Standard of care:

- (a) In dealing with property of the principal, an agent shall observe the standard of care that would be observed by a prudent person dealing with property of another.

2. Fiduciary duty:

- (a) An agent acting under a power of attorney has a fiduciary duty to the principal. The fiduciary duty includes each of the following obligations:

- (1) To act according to any instructions from the principal, or, where there are no instructions, in the best interest of the principal, and to avoid conflicts of interest.
- (2) To keep the principal's property separate and distinct from any other property owned or controlled by the agent, except for property that is jointly owned by the

principal and agent at the time of the execution of the power of attorney, and property that becomes jointly owned after the execution of the power of attorney as the result of the agent's acquisition of an interest in the principal's property by reason of the agent's exercise of authority granted in a statutory major gifts rider or in a non-statutory power of attorney executed in the same manner as a will.  
The agent may not transfer the principal's property to himself or herself without specific authorization.

(3) To keep a record of all receipts, disbursements, and transactions entered into by the agent on behalf of the principal and to make such record available at all times to the principal. The agent shall make such record available within 15 days of a written request by any of the following:

- (i) the monitor(s);
- (ii) a co-agent or successor agent acting under the power of attorney;
- (iii) a government entity, or official thereof, investigating a report that the principal may be in need of protective or other services, or investigating a report of abuse or neglect;
- (iv) a court evaluator appointed pursuant to section nine of article eighty-one of the New York mental hygiene;
- (v) a guardian ad litem appointed pursuant to section 1754 of the surrogate's court procedure act;
- (vi) the guardian or conservator of the estate of the principal, if such record has not already been provided to the court evaluator or guardian ad litem; or
- (vii) the personal representative of the estate of a deceased principal if such record has not already been provided to the guardian or conservator of the estate of the principal.

The failure of the agent to make the record available pursuant to this paragraph may result in a special proceeding under subdivision (1) of section 5-1510 of this title. Such proceeding shall be the exclusive remedy to compel the agent to provide such record.

(4) To disclose the agent's identity as agent whenever the agent acts for the principal pursuant to subdivision (1) of section 5-1507 of this title.

(b) The agent may be subject to liability for conduct and omissions which violate the fiduciary duty.

(c) The agent is not liable to third parties for any act pursuant to a power of attorney if the act was authorized at the time and the act did not violate subdivisions one or two of this section.

(3) Resignation:

(a) An agent who has signed the power of attorney may resign by giving written notice to the principal and the agent's co-agent, successor agent, or the monitor, if one has been named, or the principal's guardian if one has been appointed. If no co-agent, successor agent, monitor or guardian is known to the agent and the principal is incapacitated or the agent has notice of any facts indicating the principal's incapacity, the agent may give written notice to a government entity having authority to protect the welfare of the principal, or may petition the court to approve the resignation.

(b) The principal may provide for alternative means for an agent's resignation in the power of attorney.

§ 5-1506. Compensation

1. An agent is not entitled to receive compensation from the assets of the principal for responsibilities performed under a power of attorney unless the principal specifically provides for compensation in the power of attorney.
2. An agent shall be entitled to receive reimbursement from the assets of the principal for reasonable expenses actually incurred in connection with the performance of the agent's responsibilities.

§ 5-1507. Signature of agent

1. (a) In any transaction where the agent is acting pursuant to a power of attorney and where the hand-written signature of the agent or principal is required, the agent shall disclose the principal and agent relationship by:

- (1) signing "(name of agent) as agent for (name of principal)"; or
- (2) signing "(name of principal) by (name of agent), as agent"; or
- (3) any similar written disclosure of the principal and agent relationship.

(b) A third party shall incur no liability for accepting a signature that does not meet the requirements of this subdivision.

