



Memorandum

TO: ALL AGENTS
FROM: AGENCY OPERATIONS
SUBJECT: NEW STATUTORY POWER OF ATTORNEY FORM EFFECTIVE
JUNE 13, 2021
DATE: JUNE 03, 2021

A new Statutory Short Form Power of Attorney will go into effect on Sunday, June 13, 2021. This new form has been promulgated in accordance with a revision of the General Obligations Law Section 5-1501 et seq. The Governor of New York signed A5630A /S3923A into law on December 15, 2020.

A copy of the new Power of Attorney form, in WORD format, is attached hereto for your convenience.

It should be noted, however, that any existing Power of Attorney which would have been valid under the laws in effect at the time of its execution is grandfathered and will remain valid. Such previously executed and valid Powers of Attorney will not require re-execution.

Some of the most important of the numerous changes effectuated by the revisions are as follows:

- In addition to being acknowledged, the new Power of Attorney must be executed before two (2) witnesses who are not named in the Power as agents or as permissible recipients of gifts. The principal's signature must be affixed in the presence of each of the attesting witnesses or, in the alternative, may be acknowledged by the principal that he or she affixed his or her signature to each of them separately. The party acknowledging the signature of the principal may also serve as one of the witnesses.
- The principal may now authorize and direct a third party to sign the Power on his or her behalf if the principal is physically unable to do so. When this third party executes the Power of Attorney at the direction of a principal, it must be done in the presence of the principal, and it shall be signed by writing or printing the principal's name and printing and signing his or her own name (§5-1501B(1)(b)). The signature shall read: "PRINCIPAL (printed or signed) BY APPOINTED PERSON (printed or signed)".





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- There is no longer a requirement that the exact wording of the statutory form be utilized as long as the form substantially conforms to the statutory form. In the event optional or non-relevant provisions are omitted, or if there are errors in spelling, punctuation or formatting, the form will still be deemed to be acceptable. (§5-1501B(1)(d), §5-1501B(2) and §5-1501(2)(n)).

- It is now unlawful for any third party to unreasonably refuse to honor a properly executed power created either pursuant to the new provisions or an existing statutory short form power of attorney properly executed in accordance with the laws in effect at the time of its execution §5-1504(2) and §5-1504(4)(b). The law subjects any third party in New York who unreasonably rejects a valid power (including an existing power executed prior to this change in the law) without reasonable cause, to an award of damages, including attorney's fees, in any action (brought under §5-1510) to compel such third party to accept the power §5-1504(4)(b). The law establishes a 10-business day period (see §5-1504(3)(a)) within which time a party who is presented with a statutory short form power of attorney must either honor the power (§5-1504(3)(a)(a)) or provide a written rejection, which rejection is to be delivered to both the principal and agent, specifically setting forth all of the reasons for rejecting the power (§5-1504(3)(a)(b)). Notice of rejection shall be considered delivered at the time such notice is mailed. Also within that time period, a third party may request the agent to execute an acknowledged full force and effect affidavit pursuant to §5-1504(7) if such affidavit was not presented to the party with the power of attorney §5-1504(3)(a)(c).

- Section § 5-1504(1)(d) of the statute provides that a third party may request, and rely upon, without further investigation:
 - a) An agent's certification under penalty of perjury of any factual matter concerning the principal, agent or power of attorney; and,
 - b) An opinion of counsel as to any matter of law concerning the power of attorney if the person making the request sets forth in a writing or other record the reason for the request. Such opinion of counsel must be provided at the principal's expense unless the request is made more than ten business days after the power of attorney is presented for acceptance. § 5-1504(1)(e)
 - c) Upon presentation of the agent's affidavit and/or the attorney opinion, the party shall have seven (7) business days to honor the power, unless there remain other valid, unresolved grounds for rejection. 1504(3)(a)(c)





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- Examples of valid reasons for rejection of the Power, as set forth in §5-1504(3)(a) and §5-1504(2)(a) include:
 - a) Non-conforming form
 - b) Missing or wrong signature
 - c) Invalid notarization
 - d) Unacceptable identification
 - e) Presentation of uncertified copy of statutory short form power
 - f) Knowledge of a referral of the principal, agent or a person acting for or with the agent to the local adult protective services unit
 - g) Actual knowledge of the principal's death or a reasonable basis for believing the principal has died;
 - h) 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;
 - i) Actual knowledge or a reasonable basis for believing that the principal was incapacitated at the time the power of attorney was executed;
 - j) Actual knowledge or a reasonable basis for believing that the power of attorney was procured through fraud, duress or undue influence;
 - k) Actual notice, pursuant to subdivision five of this section, of the termination or revocation of the power of attorney;
 - l) The refusal by a title insurance company to underwrite title insurance for a gift of real property that does not contain express instructions or purposes of the principal with respect to gifts in the modifications section of the statutory short form power of attorney or in the non-statutory power of attorney;
 - m) The refusal of a request for a certification or an opinion of counsel under paragraph (d) of subdivision one of this section.

If the agent and/or principal responds to the reasons for rejection in writing to the third party, the third party shall, within seven (7) business days after receipt of said response:

- a) Honor the power; or,
- b) Finally reject the power in a writing sent to the agent, principal and any attorney that provided an opinion as to the validity of the power that sets forth the reasons for the final rejection.

- Examples of unreasonable grounds for the rejection of the power as set forth in §5-1504(2)(b) include:
 - a) The power of attorney is not on a form prescribed by the third party to whom the power of attorney is presented.
 - b) There has been a lapse of time since the execution of the power of attorney.





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- c) 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.

- The statute creates security, or a safe harbor, for those who accept the statutory Power of Attorney. If the party who accepts the power acts in good faith in so doing, it will be shielded from liability even if the power is later deemed to not be genuine or otherwise invalid. Whenever the principal's signature has been properly acknowledged and witnessed, then this safe harbor provision applies. For this safe harbor to apply, two conditions must be established; a) the Power of Attorney must have a principal's signature and be acknowledged by a notary public or a person duly authorized to take acknowledgment and b) the recipient must not have "actual knowledge" that the principal's signature is forged or that the Power of Attorney is invalid due to the fact that the power has been revoked or that it was procured by the exertion of undue influence, or that the agent is abusing or exceeding the authority granted thereunder.

- The Statutory Gift Rider has been repealed and in its place the principal may include modifications to the powers of the agent within the "Modifications" section of the Power of Attorney. It will now be permitted for the agent to make gifts in the sum of up to \$5,000 aggregate per calendar year without the necessity of modifying the form (§ 5-1513(1)(f)(I)). Any authority for gifts above \$5,000 per calendar year in the aggregate, including gifts of real estate or those specified in the Power of Attorney will need to be specifically authorized within the MODIFICATIONS section of the Power of Attorney.

This Memorandum may not be further distributed other than to your staff.

If you have any questions in regard to the foregoing, please feel free to contact Paul P. Reisman (preisman@oldrepublictitle.com), Anna Stoll (astoll@oldrepublictitle.com), Adam Jassey (ajassey@oldrepublictitle.com) or Danny Krimmer (dkrimmer@oldrepublictitle.com). We can also be reached at 516-478-5880.

