

**NEW LAW AS TO POWERS OF ATTORNEY:
THE MOVE FROM AGENT TOWARDS
STATUTORY FIDUCIARY**

by Leslie M. Langworthy, Esq.

Dated April 28, 2009

JOHNSON & LANGWORTHY, P.C.
1688 Victory Boulevard
Suite 301
Staten Island, New York 10314
PH: (718) 442-7004
FX: (718) 442-9086

TABLE OF CONTENTS

<u>Title</u>	<u>Page Number</u>
Section A - Overview of the New Statute	1
Section B - Definitions, Durability, Validity	2
(1) New Definitions	3
(2) Incapacity of Principal	6
(3) The Creation of a Valid Power of Attorney	8
Section C - The Scope of Authority Granted, Meaning of the Words in the Statutory Short Form	13
(1) Changes to Authority as to Real Estate	14
(2) Changes to Authority as to Chattel and Goods	15
(3) Changes to the Authority as to Bond, Share and Commodity Transactions	16
(4) Changes to Authority With Respect to Banking Transactions	17
(5) Authority as to Business Transactions	20
(6) Changes to Authority as to Insurance Transactions	20
(7) Changes to Authority as to Estate Transactions	23
(8) Authority as to Claims and Litigation	24
(9) Changes to Authority as to Personal Relationships	24
(10) Changes to Authority as to Benefits from Military Service	24
(11) Changes to Authority as to Records, Reports and Statements	29
(12) Changes to Authority as to Retirement Benefit Transactions	30
(13) Changes to Authority as to Gift Transactions	32
(14) Changes to Authority as to Tax Matters	34
(15) Changes to Authority as to All Other Matters	34

TABLE OF CONTENTS

<u>Title</u>	<u>Page Number</u>
Section D - Customizing Your Client’s Statutory Short Form Power of Attorney and/or Statutory Major Gifts Rider	35
Section E - Acceptance of the Statutory Short Form Power of Attorney	37
Section F - Duties of the Agent/Attorney In Fact; Compensation; the Monitor; and Special Proceedings	42
(1) Standard of Care	42
(2) Compensation	46
(3) Monitor	46
(4) Special Proceeding	46
Section G - Gifts and Transfers	49
Section H - Miscellaneous	55
(1) Termination or Revocation	55
(2) Other Jurisdictions	57
(3) Signature of Agent	57
(4) Co-Agents and Successor Agents	57
(5) The Monitor	58
APPENDIX (i) -Text of Statutory Short Form Power of Attorney*	59
APPENDIX (ii) - Text of New York Statutory Major Gifts Rider*	64

The format attached is the format contained in the Spring 2009 NYSB Elder Law Attorney published by the New York State Bar Association which is footnoted to state:

“Editor’s Note: This form is a draft POA which is being distributed for comment/suggestions. If you have any comments/suggestions, please e-mail them to Dan McMahon, NYSBA Publications Director at dmcMahon@nysba.org. A final version of the new POA form will be distributed once any necessary changes (if any) have been made. Final spacing has not been determined by the official publishers. Italics have been added to the portions of the new Statutory Short Form Power of Attorney and Major Gifts Rider that are instructional. Lines representing spaces and acknowledgments in brackets are illustrative only and have been added for clarity and convenience.”

SECTION A

OVERVIEW OF THE NEW STATUTE

In 2008 the New York Legislature passed an Act (Chapter 644 A 6421-B) to amend the law relating to powers of attorney which was signed by Governor Patterson on January 27, 2009.

The effective date of the law was March 1, 2009. However, thereafter extended legislation was passed to move the effective date to September 1, 2009.

This paper is dated April 28, 2009. It is possible that the law may be further amended before its effective date and/or the effective date may be pushed further into the future. Accordingly, this paper reviews the new law to be effective September 1, 2009, as of April 28, 2009.

The law regarding powers of attorney is set forth in Title 15 Article 5 of the General Obligations Law. According to its preamble, the Act would:

- 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
- provide for civil proceedings with respect to powers of attorney
- repeal certain sections of the law currently in effect

The first change was to amend the title to the law regarding powers of attorney which hints at the changes to be made.

The title changed from “STATUTORY SHORT FORM POWER OF ATTORNEY” to “STATUTORY SHORT FORM AND OTHER POWERS OF ATTORNEY FOR FINANCIAL ESTATE PLANNING”

Title 15, in effect until September 1, 2009, contains six sections, §5-1501 through §5-1506. §5-1501 was repealed, §5-1502; §5-1503 and §5-1504 were amended; §5-1505 and §5-1506 were repealed; and §5-1507 through §5-1514 are new. Starting September 1, 2009, Title 15 will contain fourteen sections §5-1501 through §5-1514. The new law provides that it applies to all powers of attorney executed on or after the effective date of the new law. It further provides that the provisions of the new law will 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 the new law if such power of attorney was valid at the time of its execution except that certain sections of the new law DO APPLY to powers of attorney executed prior to the effective date of the new law. Those sections that are applicable to existing powers of attorney are:

1. the new §5-1502J titled “Construction - benefits from governmental programs or civil or military service” (See discussion on Page 24);
2. the new §5-1502K titled “Construction - health care billing and payment matters; records reports and statements” (See discussion on Page 29);
3. the new §5-1504 titled “Acceptance of statutory short form power of attorney” (See discussion on Page 37);
4. the new §5-1505 titled “Standard of care; fiduciary duty; compelling disclosure of record” (See discussion on Page 42); and
5. the new §5-1510 titled “Special Proceedings” (See discussion on Page 46).

SECTION B

DEFINITIONS, DURABILITY, VALIDITY

Prior to September 1, 2009, §5-1501 set forth the text of a statutory short form power of attorney. §5-1501 was repealed. The text of the new statutory short form power of attorney is now set forth in new

§5-1513. §5-1501, instead of containing the text of the statutory short form power of attorney, will have after September 1, 2009 three entirely new subsections:

§5-1501 titled “Definitions”

§5-1501A titled “Power of Attorney not affected by incapacity”

§5-1501B titled “Creation of a valid power of attorney; when effective”

(1) New Definitions

New §5-1501 titled “Definitions” provides:

“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 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 authorized to be 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. (UNDERSCORING added TO SHOW ADDITIONAL LANGUAGE that is different from

the definition previously contained in General Obligations Law §5-1504(1)).

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, governmental or commercial entity (including, but not limited to, any such entity identified in this subdivision), 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 to place any memorandum, mark or sign, written, printed, stamped, photographed, engraved or otherwise upon an instrument or writing, or to use an electronic signature as that term is defined in subdivision three of section three hundred two of the state technology law, with the intent to execute the instrument, writing or electronic record. In accordance with the requirements of section three hundred seven of the state technology law, a power of attorney or any other instrument executed by the principal or agent that is recordable under the real property law shall not be executed with an electronic signature.

14. “Statutory major gifts rider” or “SMGR” 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 nine of section 5-1514 of this title, and that contains the exact wording of the form set forth in subdivision ten of section 5-1514 of this title. The use of the form set forth in subdivision ten of section 5-1514 of this title is lawful and when used, it shall be construed as a statutory major gifts rider. 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. The statutory major gifts rider must be executed in the manner provided in section 5-1514 of this title, simultaneously with the statutory short form power of attorney in which the authority (SMGR) is initialed by the principal. A statutory major gifts rider and the statutory short form power of attorney it supplements must be read together as a single instrument.
15. “Statutory short form power of attorney” means a power of attorney that meets the requirements of paragraphs (a), (b) and (c) of subdivision one 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. The use of the form set forth in section 5-1513 of this title is lawful and when used, it shall be construed as a statutory short form power of attorney. A statutory short form power of attorney may be used to grant authority provided in sections 5-1502A through 5-1502N 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 grant any authority provided in section 5-1514 of this title. If the authority (SMGR) on the statutory short form is initialed by the principal, the statutory short form power of attorney must be executed in the manner provided in section 5-1501B of this title, simultaneously with the statutory major gifts rider. A statutory short form power of attorney and a statutory major gifts rider which supplements it must be read together as a single instrument.
16. “Third party” means a financial institution or person.”