2. When the agent engages in a transaction that purports to be on behalf of the principal, the agent is attesting that:

- (a) the agent has actual authority to engage in the transaction;
- (b) the agent does not have, at the time of the transaction, actual notice of the termination or revocation of the power of attorney, or notice of any facts indicating that the power of attorney has been terminated or revoked;
- (c) if the power of attorney is one which terminates upon the principal's incapacity, the agent does not have, at the time of the transaction actual notice of the principal's incapacity, or notice of any facts indicating the principal's incapacity;
- (d) the agent does not have, at the time of the transaction, actual notice that the power of attorney has been modified in any way that would affect the ability of the agent to engage in the transaction, or notice of any facts indicating that the power of attorney has been so modified.

3. The attestation of the agent pursuant to subdivision (2) of this section is not effective as to any third party who had actual notice that the power of attorney had terminated or been revoked prior to the transaction.

§ 5-1508. Co-agents and successor agents

1. A principal may designate two or more persons to act as co-agents. Unless the principal provides otherwise in the power of attorney, the co-agents must act jointly. However, if prompt action is required to accomplish a purpose of the power of attorney and to avoid irreparable injury to the principal's interest and a co-agent is unavailable because of absence, illness, or other temporary incapacity, the other co-agent(s) may act for the principal. Unless the principal provides otherwise in the power of attorney, if a vacancy occurs because of the death, resignation, or incapacity of a co-agent, the remaining agent(s) may act for the principal. 2. A principal may designate one or more successor agents to serve if every initial or predecessor agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. Unless the principal provides otherwise in the power of attorney, a successor agent has the same

authority as that granted to an initial agent.

3. A co-agent or a successor agent acting under a power of attorney shall have the authority to request, receive, and seek to compel a co-agent or predecessor agent to provide a record of all receipts, disbursements, and transactions entered into by the agent on behalf of the principal.

§ 5-1509. Appointment of monitor

A principal may appoint a monitor or monitors in the power of attorney who shall have the authority to request, receive, and compel the agent to provide a record of all receipts, disbursements, and transactions entered into by the agent on behalf of the principal, to request and receive such records held by third parties and to request and receive a copy of the power of attorney. Nothing in this title shall be construed to impose a fiduciary duty on the monitor.

§ 5-1510. Special proceedings

1. If the agent has failed to make available a record of all receipts, disbursements, and transactions entered into by the agent on behalf of a principal to a person who may request such record pursuant to subparagraph (3) of paragraph (a) of subdivision (2) of section 5-1505, that person may commence a special proceeding to compel the agent to produce a copy of the power of attorney and such record.

2. A special proceeding may be commenced pursuant to this section for any of the following additional purposes:

- (a) to determine whether the power of attorney is valid;
- (b) to determine whether the principal had capacity at the time the power of attorney was executed;
- (c) to determine whether the power of attorney was procured through duress, fraud or undue influence;
- (d) to determine whether the agent is entitled to receive compensation or whether the compensation received by the agent is reasonable for the responsibilities performed;
- (e) to approve the record of all receipts, disbursements and transactions entered into by the agent on behalf of the principal;
- (f) to remove the agent upon the grounds that the agent has violated, or is unfit, unable, or unwilling to perform, the fiduciary duties under the power of attorney;
- (g) to determine how multiple agents must act;
- (h) to construe any provision of a power of attorney.

A special proceeding may also be commenced by an agent who wishes to obtain court approval of his or her resignation.

3. A special proceeding may be commenced pursuant to subdivision two of this section by any person identified in subparagraph (3) of paragraph (a) of subdivision (2) of section 5-1505, the agent, the spouse, child, or parent of the principal, the principal's successor in interest, or any third party who may be required to accept a power of attorney.

4. If a power of attorney is suspended or revoked under this section, or the agent is removed by the court, the court may require the agent to provide a record of all receipts, disbursements and transactions entered into by the agent on behalf of the principal and to deliver any property belonging to the principal and copies of records concerning the principal's property and affairs to a successor agent, a government entity, or the principal's legal representative.

