

NEWS ALERT

TRUSTS & ESTATES



A Gift From New York (Without the Rider): New York's Updated Power of Attorney

By Patrick D. Coughlin | June 22, 2021

Effective June 13, 2021, New York updated its Statutory Short Form Power of Attorney, with revisions that should significantly improve the experience for both practitioners and clients alike.

A power of attorney is a document in which the principal appoints an agent to act on his or her behalf with regard to the principal's financial affairs. Although its significance is perhaps downplayed by the often-used phrase "collateral instrument," the execution of a power of attorney can give sweeping authority over one's financial affairs to one's agent.

For much of the last decade, New York's Statutory Short Form Power of Attorney often faced criticism as being both difficult to properly execute, as well as having a rigid statutory framework that required strict compliance with the exact wording of the statute.

One of the updates requires that the power of attorney form only "substantially conform" to the statute. Unlike the old law, under the new law slight, non-substantive deviations from the statutory form, such as insignificant spelling, punctuation, or formatting mistakes, or using language that is similar but not identical to the statute, will no longer invalidate a power of attorney. Of note, this will not retroactively make valid an old statutory form that was invalid under the old law.

Another significant change is the elimination of the Statutory Gifts Rider. Under the old law, a principal who wanted to allow her agent to make gifts of more than \$500 annually had to initial this authority on the Statutory Short Form itself, and then she had to also sign a separate document authorizing her agent to make such gifts. Now, the new law permits gifts of up to \$5,000, and the Statutory Short Form Power of Attorney provides clearer instructions about how to change the gifting authority on the form itself under the "Modifications" section. No separate rider is necessary.

The new Statutory Short Form Power of Attorney must now be signed before a Notary Public and two witnesses, who are not named in the power of attorney as agents or permissible recipients of gifts. The prior law did not have a witness requirement.

The addition of the witness requirement is likely related to the new law allowing a third party to sign on behalf of the principal, at the principal's direction, which allows a principal who has a physical disability to sign a power of attorney.

One of the more frequent complaints about powers of attorney in any state is the difficulty encountered when trying to use them, and New York is no exception. To help avoid this issue, the new law permits courts to award damages in the event an otherwise valid power of attorney is unreasonably denied by a third party.

The new law also includes a timeline for third parties to either accept or reject the Statutory Short Form Power of Attorney, allows third parties to rely on the assertions of either the agent or legal counsel as to the validity of the power of attorney, and provides a shield from liability to third parties that accept a power of attorney in good faith.

While any power of attorney validly executed under the prior law will remain effective, the passing of the new Statutory Short Form Power of Attorney in New York is a good opportunity to not only review your current power of attorney, but your entire estate plan.

Please contact a Murtha Cullina LLP Trusts and Estates Attorney to discuss your estate plan.

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