Since the word “agent” is generally a person authorized by another to act for him or one entrusted with another’s business, the concept embodied in the §5-1501(1) definition of “agent” would not have appeared to be changed except insofar as §5-1501(1) states that an “agent” acting under a power of attorney has a “fiduciary relationship with the principal.” The term “fiduciary” is generally a person having the character

of a trustee in respect to the trust and is analogous to that of a trustee in respect of the trust and confidence involved in it and the scrupulous good faith and candor which it requires. It should be noted, however, that the Law Revision Commission specifically states that the agent/attorney in fact is not a trustee.

Since the word “capacity” is generally as an intelligent perception and understanding of the dispositions made of property, etc., the concept embodied in the §5-1501(3) definition of “capacity” would not have appeared to be changed except insofar as §5-1501(3) says “capacity means the ability to comprehend.”

Since the word “principal” is defined under the common law as one who, being competent to do any act for his own benefit or on his own account, confides it to another person to do it for him, the concept embodied in the §5-1501(11) definition of “principal” would not have appeared to have been changed.

The terms “incapacitated,” “Internal Revenue Code,” and “person” are not new concepts. However, all of the other definitions should be read carefully.

(2) Incapacity of the Principal

The law as to whether a power of attorney survives the disability or incompetence of the principal and whether a power of attorney is durable or nondurable, in effect until September 1, 2009, is set forth in §5-1501, §5-1505 and §5-1506. Old §5-1501 and §5-1505 address durable or nondurable powers of attorney and §5-1506 addresses so called “springing” powers of attorney, i.e., a power of attorney effective at a future time or upon the occurrence of a contingency specified in the instrument. However, effective September 1, 2009, §5-1501, §5-1505 and §5-1506 are repealed. The subject is now covered in the new §5-1501A.

The old §5-1501 titled “Statutory short form of general power of attorney; durable and nondurable; formal requirements; joint agents” provides for two forms of power of attorney: §5-1501(1) provides the text of a durable General Power of Attorney New York Statutory Short Form; and §5-1501(1)(a) provides the text

of a nondurable General Power of Attorney New York Statutory Short Form. As aforesaid, old §5-1506 provides the text of a “springing” power of attorney.

Now, as set forth in the new §5-1513 titled “Statutory short form power of attorney,” there is only one statutory form. As indicated by the text (See Appendix (i)), the statutory form contains a section regarding durability as follows:

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

The old §5-1505 titled “Powers of attorney which survive disability or incompetence: durable powers of attorney” provided that:

- “1. The subsequent disability or incompetence of a principal shall not revoke or terminate the authority of an attorney-in-fact who acts under a power of attorney in a writing executed by such principal which contains the words “This power of attorney shall not be affected by my subsequent disability or incompetence”, or words of similar import showing the intent of such principal that the authority conferred shall be exercisable notwithstanding his or her subsequent disability or incompetence.
2. All acts done by an attorney-in-fact pursuant to a power granted pursuant to subdivision one of this section during any period of disability or incompetence 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 were competent and not disabled. If a committee or guardian thereafter is appointed for such principal, such attorney-in-fact, during the continuance of the appointment, shall account to the committee or guardian rather than to such principal. The committee or guardian shall have the same power such principal would have had if he or she were not disabled or incompetent to revoke, suspend or terminate all or any part of such power of attorney.”

The new §5-1501A, titled “power of attorney not affected by incapacity,” provides that:

- “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.”

(3) The Creation of a Valid Power of Attorney

When the new law takes effect, the making of a valid power of attorney will be similar to what is now in place.

However, much of the law concerning the creation of a valid power of attorney which had been set forth in §5-1501, §5-1505 and §5-1506 has been repealed.

As aforesaid, the old §5-1501 set forth the text of a durable and nondurable statutory short form powers of attorney and the old §5-1506 set forth the text of a durable power of attorney effective at a future time. Subsection (1) and (1-a) of old §5-1501 and Subsection (6) of old §5-1506 provided that using those forms in the creation of a power of attorney was lawful and when used would be considered as a “statutory short form power of attorney” in accordance with Title 15 of the General Obligations Law.

After setting forth the text of the statutory forms, the old Subsection (1) and (1-a) of §5-1501 and the old Subsection (5) of §5-1506 in effect up to September 1, 2009 provide that the execution by the principal has to be duly acknowledged in the manner prescribed for a conveyance of real property. The sections also state that the use of any other form of power of attorney is not barred.

The sections also provide technical requirements as to the size of the print and writing.

Finally, the sections indicate that certain text preceded by the word “CAUTION” in one case and “DIRECTIONS” in another case be on the statutory short form to be considered valid.

The old text after the word “CAUTION” contained in §5-1501 reads as follows:

“(CAUTION: THIS IS AN IMPORTANT DOCUMENT. IT GIVES THE PERSON WHOM YOU DESIGNATE (YOUR “AGENT”) BROAD POWERS TO HANDLE YOUR PROPERTY DURING YOUR LIFETIME, WHICH MAY INCLUDE POWERS TO MORTGAGE, SELL OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU...THESE POWERS ARE EXPLAINED MORE FULLY IN NEW YORK GENERAL OBLIGATIONS LAW ARTICLE 5, TITLE 15, SECTIONS 5-1502A THROUGH 5-1503, WHICH EXPRESSLY PERMIT THE USE OF ANY OTHER OR DIFFERENT POWER OF ATTORNEY.

THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL OR OTHER HEALTH CARE DECISIONS. YOU MAY EXECUTE A HEALTH CARE PROXY TO DO THIS.

IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.)”

The old text after the word “CAUTION” contained in §5-1506 in addition to the foregoing stated:

“THESE POWERS MAY ONLY BE USED AFTER A CERTIFICATION THAT YOU HAVE BECOME DISABLED, INCAPACITATED, OR INCOMPETENT OR THAT SOME OTHER EVENT HAS OCCURRED.”

In addition to changing the wording of the CAUTION section, the new §5-1501B will provide for a mandatory section called “Important Information for the Agent”

The revised CAUTION section provides:

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

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

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

You can request information from your agent at any time. If you are revoking a prior Power of Attorney by executing this Power of Attorney, you should provide written notice of the revocation to your prior agent(s) and to the financial institutions where your accounts are located.

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

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

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

The new “Important Information for the Agent” section provides:

“(n) 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 either of the following manner: (Principal's Name) by (Your Signature) as Agent, or (your signature) as Agent for (Principal's Name).

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

Liability of agent:

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

Accordingly, the new §5-1501B(1) (replacing §5-1501 and §5-1506 in effect until September 1, 2009)

provides:

- “1. To be valid, a statutory short form power of attorney, or a non-statutory power of attorney, executed in this state by an individual, 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) 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 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. 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 of acknowledgment of the signature of the agent acting on behalf of the principal or because the principal became incapacitated during any such lapse of time.
 - (d) Contain the exact 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.”

If a lawyer uses the precise new text of the statutory short form set forth in §5-1513, the lawyer will have a valid instrument.

If the principal, however, will be authorizing the agent/attorney in fact to make gifts, the creation of a valid statutory short form power of attorney has completely new requirements.