§ 5-1511. Termination or revocation of power of attorney; notice

1. A power of attorney terminates when:

- (a) the principal dies;

- (b) the principal becomes incapacitated, if the power of attorney is not durable;
- (c) the principal revokes the power of attorney;
- (d) the principal revokes the agent's authority and there is no co-agent or successor agent or no co-agent or successor agent who is willing or able to serve;
- (e) the agent dies, becomes incapacitated or resigns and there is no co-agent or successor agent or no co-agent or successor agent who is willing or able to serve;
- (f) the authority of the agent terminates and there is no co-agent or successor agent or no co-agent or successor agent who is willing or able to serve
- (g) the purpose of the power of attorney is accomplished; or
- (h) a court order revokes the power of attorney as provided in section 5-1510 of this title or in section twenty-nine of article eighty-one of the mental hygiene law.

2. An agent's authority terminates when:

- (a) the principal revokes the agent's authority;
- (b) the agent dies, becomes incapacitated, or resigns;
- (c) the agent's marriage to the principal is terminated by divorce, annulment or declaration of nullity, unless the power of attorney expressly provides otherwise. If the authority of an agent is revoked solely by this subdivision, it shall be revived by the principal's remarriage to the former spouse; or
- (d) the power of attorney terminates.

3. A principal may revoke a power of attorney:

- (a) in accordance with the terms of the power of attorney.
- (b) by delivering a written, signed and dated revocation of the power of attorney as follows:
  - (1) to the agent, and the agent must comply with the principal's revocation notwithstanding the actual or perceived incapacity of the principal unless the principal is subject to a guardianship under article eighty-one of the mental hygiene law; and
  - (2) to any third party that the principal has reason to believe has received, retained, or acted upon, the power of attorney.

4. Where the power of attorney has been recorded pursuant to section 294 of the New York real property law, the principal shall also record a written revocation pursuant to section 326 of the real property law.

5. Termination of an agent's authority or of the power of attorney is not effective as to any third party who has not received actual notice of the termination and acts in good faith under the power of attorney. Any action so taken, unless otherwise invalid or unenforceable, shall bind the principal and the principal's successors in interest. A financial institution is deemed to have actual notice after it has had a reasonable opportunity to act on a written notice of the revocation or termination following its receipt of the same at its office where such account is located.

6. Unless the principal expressly provides otherwise, the execution of a power of attorney revokes any and all prior powers of attorney executed by the principal.

§ 5-1512. Powers of attorney executed in other jurisdictions

A power of attorney executed in another state or jurisdiction in compliance with the law of that state or jurisdiction or the law of this state is valid in this state, regardless of whether the principal is a domiciliary of this state.

§ 5-1513. Statutory short form power of attorney

1. The use of 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, it shall be construed as a statutory short form power of attorney in accordance with the provisions of this title:

**“POWER OF ATTORNEY”**

**NEW YORK STATUTORY SHORT FORM**

CAUTION TO THE PRINCIPAL: Your Power of Attorney is an important document. As the “principal,” you give the person whom you choose (your “agent”) powers 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 powers.

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

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

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

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.

**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, they must act together unless you initial the statement below.

( ) My agents may act SEPARATELY.

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

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

Successor agents designated above must act together unless you initial the statement below.

( ) My successor agents may act SEPARATELY.

This POWER OF ATTORNEY is valid when I sign it and its validity shall not be affected by my subsequent incapacity unless I have stated otherwise below, under “Modifications.”

This POWER OF ATTORNEY REVOKEs any and all prior Powers of Attorney executed by me unless I have stated otherwise below, under “Modifications.”

If you are NOT revoking your prior Powers of Attorney, and if you are granting the same power(s) in two or more Powers of Attorney, you must also indicate under “Modifications” whether the agents given these powers are to act together or separately.

If your prior Power of Attorney has been in active use, you should provide a copy of this Power of Attorney to your prior agent(s) and to the financial institutions where your accounts are located.

