

## **New York Statutory Power of Attorney FAQ's**

*New York State has enacted a new statutory Power of Attorney effective **June 13, 2021**.  
Due to the potential to assign significant powers to an Agent, we **strongly urge** consultation  
with an attorney before executing a Power of Attorney.*

### **What's changed with this Power of Attorney?**

A POA validly executed prior to the law that goes into effect on **June 13, 2021**, will be grandfathered and enforceable under the new law provisions.

The POA form executed on or after **June 13, 2021**, must *substantially conform* rather than contain the exact wording of section 5-1513 of the General Obligations Law.

A third party may sign for the Principal at the Principal's direction. This provision is intended to be used by a Principal who has capacity but is under a physical disability.

The Statutory Gifts Rider has been eliminated. Gifting provisions may be included in the Modifications section of the Power of Attorney form itself.

Gifts in excess of the \$5,000 maximum allowed in section (f)(1) personal and family maintenance must be expressly authorized by the Principal in the Modifications section.

Any section indicated as "Optional" that is not used may be omitted and replaced by the words "Intentionally Omitted".

The Power of Attorney must be acknowledged and witnessed by two persons who are not named in the instrument as agents or as permissible recipients of gifts. The person who takes the acknowledgment under this paragraph may also serve as one of the witnesses.

### **What is a Power of Attorney?**

A Power of Attorney is a powerful legal document that grants one or more persons the power to manage financial affairs and make important decisions on someone else's behalf. The Power of Attorney is frequently used to help in the event of a Principal's illness or disability, or in legal transactions where the Principal cannot be present to sign necessary legal documents.

### **Who is the Principal?**

The person who executes a Power of Attorney is called the **Principal**. The Principal grants the Agent the authority to act on his/her/their behalf.

### **Who is the Agent?**

The Agent is the person authorized via a Power of Attorney to act on behalf of the Principal.

The Agent agrees to follow the instructions of the Principal and in the absence of explicit instruction, to act in the Principal's best interests.

### **What makes this form a Statutory Short Form?**

A Power of Attorney is a Statutory Short Form when it complies with the requirements and language provided in the state statute. When powers are initialed in Section (f) of the form, each power incorporates the items listed in the construction sections of the statute.

### **How do I know if this Power of Attorney is durable?**

When executed correctly, the Power of Attorney is '**durable**', meaning it will remain in effect even if the Principal becomes incapacitated (lacking capacity), unless it is indicated otherwise in the modification section of the Power of Attorney.

*Section 5-1501 of the General Obligations Law defines capacity as 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".*

### **Is this Power of Attorney a Springing Power of Attorney?**

A Springing Power of Attorney is a type of durable Power of Attorney document that only comes into effect after certain conditions are met, e. g. when the Principal becomes disabled or mentally incompetent. The 2021 Power of Attorney is a durable power of attorney which becomes effective once signed by the Agent(s). However, practitioners have the option of including 'springing' language in the Modifications section which would determine alternate conditions under which the Power of Attorney would become effective.

*Best practices vary as to the benefit of including a 'springing' option and practitioners differ as to the most effective language. Attorneys are encouraged to evaluate the benefit of this springing option and discuss with their client(s).*

### **How do I create a valid Power of Attorney?**

The creation of a valid Power of Attorney is prescribed in section 5-1501B of the General Obligations Law. To be valid, among other things, the Power of Attorney must conform to the following:

- 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
- Be signed, initialed and dated by a Principal with capacity, or in the name of such Principal by another person, duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property, and witnessed by two persons one of whom can be the notary. Witnesses cannot be the agent or successor agent or a permissible recipient of gifts.
- Be signed and dated by any Agent acting on behalf of the Principal with the signature of the Agent duly acknowledged in the manner prescribed for the acknowledgment of a conveyance

of real property.

-Substantially conform to the wording of the:

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

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

Even if a Power of Attorney is "valid," it may not be a Statutory Short Form which you can compel a third party to accept.

### **When does the Power of Attorney go into effect?**

The Agent can act on behalf of the Principal only after signing the Power of Attorney before a notary public (acknowledgment). The date on which an Agent's signature is acknowledged is the effective date of the Power of Attorney as to that Agent. If two or more Agents are designated to act together, the Power of Attorney takes effect when all the Agents have signed and their signatures have been acknowledged.

*Please note that the revised Power of Attorney form, effective **June 13<sup>th</sup> 2021**, must not be executed prior to that date or it will not be a statutory Power of Attorney.*

### **How long does the Power of Attorney remain in effect?**

The Principal can revoke or terminate a Power of Attorney at any time for any reason as long as the Principal is of sound mind (has capacity). If the Principal is no longer of sound mind, a court can remove the Agent for acting improperly.

### **What happens if the Principal dies?**

The Power of Attorney terminates at the death of the Principal or due to other events described in section 5-1511 of the General Obligations Law.

### **What activities are covered by this Power of Attorney?**

A Principal can give an Agent broad legal authority, or very limited authority. The power may be limited to a particular activity, such as one particular real estate transaction, or a broad range of powers to manage such things as gifting, banking and business transactions. In addition to specifying what powers are being granted, further explanation can be provided in the Modifications section of the form.

New York law provides a list of powers that a Principal can choose from when completing the Power of Attorney form. The Principal can give the Agent any or all of the powers below. Each of these powers is further described in the construction sections of the statute (NY GOL 5-1502A-5-1502N). The Principal can also give the Agent the authority to delegate the handling of these matters to someone else.

-Real estate transactions

-Chattel and goods transactions

-Bond, share and commodity transactions

- Banking transactions
- Business operating transactions
- Insurance transactions
- Estate transactions
- Claims and Litigation
- Personal and family maintenance
- Benefits from governmental programs or civil or military service
- Financial matters related to health care; records, reports and statements
- Retirement benefit transactions
- Tax matters

**Does this Power of Attorney cover health care decisions?**

Health care decision making is not included within the scope of this Power of Attorney. The power to make medical decisions on behalf of someone else, including the decision to remove or provide life-sustaining treatment, is done by executing a separate document called a Health Care Proxy.

Certain powers of attorney listed in section 5-1501C of the General Obligations Law are excluded from this statute, such as a power of attorney given primarily for a business or commercial purpose. However, a statutory short form power of attorney may be used in any of the transactions described in section 5-1501C.

**Is this Power of Attorney valid if completed in another state?**

A Power of Attorney that complies with section 5-1501B of the General Obligations Law and is executed in another state or jurisdiction by a New York resident is valid in New York.