The new §5-1501B(2) states:

- “2. In addition to the requirements of subdivision one of this section, to be valid for the purpose of authorizing the agent to make any gift or other transfer described in section 5-1514 of this title:
- (a) a statutory short form power of attorney must contain the authority (SMGR) initialed by the principal and be accompanied by a valid statutory major gifts rider; and
 - (b) a non-statutory power of attorney must be executed pursuant to the requirements of paragraph (b) of subdivision nine of section 5-1514 of this title.” (§5-1514(9)(b)) – cross reference to section in parentheses provided)

The §5-1514(9) is set forth in full later in this material (See discussion Page 55). The most important part of §5-1514(9) is subsection §5-1514(9)(b) which provides that the statutory major gifts rider must:

- “(b) 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, and witnessed by two persons who are not named in the instrument as permissible recipients of gifts or other transfers, in the manner described at paragraph two of subdivision (a) of section 3-2.1 of the estates, powers and trusts law.”

N.Y. EPTL 3-2.1(a)(2) provides:

“The signature of the testator shall be affixed to the will in the presence of each of the attesting witnesses, or shall be acknowledged by the testator to each of them to have been affixed by him or by his direction. The testator may either sign in the presence of, or acknowledge his signature to each attesting witness separately.”

As to the effective date of the power of attorney the new §5-1501B provides:

- “3. (a) The date on which an agent's signature is acknowledged is the effective date of the power of attorney as to that agent; provided, however, that if two or more agents are designated to act together, the power of attorney takes effect when all the agents so designated have signed the power of attorney with their signatures acknowledged.
- (b) If the power of attorney states that it takes effect upon the occurrence of a date or a contingency specified in the document, then the power of attorney takes effect only when the date or contingency identified in the document has occurred, and the signature of the agent acting on behalf of the principal 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 paragraph without regard to whether the specified contingency has occurred.”

The new §5-1513 statutory form replaces the §5-1506 “springing” power of attorney. However, the new form has no optional language to use to indicate that the power is a “springing” power of attorney.

Finally, although the language is tortured, §5-1505(4) would appear to provide that other forms of powers of attorney can be used:

- “4. Nothing in this title shall be construed to bar the use of any other or different form of power of attorney desired by a person other than an individual as the term person is defined in section 5-1501 of this title.”

However, the meaning of this section §5-1505(4) is unclear to the author.

SECTION C

THE SCOPE OF AUTHORITY GRANTED; MEANING OF THE WORDS IN THE STATUTORY SHORT FORM

The General Obligations law currently in effect contains old Sections 5-1502A through 5-1502O which explain the meaning of words governing the authority of the agent set forth in the old statutory short form power of attorney. The current forms of the statutory short form power of attorney used prior to the effective

date of the new law require that the principal initial a box adjacent to a subject if he or she wishes to grant the authority as to that subject as defined in these sections of the General Obligations Law. The summary of titles to these sections in effect until September 1, 2009 are as follows:

§5-1502A Construction - real estate transactions.

§5-1502B Construction - chattel and goods transactions.

§5-1502C Construction - bond, share and commodity transactions.

§5-1502D Construction - banking transactions.

§5-1502E Construction - business operating transactions.

§5-1502F Construction - insurance transactions.

§5-1502G Construction - estate transactions.

§5-1502H Construction - claims and litigation.

§5-1502I Construction - personal relationships and affairs.

§5-1502J Construction - benefits from military service.

§5-1502K Construction - records, reports and statements.

§5-1502L Construction - retirement benefit transactions.

§5-1502M Construction - certain gift transactions.

§5-1502N Construction - tax matters.

§5-1502O Construction - all other matters.

(1) Changes to Authority as to Real Estate

§5-1502A titled “Construction - real estate transactions” had two revisions.

Subsection (2) of §5-1502A provided prior to September 1, 2009 that the principal authorizes the agent:

“To sell, to exchange, to convey either with or without covenants, to quit-claim, to release, to surrender, to mortgage, to encumber, 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;” (BRACKETS added TO SHOW DELETIONS)

Accordingly, the new law means that the principal is not authorizing the agent/attorney in fact “to revoke, create or modify a trust” when the principal initials the box adjacent to “(A) real estate transactions.” However, if the principal executes a statutory major gifts rider, in it the principal may, pursuant to the new §5-1514(3)(c)(8) give the agent/attorney in fact the power to “create, amend, revoke, or terminate an inter vivos trust;” (See Page 50 for §5-1514(3)(c)(8)).

Subsection (9) of §5-1502A provides, prior to September 1, 2009, that the principal authorizes the agent:

“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;” (BRACKETS added TO SHOW DELETIONS)

Accordingly, the new law means that the principal is not authorized to execute, acknowledge seal and deliver a “revocation, declaration or modification of trust” when the principal initials the box adjacent to “(A) real estate transactions.” However, if the principal executes a statutory major gifts rider, in it the principal may, pursuant to the new §5-1514(3)(c)(8) give the agent/attorney in fact the power to “create, amend, revoke, or terminate an inter vivos trust;” (See Page 50 for §5-1514(3)(c)(8)).

(2) Changes to Authority as to Chattel and Goods

§5-1502B titled “Construction - chattel and goods transactions” had two revisions.

Subsection (2) of old §5-1502B provides, prior to September 1, 2009, that the principal authorizes the agent:

“To sell, to exchange, to convey either with or without covenants, to release, to surrender, to mortgage, to encumber, 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;” (BRACKETS added TO SHOW DELETIONS)

Accordingly, the new law means that the principal is not authorized to revoke, create or modify a trust when the principal initials the box adjacent to “(B) chattel and goods transactions.” However, if the principal executes a statutory major gifts rider, in it the principal may, pursuant to the new §5-1514(3)(c)(8), give the agent/attorney in fact the power to “create, amend, revoke, or terminate an inter vivos trust” (See Page 50 for discussion of the new §5-1514(3)(c)(8)).

Subsection (7) of old §5-1502 B provides, prior to September 1, 2009, that the principal authorizes the agent:

“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;” (BRACKETS added TO SHOW DELETIONS)

Accordingly, the new law means that the principal is not authorized to execute, acknowledge, seal or deliver a “revocation, declaration of modification of trust” when the principal initials the box adjacent to “(B) chattel and goods transactions.” However, if the principal executes a statutory major gifts rider, in it the principal may, pursuant to the new §5-1514(3)(c)(8) give the agent/attorney in fact the power to “create, amend, revoke, or terminate an inter vivos trust” (See Page 50 for discussion of new §5-1514(3)(c)(8)).

(3) Changes to Authority as to Bond, Share and Commodity Transactions

§5-1502C titled “Construction-bond, share and commodity transactions” had two revisions.

Subsection (2) of old §5-1502C provided prior to September 1, 2009 that the principal authorizes the agent:

- “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;” (BRACKETS added TO SHOW DELETIONS)

Accordingly, the new law means that the principal is not authorized to “revoke, create or modify a trust” when the principal initials the box adjacent to “(C) bond, share and commodity transactions.” However, if the principal executes a statutory major gifts rider in it, the principal may, pursuant to the new §5-1514(3)(c)(8), give the agent/attorney in fact the power to “create, amend, revoke or terminate an inter vivos trust” (See Page 50 for the new §5-1514(3)(c)(8)).

Subsection (9) of old §5-1502(C) provides, prior to September 1, 2009, that the principal authorizes the agent:

- “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;” (BRACKETS added TO SHOW DELETIONS)

Accordingly, the new law provides that the principal is not authorized to execute, acknowledge, seal or deliver any “revocation, declaration or modification of trust” when the principal initials the box adjacent to “(C) bond, share and commodity transactions.” However, if the principal executes a statutory major gifts rider in it the principal may, pursuant to the new §5-1514(3)(c)(8), give the agent/attorney in fact the power to “create, amend, revoke or terminate an inter vivos trust” (See Page 50 for the new §5-1514(3)(c)(8)).