**GRANT OF POWERS:**

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

- (1) Initial the bracket at each power you grant, or
- (2) Write or type the letters for each power 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 power 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;  
( ) (J) benefits from governmental programs or civil or military service;  
( ) (K) health care billing and payment matters; records, reports, and statements;  
( ) (L) retirement benefit transactions;  
( ) (M) tax matters;  
( ) (N) all other matters;  
( ) (O) full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) shall select;  
( ) (P) EACH of the matters identified by the following letters .

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

**MODIFICATIONS: (OPTIONAL)**

In this section, you may make additional provisions, including language to limit or supplement powers granted to your agent.

However, you cannot use this Modifications section to grant your agent powers to make major gifts or changes to interests in your property. If you wish to grant your agent such authority, you MUST complete the Statutory Major Gifts Rider.

**(OPTIONAL) MAJOR GIFTS AND OTHER TRANSFERS: STATUTORY MAJOR GIFTS RIDER**

If you wish to authorize major gifts and other transfers of your property, you must complete the Statutory Major Gifts Rider, and initial the statement below. Initialing the statement, below, by itself, does not authorize your agent to make major gifts and other transfers.

( ) I wish to authorize my agent to make major gifts and other transfers of my property, in accordance with the terms and conditions of the Statutory Major Gifts Rider that supplements this Power of Attorney.

The preparation of the Statutory Major Gifts Rider should be supervised by a lawyer.

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

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).

**COMPENSATION OF AGENT(S): (OPTIONAL)**

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

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

**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.

**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 a Power of Attorney.

**SIGNATURE AND ACKNOWLEDGMENT:**

In Witness Whereof I have hereunto signed my name on \_\_\_\_\_, 20\_\_\_\_\_.  
PRINCIPAL signs here: ==> \_\_\_\_\_

(acknowledgment)

**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 receipts, 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 the following manner: (Principal's Name) by (Your Signature) as Agent.

You may not use the principal's assets to benefit yourself or give gifts to yourself or anyone else unless there is a Statutory Major Gifts Rider attached to this Power of Attorney that specifically gives you that authority. 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.

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 to the principal.

Agent(s) sign(s) here: ==> \_\_\_\_\_  
(acknowledgment(s))"

§ 5-1514. Major gifts and other transfers; formal requirements; statutory form

1. If the principal intends to authorize the agent to make gifts and transfers other than gifts authorized by subdivision fourteen of section 5-1502I of this title, the principal must expressly grant such authority either in a statutory major gifts rider to a statutory short form power of attorney or in a non-statutory power of attorney executed in the same manner as a will.
2. The principal may authorize the agent to make gifts to the principal's spouse, children and more remote descendants, and parents, not to exceed, for each donee, the annual federal gift tax exclusion amount pursuant to the Internal Revenue Code. For gifts to the principal's children and more remote descendants, and parents, the maximum amount of the gift to each donee shall not exceed twice the gift tax exclusion amount, if the principal's spouse agrees to split gift treatment pursuant to the Internal Revenue Code.
3. The principal may also authorize the agent to:
  - (a) make gifts up to a specified dollar amount, or unlimited in amount.
  - (b) make gifts to any person or persons.
  - (c) make the following specified transactions:
    - (1) open, modify or terminate a deposit account in the name of the principal and other joint tenants;
    - (2) open, modify or terminate any other joint account in the name of the principal and other joint tenants;
    - (3) open, modify, or terminate a bank account in trust form as described in section 7-5.1 of the estates, powers and trusts law, and designate or change the beneficiary or beneficiaries of such account;
    - (4) open, modify, or terminate a transfer on death account as described in part four of article thirteen of the estates, powers and trusts law, and designate or change the beneficiary or beneficiaries of such account;
    - (5) change the beneficiary or beneficiaries of any contract of insurance on the life of the principal or annuity contract for the benefit of the principal;

- (6) procure new, different or additional contracts of insurance on the life of the principal or annuity contracts for the benefit of the principal and designate the beneficiary or beneficiaries of any such contract;
- (7) designate or change the beneficiary or beneficiaries of any type of retirement benefit or plan;
- (8) create, amend, revoke, or terminate an inter vivos trust;
- (9) create, change or terminate other property interests or rights of survivorship, and designate or change the beneficiary or beneficiaries therein.

