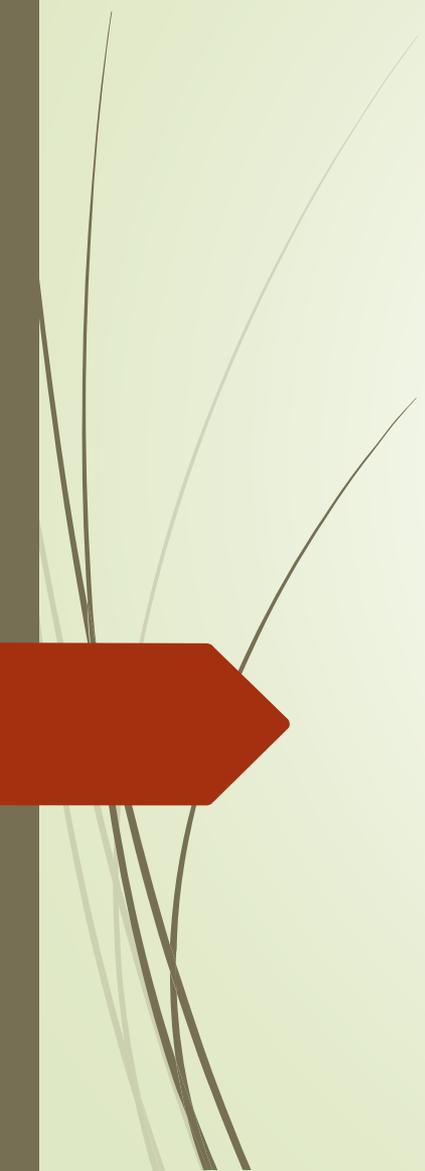


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What you need to know

THE NEW POWER OF ATTORNEY FORM



Durable Power of attorney

- ✓ New York General Obligations Law Section 5-1501 *et seq.*, provides the statutory forms for powers of attorney, and allows for an “agent” to perform a wide range of transactions for a “principal”, generally financial. It does not confer health care decision-making powers.
- ✓ Powers of Attorney must be executed by a person while competent and will survive incapacity. This is why they are called “durable.”



Durable Power of attorney

- ✓ In 2009, a new Statutory Short Form was introduced to provide a more secure instrument and less likely to be fraudulently executed. That form made a number of major changes. This was in reaction to several court cases where Powers of Attorney were improperly used.
- ✓ Powers of Attorney executed prior to 2009 were still valid.
- ✓ In 2010, a few technical changes were made, and the sections regarding revocation and successor agents were changed as well.



Durable power of attorney (2009-2010 Changes)

- ✓ There is a “Caution to the Principal” at the beginning of the form to inform people of the serious nature of the document.
- ✓ There is a statement by the agent will act in the best interest of the principal.



Durable power of attorney (2009-2010 changes)

- The Power of Attorney must be signed and accepted by the Agent(s). It only becomes valid after the Agent signs and accepts the responsibility of acting as agent.
- If you name more than one agent, then each one would have to sign in order to use it.
- A Successor agent or agents can be named. They do not have to sign until they are needed.
- Additions, alterations and modifications must be appended in a Modifications section. No changes are allowed to the form except for this section.



Durable power of attorney (2009-2010 changes)

- Prior Powers of Attorney are not automatically revoked unless there is a statement specifically revoking them.
- There is a box for Agent compensation. If no provision is made, the Agent can not be compensated. Also, reasonable compensation can be specified in the Modifications section;
- There is a provision for appointment of a Monitor, who has the power to review the accounts of the Agent;
- For gifts in excess of \$500 in the aggregate, a Statutory Gift Rider must be appended. This form requires two witnesses.



Durable power of attorney (2020 changes)

- Chapter 343 of the Laws of 2020 provides for a new Statutory Power of Attorney, signed in December 15, 2020. This law comes after a multi-year effort by the NYS Bar Association to make the form simpler to use.
- Substantial conformance with the statutory form, rather than “exact wording.”
- Optional sections can be omitted and replaced with “intentionally omitted.”
- No gift rider, but will need two witnesses if amended at Governor’s request. The Chapter amendment is before the NYS legislature currently (S.888/A2353). One of the witnesses can be the Notary.
- For gifts in excess of \$5,000 in the aggregate, a gift-giving power must be in the Modifications.



Durable power of attorney (2020 changes)

- Any person or institution asked to accept a Power of Attorney can request an agent's certification as to any factual matter, e.g., is principal still alive, has the POA been revoked, etc. Also, the law permits the person or institution to make a request in writing for an attorney's opinion letter regarding any matter of law. The request must state the reason that the opinion is being requested.
- The person or institution must accept or reject the form within 10 days. A response can be made and a final decision is required 7 days after the response.
- These deadlines **do not apply** to a number of government agencies or a public retirement system.
- If there is unreasonable failure to honor the statutory form, there can be a lawsuit for damages, including attorneys fees and costs. This is to deter banks and financial institutions from rejecting the form for no legal reason. This also applies to older Powers of Attorney.



Durable power of attorney (2020 changes)

- Ability for individual to sign at direction of principal who is unable to physically sign.
- Effective 180 days after signing, so June 13, 2021. The new form should not be used until then. Prior forms will still be valid.
- Questions?