(4) Changes to Authority With Respect to Banking Transactions

§5-1502D titled “Construction-banking transactions” had two important revisions:

Subsection (1) of old §5-1502D provides, prior to September 1, 2009, that the principal authorizes the agent:

- “1. To continue, to modify, [and,] to terminate any deposit account, or other banking arrangement made by or on behalf of the principal prior to the creation of the agency,” (BRACKETS added TO SHOW DELETIONS)

After September 1, 2009, Subsection (1) of the new §5-1502D will provide that the principal authorizes the agent to perform the same tasks with major provisos:

- “1. To continue, to modify, 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 signed and dated by the principal with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property, and which is executed pursuant to the requirements of paragraph (b) of subdivision nine of section 5-1514 of this title, 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 signed and dated by the principal with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property, and which is executed pursuant to the requirements of paragraph (b) of subdivision nine of section 5-1514 of this title.” (UNDERSCORING added TO SHOW NEW LANGUAGE)

Accordingly, under the new law, while the agent/attorney in fact may be able to make deposits and withdrawals from any deposit account, including any joint account or totten trust, there are major provisos to same.

The first proviso is that the agent does not have the power to add or eliminate a joint tenant on an account unless the principal executes a statutory power of attorney with a major gifts rider or executed a non statutory power of attorney which contains part of the language of a statutory major gifts rider, and is acknowledged and executed in the same manner as the statutory major gifts rider.

A statutory major gifts rider must, according to new §5-1514 (9)(b), 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 or real property, and witnessed by two persons who are not named in the instrument as permissible recipients of gifts or other transfers, in the manner described in paragraph two of subdivision (a) of §3-2.1 of the estates powers and trusts law (i.e., executed in the same manner as a Last Will & Testament. See prior quote of EPTL §3-2.1(a)(2) on Page 12)

The second proviso is that the agent cannot add, delete or otherwise change the designation of the beneficiary of a totten trust account unless the principal has executed a statutory power of attorney with a major gifts rider or executed a non statutory power of attorney which contains part of the language of a statutory major gifts rider, acknowledged and executed in the same manner as a Last Will & Testament.

Subsection (2) of old §5-1502D provides, prior to September 1, 2009, that the principal authorizes the agent:

- “2. To open [either in the name of the agent alone, or] in the name 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 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;” (BRACKETS added TO SHOW DELETIONS)

After September 1, 2009, Subsection (2) of §5-1502D will provide that the principal authorizes the agent:

- “2. To open in the name of the principal or on behalf of the principal 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;” (UNDERSCORING added TO SHOW NEW LANGUAGE)

Accordingly, while the agent/attorney in fact can open an account in the name of the principal or on his behalf, the agent/attorney in fact is not authorized to open an account in his own name or in the joint name of the principal and the agent/attorney in fact unless the principal executes a statutory major gifts rider and in it the principal specifically authorizes the agent/attorney in fact to “open, modify, or terminate a deposit account in the name of the principal and other joint tenants” and/or “open, modify or terminate any other joint account in the name of the principal and other joint tenants” (See the new §5-1514(3)(c)(1) and (2)).

(5) Authority as to Business Transactions

§5-1502E titled “Construction - business operating transactions” was not amended.

(6) Changes to Authority as to Insurance Transactions

Old §5-1502F titled “Construction-insurance transactions” had three revisions.

Subsection (1) of §5-1502F provides, prior to September 1, 2009, that the principal is authorizing the agent to:

- “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;

After September 1, 2009, Subsection (1) of the new §5-1502F will provide that the principal is authorizing the agent to do the same but with a major proviso:

- “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 signed and dated by the principal with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property, and which is executed pursuant to the requirements of paragraph (b) of subdivision nine of section 5-1514 of this title;” (UNDERSCORING added TO SHOW NEW LANGUAGE)

Accordingly, the authority of the agent/attorney in fact does not extend to changing the principal’s testamentary plans by changing beneficiary designations without complying with the new statutory major gifts rider (See new §5-1514(3)(c)(5)).

Subsection (2) of old §5-1502F provides, prior to September 1, 2009, that the principal is authorizing the agent to:

- “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;]” (BRACKETS added TO SHOW DELETIONS)

When the new law takes effect, Subsection (2) of § 5-1502F will provide that the principal is only authorizing the agent to:

- “2. To procure new, different or additional contracts of insurance 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;”

Accordingly, the agent/attorney in fact can obtain insurance but NOT on the life of the principal. Since the agent/attorney in fact cannot procure life insurance, he or she cannot designate a beneficiary. See discussion of §5-1514(3)(c)(5) on Page 50 if a statutory major gifts rider is executed and authority as to life insurance specified. See also §5-1514(4)(b) as to the express authority that must be given to the agent to create in himself or herself an “interest” in the principal’s property.

Subsection (3) of old §5-1502F currently provides that the principal is authorizing agent to:

- “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] election as to beneficiary or mode of payment, to change the manner of paying premiums, 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;]” (BRACKETS added TO SHOW DELETIONS)

Subsection (3) of new §5-1502F, when the new law takes effect, will provide that the principal is authorizing the agent to:

- “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 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; 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 signed and dated by the principal with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property, and which is executed pursuant to the requirements of paragraph (b) of subdivision nine of section 5-1514 of this title;” (UNDERSCORING added TO SHOW NEW LANGUAGE)

Accordingly, the agent/attorney in fact cannot add delete or otherwise change the designation of beneficiaries without having the authority conveyed pursuant to §5-1514(3)(c)(5) in a statutory major gifts rider or in a non statutory power of attorney executed like a statutory major gifts rider.

(7) Changes to Authority as to Estate Transactions

The closing paragraph of old §5-1502G - titled “Construction - estate transactions” was revised as follows:

The closing paragraph of §5-1502G currently provides that:

“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, and whether located in the state of New York or elsewhere.” (BRACKETS added TO SHOW DELETIONS)

The closing paragraph in the new §5-1502G provides:

“All powers described in this section 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.” (UNDERSCORING added TO SHOW NEW LANGUAGE)

Accordingly, the estate, trust or other fund need not be specifically identified at the time of creation of the power of attorney in order for the agent/attorney in fact to exercise powers as to that estate, trust or fund.

(8) Authority as to Claims and Litigation

Old §5-1502H as currently in effect permits the agent/attorney in fact to do all that a principal can do as to claims and litigation.

New §5-1502H effective September 1, 2009 will permit the same.

(9) Changes to Authority as to Personal Relationships

The title to old §5-1502I was changed from “Construction - personal relationships and affairs” to “Construction – personal and family maintenance”

A new subsection §5-1502I (14) was added as follows:

- “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 five hundred dollars; and”

Accordingly, the agent/attorney in fact can continue to make the annual gifts customarily made by the principal provided they do not exceed \$500.00 to any one individual or charity.

(10) Changes to Authority as to Benefits from Military Service

Old §5-1502J titled “Construction - benefits from military service” had significant changes as set forth below.

This is one of the sections of the new law which is applicable to powers of attorney executed prior to September 1, 2009.