A gift or other transfer to an individual authorized by this subdivision may be made outright, to a trust established or created for such individual, to a Uniform Transfers to Minors Act account for such individual (regardless of who is the custodian), or to a tuition savings account or prepaid tuition plan as defined under section 529 of the Internal Revenue Code for the benefit of such individual (without regard to who is the account owner or responsible individual for such account).

4. An agent may not

- (a) exercise any authority described in subdivisions two or three of this section unless such authority is expressly granted in a statutory major gifts rider to a statutory short form power of attorney or in a non-statutory power of attorney executed in the same manner as a will;
- (b) make a gift to himself or herself or create in himself or herself an interest in the principal's property pursuant to any grant of authority described in subdivisions two or three of this section unless such authority is expressly granted in a statutory major gifts rider to a statutory short form power of attorney or in a non-statutory power of attorney executed in the same manner as a will.

5. Any authority granted to an agent pursuant to subdivisions two or three or paragraph (b) of subdivision four of this section must be exercised according to any instructions provided by the principal or otherwise for purposes which the agent reasonably deems to be in the best interest of the principal, specifically including financial, estate, or tax planning, including minimization of income, estate, inheritance, generation-skipping transfer or gift taxes.

6. Construction of the provisions of the statutory major gifts rider

- (a) In a statutory major gifts rider to a statutory short form power of attorney, the language "I grant power to my agent to make gifts to my spouse, children and more remote descendants, and parents, not to exceed, for each donee, the annual federal gift tax exclusion amount pursuant to the Internal Revenue Code. For gifts to my children and more remote descendants, and parents, the maximum amount of the gift to each donee shall not exceed twice the gift tax exclusion amount, if my spouse agrees to split gift treatment pursuant to the Internal Revenue Code" must be construed to mean that the principal authorizes the agent:

- (1) To make gifts on behalf of the principal to the principal's spouse, children and other descendants, and parents. Gifts to a donee shall not exceed in any calendar year the amount of the federal gift tax exclusion available to the principal under section 2503(b) of the Internal Revenue Code. Gifts may be made outright or by exercise or release of a presently exercisable general power of appointment held by the principal, to a trust established or created for such individual (provided that gifts to such trust qualify for the federal gift tax exclusion under section 2503(b))

or (c) of the Internal Revenue Code), to a Uniform Transfers to Minors Act account for such individual (regardless of who is the custodian), to a tuition savings account or prepaid tuition plan as defined under section 529 of the Internal Revenue Code for the benefit of such individual (without regard to who is the account owner of or responsible person for such account).

(2) To make gifts up to twice the annual federal gift tax exclusion amount on behalf of both the principal and the principal's spouse, to the principal's children and other descendants, and parents, if the principal's spouse consents to the splitting of such gifts pursuant to section 2513 of the Internal Revenue Code;  
(3) To consent, pursuant to [S]section 2513(a) of the United States Internal Revenue Code, to the splitting of gifts made by the principal's spouse to the principal's children and other descendants in any amount, and to the splitting of gifts made by the principal's spouse to any other persons in amounts not exceeding the aggregate annual gift tax exclusions for both spouses under [S]section 2503(b) of said Code (or cognate provisions of any successor statute);  
(4) To satisfy pledges made to organizations, whether charitable or otherwise, by the principal; and

(b) Any authority granted to an agent under a statutory major gifts rider to a statutory short form power of attorney must be construed to mean that the principal authorizes the agent:

(1) To prepare, execute, consent to on behalf of the principal, and file any return, report, declaration, or other document required by the laws of the United States, or by any state or political subdivision thereof, or by any foreign country or political subdivision thereof, which the agent deems to be desirable or necessary with respect to any gift made under the authority of this section;  
(2) To execute, acknowledge, seal, and deliver any deed, assignment, agreement, trust agreement, authorization, check, or other instrument which the agent deems useful for the accomplishment of any of the purposes enumerated in this section;  
(3) To prosecute, defend, submit to arbitration, settle and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any gift transaction or to intervene in any related action or proceeding;  
(4) To hire, discharge and compensate any attorney, accountant, expert witness, or other assistant or assistants when the agent deems that action to be desirable for the proper execution by the agent of any of the powers described in this section, and for the keeping of needed records thereof; and  
(5) In general, and in addition to but not in contravention of all the specific acts listed in this section, to do any other act or acts which the agent deems desirable or necessary to complete any such gift on behalf of the principal.

(c) The powers explicitly authorized in this section shall be construed to include any like powers authorized in any other section of title 15 of article 5 of the general obligations law. Accordingly, such like powers as are authorized in any other section of title 15 of article 5 of the general obligations law may not be exercised by the agent unless they are expressly granted to the agent in the statutory major gifts rider or in a non-statutory power of attorney executed in the same manner as a will.

(d) The statutory major gifts rider may be modified pursuant to section 5-1503 to contain additional provisions authorizing the agent to make any or all of the transactions specified at subdivision (3) of this section.

7. All powers described in this section shall be exercisable equally with respect to a gift of any property in which the principal is interested at the time the power of attorney is given or in which the principal becomes interested after that time, and whether located in the state of New York or elsewhere.

8. If, after naming the spouse as a permissible recipient of gifting or other transfers, the principal is divorced, his or her marriage is annulled or its nullity declared, the divorce, annulment, declaration of nullity or dissolution revokes the authority to gift to the former spouse, unless the statutory major gifts rider expressly provides otherwise. If the authority to gift to the former spouse is revoked solely by this subdivision, it shall be revived by the principal's remarriage to the former spouse.

9. To be valid, a statutory major gifts rider to a statutory short form power of attorney must:

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

(b) Purport to be signed and dated by a principal with capacity and witnessed by two persons who are not named as permissible recipients of gifts or other transfers under the statutory major gifts rider, in the manner described at paragraph (2) of subdivision (a) of section 3-2.1 of the estates, powers and trusts law.

(c) Be accompanied by a properly executed statutory short form power of attorney in which the statement "Major Gifts and Other Transfers: Major Gifts Rider" is initialed by the principal.

10. The use of the following shall be construed as the "Statutory Major Gifts Rider" for a statutory short form power of attorney:

**“POWER OF ATTORNEY**

**NEW YORK STATUTORY MAJOR GIFTS RIDER**

**AUTHORIZATION TO MAKE MAJOR GIFTS OR OTHER TRANSFERS**

CAUTION TO THE PRINCIPAL: This OPTIONAL rider allows you to authorize your agent to make major gifts or other transfers of your money or other property during your lifetime. Granting any of the following powers to your agent gives your agent the authority to take actions which could significantly reduce your property or change how your property is distributed at your death.

“Major gifts or other transfers” are described in section 5-1514 of the General Obligations Law. This Major Gifts Rider does not require your agent to exercise granted powers, but when he or she exercises these powers, he or she must act according to any instructions you provide, or otherwise in your best interest.

This Major Gifts Rider and the Power of Attorney it supplements must be read together as a single instrument.

Before signing this document authorizing your agent to make major gifts and other transfers, you should seek legal advice to ensure that your intentions are clearly and properly expressed.

**A. GRANT OF LIMITED POWERS TO MAKE GIFTS**

Granting gifting powers to your agent gives your agent the authority to take actions which could significantly reduce your property.

If you wish to allow your agent to make gifts to himself or herself, you must separately grant that

authority in section C below.

To grant your agent the gifting power provided below, initial the bracket to the left of the power.

( ) I grant power to my agent to make gifts to my spouse, children and more remote descendants, and parents, not to exceed, for each donee, the annual federal gift tax exclusion amount pursuant to the Internal Revenue Code. For gifts to my children and more remote descendants, and parents, the maximum amount of the gift to each donee shall not exceed twice the gift tax exclusion amount, if my spouse agrees to split gift treatment pursuant to the Internal Revenue Code.

This authority must be exercised pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest.

**B. MODIFICATIONS:**

Use this section if you wish to authorize gifts in excess of the above amount, gifts to other beneficiaries, or other types of transfers.

Granting such powers 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. If you wish to authorize your agent to make gifts or transfers to himself or herself, you must separately grant that authority in section C below.

( ) I grant the following powers to my agent to make gifts or transfers pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest:

**C. GRANT OF SPECIFIC AUTHORITY FOR AN AGENT TO MAKE MAJOR GIFTS OR OTHER TRANSFERS TO HIMSELF OR HERSELF: (OPTIONAL)**

If you wish to authorize your agent to make gifts or transfers to himself or herself, you must grant that authority in this section, indicating to which agent(s) the authorization is granted, and any limitations and guidelines.

( ) I grant specific authority for the following agent(s) to make the following major gifts or other transfers to himself or herself:

This authority must be exercised pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest.

**D. 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 Major Gifts Rider.

**E. SIGNATURE OF PRINCIPAL:**

In Witness Whereof I have hereunto signed my name on \_\_\_\_\_, 20\_\_\_\_.

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Your signature

**F. SIGNATURES OF WITNESSES:**

By signing as a witness, I acknowledge that the principal signed the Major Gifts Rider in my presence and 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 Major Gifts Rider reflects his or her wishes and that he or she has signed it voluntarily. I am not named herein as a permissible recipient of major gifts.

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Signature of witness 1

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Signature of witness 2

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Date

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Date

Print name

Print name

Address

Address

City, State, Zip code

City, State, Zip code

This document prepared by: \_\_\_\_\_ " § 20. This act shall take effect on the first of March next succeeding the date on which it shall have become a law; provided that the provisions of this act shall apply to all powers of attorney executed prior to, on or after the effective date of this act and the provisions of this act shall not affect the validity of any power of attorney or the conveyance of authority to an attorney-in-fact or agent contained in a power of attorney executed prior to the effective date of this act if such power of attorney was valid at the time of its execution, except that:

(a) subdivisions 8, 14 and 15 of section 5-1501 and sections 5-1501A and 5-1501B of the general obligations law as added by section two of this act, subparagraph 3 of paragraph (a) of subdivision 2 of section 5-1505, and sections 5-1506, 5-1509, 5-1513 and 5-1514 of the general obligations law, as added by section nineteen of this act and the amendments to subdivisions 2 and 9 of section 5-1502A, subdivisions 2 and 7 of section 5-1502B, subdivisions 2 and 9 of section 5-1502C, subdivisions 1 and 2 of section 5-1502D, subdivisions 1, 2 and 3 of section 5-1502F, the section heading, the opening paragraph, and subdivisions 13 and 14 of section 5-1502I, subdivisions 2 and 4 of section 5-1502L, and section 5-1503 of the general obligations law made by sections six, seven, nine, nine-a, twelve, thirteen and seventeen of this act, shall apply to all powers of attorney executed on or after the effective date of this act;

(b) section 5-1510 of the general obligations law, as added by section nineteen of this act, shall apply to all proceedings concerning powers of attorney commenced on or after the effective date of this act, and shall also apply to all proceedings concerning powers of attorney commenced before the effective date of this act unless the court determines that application of a particular provision of such section would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of section 5-1510 shall not apply and prior law shall apply.