First, the title was changed from “Construction - benefits from military service” to “Construction - benefits from governmental programs or civil or military service.” (UNDERSCORING added TO SHOW NEW LANGUAGE)

The preamble to new §5-1502J will provide that:

“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,” or in a statutory short form power of attorney properly executed in accordance with the laws in effect at the time of its execution, the language conferring authority with respect to “military service,” must be construed to mean that the principal authorizes the agent: (UNDERSCORING added TO SHOW NEW LANGUAGE)

Section §5-1502J(1) in effect until September 1, 2009 provides that the agent/attorney in fact has the authority to:

- “1. To execute vouchers in the name of the principal for [any and all] allowances and reimbursements payable by the United States, or by [any] state or subdivision [thereof,] to the principal, including [by way of illustration and not of restriction, all] allowances and reimbursements for transportation of the principal and of [his] 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 depository of the United States or of any state or subdivision thereof;” (BRACKETS added TO SHOW DELETIONS)

The new Section §5-1502J(1) effective September 1, 2009 will provide that the agent/attorney in fact has the authority to:

- “1. To execute vouchers in the name of the principal for allowances and reimbursements payable by the United States, or a foreign government or by a state or subdivision of a state, to the principal, including but not limited to allowances and reimbursements for transportation of the principal and of 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 depository of the United States or a foreign government or of any state or subdivision thereof;" (UNDERSCORING added TO SHOW NEW LANGUAGE)

Accordingly, the new §5-1502J(1) provides that the agent/attorney in fact can execute vouchers, etc. for allowances payable by a foreign government and that such reimbursements for transportation are related not only to a male principal and his spouse but to a male or female principal, their spouse, children and other dependents.

Old Section §5-1502J(2) in effect until September 1, 2009 provides that the agent/attorney in fact has the authority to:

- “2. To take possession and to order the removal and shipment of [any] property of the principal from [any] post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, [to] execute and [to] deliver [any] 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;” (BRACKETS added TO SHOW DELETIONS)

The new §5-1502J(2) will provide that the agent has the authority:

- “2. To take possession and to order the removal and shipment of property of the principal from a post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument for such purpose;” (UNDERSCORING added TO SHOW NEW LANGUAGE)

The new language simply eliminated the requirement that the agent/attorney in fact is to exercise judgment (i.e., think desirable) with respect to these powers.

A new Section §5-1502J(3) effective September 1, 2009 was added and it provides that the agent/attorney in fact has the authority:

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

Old Section §5-1502J(3) in effect until September 1, 2009 provides that the agent/attorney in fact has

the authority to:

- “3. To prepare, [to] file and [to] prosecute [the] 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] statute or 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,] benefit or assistance 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, 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;” (BRACKETS added TO SHOW DELETIONS)

Old §5-1502J(3) renumbered §5-1502J(4) provides effective September 1, 2009 that the agent/attorney

in fact has the authority:

- “4. To prepare, file and prosecute a claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is, or claims to be, entitled, under a statute or governmental regulation, 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, 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;” (UNDERSCORING added TO SHOW NEW LANGUAGE)

Accordingly, claims involved are those under government regulation or statute including but not limited to those arising from military service.

Old Section §5-1502J(4) prior to September 1, 2009 provides that the agent/attorney in fact has the authority:

- “4. To receive the financial proceeds of any claim of the type described in this section, [to] conserve, [to] invest, [to] disburse or [to utilize anything so received for purposes 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;]” (BRACKETS added TO SHOW DELETIONS)

The old §5-1502J(4) is renumbered as new §5-1502J(5) and it provides that the agent/attorney in fact has the authority:

- “5. To receive the financial proceeds of any claim of the type described in this section, conserve, invest, disburse or use anything so received for a lawful purpose;” (UNDERSCORING added TO SHOW NEW LANGUAGE)

Accordingly, reimbursement to the agent/attorney in fact out of the proceeds is not explicitly provided for. However, proceeds can be used for any lawful purpose.

Old Section §5-1502J(5) is renumbered §5-1502J(6) and it provides that the agent/attorney in fact has the authority:

- “5. To prosecute, [to] defend, [to] submit to [arbitration], [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;] (BRACKETS added TO SHOW DELETIONS)

The new §5-1502J(6) provides:

- “6. To prosecute, defend, submit to alternative dispute resolution, settle, and propose or accept a compromise with respect to any benefit or assistance described in subdivision four of this section;” (UNDERSCORING added TO SHOW NEW LANGUAGE)

Accordingly, the new §5-1502J(6) is applicable to claims under government statute or regulation including but not limited to arising from military service as already described in §5-1502J(4).

A new §5-1502J(7) provides that the agent/attorney in fact is authorized:

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

Old §5-1502J(6) effective until September 1, 2009 was renumbered as new §5-1502J(8) and that new section simply provides that the agent/attorney in fact can be male or female.

The new §5-1502J(9) (formerly (7)) effective September 1, 2009 provides that the agent/attorney in fact has authority to take action to obtain benefits from governmental programs or arising from civil or military service.

Finally, the closing paragraph of Section §5-1502J now provides:

“All powers described in this section 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.” (UNDERSCORING added TO SHOW NEW LANGUAGE)

Again, this changes the old law to expand the authority of the agent/attorney in fact to include authority as to benefits pursuant to non-military programs.

(11) Changes to Authority as to Records, Reports and Statements

Old §5-1502(K) titled “Construction - records, reports and statements” was significantly amended.

This is one of the sections of the new law applicable to powers of attorney executed prior to September 1, 2009.

The title of this section changed from “Construction - records, reports and statements” to “Construction - health care billing and payment matters; records, reports and statements.”

The preamble to the new law will provide that:

“In a statutory short form power of attorney, the language conferring general authority with respect to “health care billing and payment matters; records, reports and statements,” or in a statutory short form power of attorney properly executed in accordance with the laws in effect at the time of its execution, the language conferring authority with respect to “records, reports and statements,” must be construed to mean that the principal authorizes the agent: (UNDERSCORING added TO SHOW NEW LANGUAGE)

A new §5-1502(K)(1) was added to provide that the agent/attorney in fact now has authority as follows:

- “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 (Health Insurance Portability and Accountability Act of 1996 – (HIPAA)), and applicable regulations. This authority shall not include authorization for the agent to make other medical or health care decisions for the principal;” (Explanation in parentheses added)

Old §5-1502(K)(3) effective until September 1, 2009 was renumbered to be §5-1502(K)(4) and it provides that the agent/attorney in fact has the authority:

- “4. To prepare, to execute and to file any record, report, statement, or other document to safeguard or promote the principal's interest, under a statute or governmental regulation;”

The Closing paragraph of new §5-1502(K) will provide after September 1, 2009:

“All powers described in this section 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.” (UNDERSCORING added TO SHOW NEW LANGUAGE)

(12) Changes to Authority as to Retirement Benefit Transactions

Old §5-1502L titled “Construction - retirement benefit transactions” was significantly revised.

Subsection (2) of old §5-1502L effective until September 1, 2009 provides that the principal authorizes the agent/attorney in fact:

- “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,” (BRACKETS added TO SHOW DELETIONS)

Subsection (2) of §5-1502L provides that effective September 1, 2009 the principal authorizes the agent/attorney in fact to:

- “2. To make investment directions, to select and change payment options, 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 authority 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 signed and dated by the principal with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property, and which is executed pursuant to the requirements of paragraph (b) of subdivision nine of section 5-1514 of this title;” (UNDERSCORING added TO SHOW NEW LANGUAGE)

Accordingly, the new law means that the principal is not authorizing the agent/attorney in fact to change beneficiary designations when the principal initials the box adjacent to “(L) retirement benefits transactions.” However, if the principal executes a statutory major gifts rider, in it the principal may, pursuant to the new §5-1514(3)(c)(7), authorize the agent/attorney in fact to designate or change the beneficiary of a retirement benefit or plan.

Old Subsection (4) of §5-1502L until September 1, 2009 provides that the principal authorizes the agent:

- “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;” (BRACKETS added TO SHOW DELETIONS)

Accordingly, pursuant to the new law, when the principal initials the box adjacent to “(L) retirement benefit transactions,” the principal is not authorizing the agent/attorney in fact to execute and deliver a trust agreement. However, if the principal executes a statutory major gifts rider, in it the principal can, pursuant to the new §5-1514(c)(8) authorize the agent/attorney in fact to create, amend, revoke or terminate an inter vivos trust.

(13) Changes to Authority as to Gift Transactions

Old §5-1502M titled “Construction - certain gift transactions” was REPEALED. The new law concerning gift transactions is now contained in §5-1514 (titled “Major gifts and other transfers; formal requirements; statutory form”) (See Page 49).

Old §5-1502M provides:

“§5-1502M Construction—certain gift transactions

In a statutory short form power of attorney, the language conferring general authority with respect to “making gifts to my spouse, children and more remote descendants, and parents, not to exceed in the aggregate \$10,000 to any person in any year” 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, including the agent, either outright or to a trust for the sole benefit of one or more of said persons, whether an existing trust or a trust which the agent is hereby authorized to create, only for purposes which the agent reasonably deems to be in the best interest of the principal, specifically including minimization of income, estate, inheritance, generation-skipping transfer or gift taxes, provided that no person may be the recipient of gifts in any one calendar year which, in the aggregate, exceed \$10,000, unless the statutory short form power of attorney contains additional language pursuant to section 5-1503 of the general obligations law authorizing gifts in excess of said amount or gifts to other beneficiaries;
2. To consent, pursuant to 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 Section 2503(b) of said Code (or cognate provisions of any successor statute);

3. To satisfy pledges made to organizations, whether charitable or otherwise, by the principal;
4. 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;
5. 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;
6. 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;
7. 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
8. 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.

All powers described in this section 5-1502M of the general obligations law 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.

The powers explicitly authorized in the provisions of this section 5-1502M 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. 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.”

AGAIN, all of the foregoing have been REPEALED for Powers of Attorney executed after September 1, 2009. The gift authorization will be in new §5-1514.

(14) Changes to Authority as to Tax Matters

Old §5-1505N titled “Construction - tax matters” was revised and renumbered to be §5-1502M.

The Closing paragraph of §5-1502N provides until September 1, 2009 that:

“The powers explicitly authorized in the provisions of this section [§5-1502N 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 (titled “Construction – Personal relationships and affairs). 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.” (BRACKETS added TO SHOW DELETIONS and an explanation in parentheses added)

The Closing paragraph of what is now renumbered to be §5-1502M now provides that:

“The powers explicitly authorized in the provisions of this section shall not be construed to diminish any like powers authorized in any other section of this title , 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 this title shall be construed as if the provisions of this section do not exist.” (UNDERSCORING added TO SHOW NEW LANGUAGE)”

(15) Changes to Authority as to All Other Matters

Old §5-1502O titled “Construction-all other matters” provides that until September 1, 2009:

“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 [5-1502N], inclusive, of this [chapter,] and which the principal can

do through an agent, [except] that such authority shall not include authorization for the agent to make medical or other health care decisions for the principal.” (BRACKETS added TO SHOW DELETIONS)”

The new section is §5-1505N titled “Construction - all other matters” provides that effective September 1, 2009:

“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 5-1502M, inclusive, of this title, and which the principal can do through an agent; provided, however, 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.” (UNDERSCORING added TO SHOW NEW LANGUAGE)”

Accordingly, the agent/attorney in fact cannot appoint a Health Care Agent (but can appoint an agent as to payment of medical bills) and cannot appoint another agent/attorney in fact for his or her principal.

SECTION D

CUSTOMIZING YOUR CLIENT’S STATUTORY SHORT FORM POWER OF ATTORNEY AND/OR STATUTORY MAJOR GIFTS RIDER

Since the new law and new forms of the statutory power of attorney and statutory major gifts rider contemplate, in the forms, that modifications can be made and since the old law had no “statutory major gifts rider,” §5-1503 currently titled “Modifications of the statutory short form power of attorney” was amended.

The title to §5-1503 has changed to address not only modifications of the statutory short form power of attorney but also modifications of the statutory major gifts rider.

The old §5-1503 in effect until September 1, 2009 provides:

“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] 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,]” as either of these [phrases] is used in the sections of this title, by the fact that it also contains additional language which:

1. Eliminates from the power of attorney 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], 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], 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 [short form power of attorney effective at a future time.]” (BRACKETS added TO SHOW DELETIONS)

The new §5-1503 effective September 1, 2009 will provide:

“A power of attorney which satisfies the requirements of paragraphs (a), (b) and (c) of subdivision one of section 5-1501B and section 5-1513 of this title is not prevented from being a “statutory short form power of attorney,” 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 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 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 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. (UNDERSCORING added TO SHOW NEW LANGUAGE)

Accordingly, if the principal checks the box adjacent to the word “Modifications” on the statutory short form power of attorney, the principal can eliminate, supplement or make additional provision as to the authority of the agent/attorney in fact. If the principal checks the box below the word “Modifications” on the statutory major gifts rider, the principal shall still have a valid statutory major gifts rider and can eliminate, supplement or make additional provisions as to the authority of the agent/attorney in fact thereunder.

SECTION E

ACCEPTANCE OF THE STATUTORY SHORT FORM POWER OF ATTORNEY

Practitioners have had difficulty over the years in having financial institutions accept statutory short form powers of attorney prepared under their supervision – perhaps because they were presented with many pre-printed forms the execution of which were not supervised by a lawyer.

The new law as to acceptance of a statutory short form power of attorney declares that it is no longer applicable to simply “financial institutions” but to any third party. Subsection (1) of §5-1504 of the new law provides that no third party can refuse to honor a statutory power of attorney without reasonable cause and reasonable cause does not include the fact that the power of attorney is not on that third party’s form, that time has elapsed since the execution of the power of attorney or time has elapsed between the acknowledgments of the signatures of the principal and agent.

Old §5-1504 titled “Acceptance of statutory short form power of attorney” in effect until September 1, 2009 provides that:

- “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. No financial institution located in this state shall refuse to honor a statutory short form power of attorney properly executed in accordance with section 5-1501 or 5-1506 of this title.
3. The failure of a financial institution to honor a properly executed statutory short form power of attorney shall be deemed unlawful.
4. No financial institution receiving and retaining a statutory short form power of attorney properly executed in accordance with section 5-1501 or 5-1506 of this title or a complete photostatic copy of the properly executed original thereof nor any officer, agent or employee of such financial institution shall incur any liability by reason of acting upon the authority thereof unless the financial institution shall have actually received, at the office where the account is located, written notice of the revocation or termination of such power of attorney.
5. If the application of the provisions of subdivision two or three of this section shall be held invalid to any financial institution the application of such provisions to any other financial institution other than those to which it is held invalid, shall not be affected thereby.”

As previously discussed, the term “financial institution” was redefined in §5-1501(5) (See Page 3).

The term is not used in §5-1504 except as to financial institutions where the principal maintains an account. (See §5-1504(3)).

A totally revised §5-1504(1) titled “Acceptance of Statutory Short Form of Power of Attorney” will provide effective September 1, 2009 that:

- “1. No 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 5-1501B 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 rule twenty-one hundred five of the civil practice law and rules (CPLR §2105 provides that where a certified copy of a paper is required by law, an attorney admitted to practice in the courts of the state may certify that it has been compared by him with the original and found to be a true and complete copy. Such a certificate, when subscribed by such attorney, has the same effect as if made by a clerk), or by a court or other government entity; (explanation in parentheses added)
 - (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;
 - (8) actual notice, pursuant to subdivision three of this section, of the termination or revocation of the power of attorney; or

- (9) the refusal by a title insurance company to underwrite title insurance for a transfer of real property made pursuant to a major gifts rider or non-statutory power of attorney that does not contain express instructions or purposes of the principal.
- (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.”

Accordingly, the big change is that §5-1504(1) is applicable to not simply financial institutions but also to third parties and that an attorney at law can certify the power of attorney. The balance of what was reasonable and unreasonable was largely what was actually occurring, with the exception of some egregious and publicized cases of abuse.

A substantially revised §5-1504(2) provides that the only remedy of the agent/attorney in fact (and principal), if the third party unreasonably refuses to honor the power of attorney, is to commence a court action (See discussion of §5-1510 on Page 46). It provides:

- “2. Except as provided in subdivision three of this section, it shall be deemed unlawful for a third party to unreasonably refuse 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. A special proceeding as authorized by section 5-1510 of this title shall be the exclusive remedy for a violation of this section.”

A substantially revised §5-1504(3) and (4) provides:

- “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 third party receiving and retaining 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, or a complete photostatic copy of the properly executed original thereof nor any officer, agent, attorney-in-fact or employee of such third party shall incur any liability by reason of acting upon the authority thereof unless the third party shall have received actual notice of the revocation or termination of such power of attorney.

If a principal maintains an account at a financial institution, the 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.

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

The new law requires a more detailed affidavit from the agent/attorney in fact as to the power of attorney being in full force and effect.

The new section §5-1504(5) was added and it provides:

- “5. When the power of attorney is presented to a third party, it shall not be deemed 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.”

Finally, the new §5-1504(6) was added and it provides:

- “6. Nothing in this section shall require the acceptance of a form that is not a statutory short form power of attorney.”

SECTION F

DUTIES OF THE AGENT/ATTORNEY IN FACT; COMPENSATION; THE MONITOR; AND SPECIAL PROCEEDINGS

§5-1505 titled “Standard of care; fiduciary duty; compelling disclosure of record” is entirely new law.

§5-1506 titled “Compensation” is an entirely new law.

§5-1509 titled “Monitor” is an entirely new law.

§5-1510 titled “Special proceedings” is an entirely new law.

(1) Standard of Care

New §5-1505 is one of the sections of the new law that is applicable to powers of attorney executed prior to September 1, 2009.

While the standard of care of an agent/attorney in fact as a fiduciary has not changed, it would appear that agents/attorneys in fact are going to have to maintain more records to prove that they met their obligations and that proof may have to be submitted to other persons acting as quasi fiduciaries including a new person – the §5-1509 “Monitor” and to governmental entities investigating a report that the principal needs protective services or investigating a report of abuse or neglect rather promptly – within 15 days of a written request.

The sponsor’s memo of State Senator Volker stated that:

“The bill includes a statutory explanation of the Agent’s fiduciary duties, codifying the common law recognition of an agent as a fiduciary. See e.g., *Mantella v. Mantella*, 268A.D. 2d 852 (3rd Dept 2000); *Moglia v. Moglia*, 144 A.D. 2d 347, 348 (1988); *Musacchio v. Romagnoli*, 2 235 N.Y. L.J. 116 (Sup Ct Westchester Co. 2006).”

As to record keeping, State Senator Volker’s memo again references common law:

“This accountability of the Agent is consistent with common law requirement that where one assumes to act for another he or she should willingly account for such stewardship. See, e.g., *In re Garson*, 17A.D. 3rd 243 (1st Dept 2005); *Matter of Kent*, 188 Misc 2d 509, 511 (Sup Ct. Dutchess Co. 2001).”

The new §5-1505 titled “Standard of Care; fiduciary duty, compelling disclosure of records” provides in subsections (1) and (2)(a) that:

- “1. Standard of care. 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 signed and dated by the principal with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property, and which is executed pursuant to the requirements of paragraph (b) of subdivision nine of section 5-1514 of this title. The agent may not transfer the principal's property to himself or herself without specific authorization.”

The new §5-1505 subsection (2)(a)(3) provides that it is the agent/attorney in fact’s fiduciary duty to:

- “(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 and power of attorney available at the request of the principal. The agent shall make such record and a copy of the power of attorney available within fifteen days of a written request by any of the following:
 - (i) a monitor;
 - (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 81.09 of the mental hygiene law;
 - (v) a guardian ad litem appointed pursuant to section seventeen hundred fifty-four 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 one of section 5-1510 of this title. Such proceeding shall be the exclusive remedy to compel the agent to provide such record.”

The new §5-1505(2)(b) and (c) provides that:

- “(b) The agent may be subject to liability for conduct or 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 subdivision one or two of this section.”

Finally, the new §5-1505(3) provides:

“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.”

(2) Compensation

New §5-1506 titled “Compensation” provides that:

- “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.”

While the agent/attorney in fact is a statutory fiduciary, there are no statutory commission nor is there any statutory scheme or formula to compensate the agent/attorney in fact for their services unless the principal provides for same in the power of attorney document (i.e., not in a side agreement).

(3) The Monitor

§5-1509 titled “Monitor” provides that a principal has the option of appointing a “Monitor” as defined in §5-1501:

“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.”

(4) Special Proceedings

Section §5-1510 titled “Special Proceedings” is one of the sections of the new law applicable to a power of attorney executed prior to September 1, 2009.

§5-1510(1) provides that:

- “1. If the agent has failed to make available a copy of the power of attorney and/or 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, (the monitor, co-agent, successor agent, investigative governmental entity, court evaluator, guardian ad litem, guardian or conservator and personal representative of the estate of the principal)... that person may commence a special proceeding to compel the agent to produce a copy of the power of attorney and such record.”
(Explanation in parentheses added)

§5-1510(2) sets forth in the reasons a special proceeding may be commenced:

- “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;
 - (i) to compel acceptance of the power of attorney in which event the relief to be granted is limited to an order compelling acceptance.”

According to State Senator Volker’s memo, the case law prior to September 1, 2009 had already provided the §5-1510(2)(i) remedy:

“When a third party unreasonably refuses to accept a power of attorney, the statute, as does present law authorizes an agent to seek a court order compelling acceptance of the power of attorney through a special proceeding. See generally *Mazzuka v. Bank of North America*, 53 Misc 2d 1053 (NY City Civ Ct 1967); *Security Trust Co. of Rochester v. Magar Homes*, 92A.D. 2d 714 (4th Dept 1983).”

The closing paragraph of §5-1510(2) provides that a special proceeding may also be commenced by an agent who wishes to obtain court approval of his or her resignation.

§5-1510(3) recites who may commence the proceeding brought pursuant to §5-1510(2) adding in addition to the Monitor, etc., the agent, spouse, child, a parent of the principal, the principal’s successor in interest or any third party as follows:

- “3. A special proceeding may be commenced pursuant to subdivision two of this section by any person identified in subparagraph three of paragraph (a) of subdivision two of section 5-1505 of this title (monitor, co-agent, successor agent, investigating government agency, court evaluator, guardian ad litem, guardian or conservator and personal representative of estate – See §5-1505(2)(a)(3) i-vii), 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.” (explanation in parentheses added)

Finally, if pursuant to the special proceeding the power of attorney is suspended or revoked or the agent is removed, the Court may require the agent/attorney in fact provide his or her records to the Court.

- “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.”

SECTION G

GIFTS AND OTHER TRANSFERS

Formerly, §5-1502M titled “Construction - certain gift transactions” (text set forth on Pages 32-34) and other subsections of §5-1502 defined the authority of the agent/attorney in fact to make gifts.

New §5-1514 titled “Major gifts and other transfers; formal requirements; statutory form” sets forth all the powers of the agent/attorney in fact as to gift transactions during the principal’s life or testamentary substitutes effective on the principal’s demise effective September 1, 2009.

The new §5-1514(1), (2), (3) and (4) provides for the gifts an agent/attorney in fact may or may not be authorized to make:

- “1. If the principal intends to authorize the agent to make gifts and transfers other than...., (customary gifts to individuals and charities not to exceed \$500.00 per year) 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 pursuant to the requirements of paragraph (b) of subdivision nine of this section. (explanation in parentheses added)

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 (E.P.T.L. §7-5.1 states that a “trust account” includes a savings, share, certificate or deposit account in a financial institution established by a depositor describing himself as a trustee for another, other than a depositor describing himself as acting under a will, trust instrument or other instrument, court order or decree – explanation in these parentheses added);
- (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 (E.P.T.L. Part 4 addresses transfer on death security registration – explanation in these parentheses added);
- (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; and
- (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 subdivision 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 pursuant to the requirements of paragraph (b) of subdivision nine of this section;
 - (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 subdivision 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 pursuant to the requirements of paragraph (b) of subdivision nine of this section.
5. Any authority granted to an agent pursuant to subdivision 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.”

The text of the statutory major gifts rider will contain specific language as to gifts to the principal’s family which replaces a part of the repealed §5-1502M. If the principal checks a box adjacent to this language, the grant of authority will be construed as set forth in §5-1514(6)(a) below:

- “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 authority 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 Section 2513(a) of the 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 Section 2503(b) of said Code (or cognate provisions of any successor statute); and

- (4) To satisfy pledges made to organizations, whether charitable or otherwise, by the principal; and”

The statutory major gifts rider will be deemed to include the authority to take actions in connection with gifts and transfers as follows in §5-1514(6)(b):

- “(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 alternative dispute resolution, 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 authorities 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.”

§5-1514(6)(c) is confusing and the author cannot determine its meaning:

- “(c) The authority explicitly authorized in this section shall be construed to include any like authority authorized in any other section of this title. Accordingly, such like authorities as are authorized in any other section of this title 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 pursuant to the requirements of paragraph (b) of subdivision nine of this section.”

Authority, other than the gifts to spouse, etc., in excess of the annual gift tax exclusion, gifts to other beneficiaries or other types of transfers is elective and the statute calls them modifications. The proposed statutory major gifts rider (set forth in Appendix (ii) has a box that can be checked off if the statutory rider will be modified). Ostensibly, the attorney drafting the major gifts rider would use the words in §5-1514(3) in the Modifications section of the proposed form.

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

§5-1514(7) indicates the applicability of the statutory major gifts rider:

- “7. All authority 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 this state or elsewhere.”

§5-1514(8) addresses the subject of gifts to former spouses:

- “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 or the non-statutory power of attorney executed pursuant to the requirements of paragraph (b) of subdivision nine of this section 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.”

§5-1514(9) sets forth the four requirements for a statutory major gifts rider to be valid:

- “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) 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, and witnessed by two persons who are not named in the instrument as permissible recipients of gifts or other transfers, in the manner described at paragraph two of subdivision (a) of section 3-2.1 of the estates, powers and trusts law.
 - (c) Be accompanied by a statutory short form power of attorney in which the authority (SMGR) is initialed by the principal.
 - (d) Be executed simultaneously with the statutory short form power of attorney and in the manner provided in this section.”

SECTION H

MISCELLANEOUS

(1) Termination or Revocation

§5-1511 titled “Termination or revocation of power of attorney; notice” is new. As to the power of the principal to revoke the power of attorney, §5-1511 replaces old §5-1501(1), §5-1501(1)(a) and §5-1506.

It provides that:

- “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 81.29 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 two hundred ninety-four of the real property law, the principal shall also record a written revocation pursuant to section three hundred twenty-six of the real property law. Notwithstanding the recording of a revocation, a third party must have actual notice of the revocation for the revocation to be effective.
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 receipt of the same at its office where an 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."

(2) Other Jurisdictions

New §5-1512 titled "Powers of attorney executed in other jurisdictions" provides that:

"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."

(3) Signature of Agent

New §5-1507 titled "Signature of Agent" details how an agent/attorney in fact must sign and what the agent/attorney in fact is attesting to when he or she signs on behalf of the principal.

(4) Co-Agents and Successor Agents

New §5-1508 titled "Co-Agents and Successor Agents" provides:

- “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 or co-agents 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 or agents 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) The Monitor

New §5-1509 indicates that the principal may appoint a monitor.

APPENDIX (i)

TEXT OF STATUTORY SHORT FORM

POWER OF ATTORNEY NEW YORK STATUTORY SHORT FORM

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

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

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

You can request information from your agent at any time. If you are revoking a prior Power of Attorney by executing this Power of Attorney, you should provide written notice of the revocation to your prior agent(s) and to the financial institutions where your accounts are located.

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

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

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

(b) DESIGNATION OF AGENT(S):

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

_____ as my agent(s)
[name(s) and address(es) of agent(s)]

If you designate more than one agent above, they must act together unless you initial the statement below.

(_____) My agents may act SEPARATELY.

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

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

[name(s) and address(es) of successor agent(s)]

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

(_____) My successor agents may act SEPARATELY.

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

(e) This POWER OF ATTORNEY 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 authority 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.

(f) GRANT OF AUTHORITY:

To grant your agent some or all of the authority below, either (1) Initial the bracket at each authority you grant, or (2) Write or type the letters for each authority you grant on the blank line at (P), and initial the bracket at (P). If you initial (P), you do not need to initial the other lines.

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

- () (A) real estate transactions;
- () (B) chattel and goods transactions;
- () (C) bond, share, and commodity transactions;
- () (D) banking transactions;
- () (E) business operating transactions;
- () (F) insurance transactions;
- () (G) estate transactions;
- () (H) claims and litigation;
- () (I) personal and family maintenance;
- () (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) select;
- () (P) EACH of the matters identified by the following letters _____

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

(g) MODIFICATIONS: (OPTIONAL)

In this section, you may make additional provisions, including language to limit or supplement authority granted to your agent. However, you cannot use this Modifications section to grant your agent authority 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.

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

In order to authorize your agent to make major gifts and other transfers of your property, you must initial the statement below and execute a Statutory Major Gifts Rider at the same time as this instrument. Initialing the statement below by itself does not authorize your agent to make major gifts and other transfers. The preparation of the Statutory Major Gifts Rider should be supervised by a lawyer.

(_____) (SMGR) I grant my agent authority 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.

(i) 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) upon request.

(j) 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.

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

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

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

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

PRINCIPAL signs here: ==> _____

(Acknowledgment)

[STATE OF _____)
COUNTY OF _____) ss:

On the ____ day of _____, in the year ____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

Notary Public]

(n) 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 either of the following manner: (Principal's Name) by (Your Signature) as Agent, or (your signature) as Agent for (Principal's Name).

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

Liability of agent:

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

(o) 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.

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

(acknowledgment(s))

[STATE OF _____)
COUNTY OF _____) ss:

On the ____ day of _____, in the year ____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

Notary Public]

[STATE OF _____)
COUNTY OF _____) ss:

On the ____ day of _____, in the year ____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

Notary Public]

APPENDIX (ii)

TEXT OF MAJOR GIFTS RIDER

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 authority 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 authority, but when he or she exercises this authority, 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 AUTHORITY TO MAKE GIFTS

Granting gifting authority 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 subdivision (c) below.

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

() I grant authority 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 authority to your agent gives your agent the authority to take actions which could significantly reduce your property and/or change how your property is distributed at your death. If you wish to authorize your agent to make gifts or transfers to himself or herself, you must separately grant that authority in subdivision (c) below.

() I grant the following authority 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 AND ACKNOWLEDGMENT:

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

PRINCIPAL signs here:

(acknowledgment)

[STATE OF _____) ss:
COUNTY OF _____)

On the ____ day of _____, in the year ____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

Notary Public]

(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.

Signature of witness 1

Signature of witness 2

Date

Date

Print name

Print name

Address

Address

City, State, Zip code

City, State, Zip code

(g) This document prepared by: _____.”