

# The New Power of Attorney Form

## Using the New Form

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## 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.”

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- ✓ There is a “Caution to the Principal” at the beginning of the form to inform people of the serious nature of the document, to inform them that they can revoke the Power of Attorney at any time, and that a Health Care Proxy is needed for health care decisions.

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**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, you should provide written notice of the revocation to your prior agent(s) and to any third parties who may have acted upon it, including 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.nysenate.gov](http://www.nysenate.gov) or [www.nyassembly.gov](http://www.nyassembly.gov).**

**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.**

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- **Designation of Agent**
- You can have more than one Agent
- They can act separately if you initial the box.

I, \_\_\_\_\_  
*(name of principal)* \_\_\_\_\_  
*(address of principal)*

hereby appoint:

\_\_\_\_\_  
*(name of agent)* \_\_\_\_\_  
*(address of agent)*

\_\_\_\_\_  
*(name of second agent)* \_\_\_\_\_  
*(address of second agent)*

as my agent(s).

If you designate more than one agent above and you do not initial the statement below, they must act together.

(\_\_\_\_) My agents may act SEPARATELY.

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- **Designation of Successor Agents**
- Successor Agents step in if your Agent cannot act.
- You can have more than one successor Agent
- They can act separately if you initial the box.
- You can specify how and when the successor agent takes over:

(\_\_\_\_) My successor agents may act SEPARATELY.

You may provide for specific succession rules in this section. Insert specific succession provisions here:

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- **Grant of authority**

- These are the standard powers:

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;

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- **Grant of authority**

- These are the standard powers:

(H) claims and litigation;

(I) personal and family maintenance: If you grant your agent this authority, it will allow the agent to make gifts that you customarily have made to individuals, including the agent, and charitable organizations. The total amount of all such gifts in any one calendar year cannot exceed five thousand dollars;

(J) benefits from governmental programs or civil or military service;

(K) financial matters related to health care; 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).

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- **Gift transactions**

- In order to make gifts in excess of \$5,000 in the aggregate this box must be initialed:

**(g) CERTAIN GIFT TRANSACTIONS: (OPTIONAL)**

In order to authorize your agent to make gifts in excess of an annual total of \$5,000 for all gifts described in (I) of the grant of authority section of this document (under personal and family maintenance), and/or to make changes to interest in your property, you must expressly grant that authorization in the Modifications section below. If you wish to authorize your agent to make gifts to himself or herself, you must expressly grant such authorization in the Modifications section below. 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. Your choice to grant such authority should be discussed with a lawyer.

() I grant my agent authority to make gifts in accordance with the terms and conditions of the Modifications that supplement this Statutory Power of Attorney.

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**(i) DESIGNATION OF MONITOR(S): (OPTIONAL)**

**Rarely used.**

**(j) COMPENSATION OF AGENT(S):**

**Reasonable compensation can be defined in modifications.**

**(k) ACCEPTANCE BY THIRD PARTIES:**

**Contains an indemnification by principal for third parties, even if revoked.**

**(l) TERMINATION:**

**Continues until revoked**

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## **(m) SIGNATURE AND ACKNOWLEDGMENT:**

- **Must be signed, notarized and witnessed.**
- **There is a new law regarding electronic signature (e.g., DocuSign) but we do not consider electronic signatures to be valid. Remote notarization is permissible, but will probably not be extended since the public health emergency declaration is over.**
- **2 witnesses are required. One can be the notary. One cannot be the Agent.**

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- 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.
- Successor agents do not have to sign until they are needed.

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- Prior Powers of Attorney are not automatically revoked unless there is a statement specifically revoking them.
- Revocation and Gift Provisions should be in the Modifications section.

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## ➤ Suggested Modifications.

### **GUARDIAN PROVISION**

If it becomes necessary to appoint a guardian of my person or property, I hereby nominate pursuant to New York Mental Hygiene Law § 81.17 \_\_\_\_\_ to serve as guardian. If \_\_\_\_\_ is for any reason unable or unwilling to serve as guardian, I nominate \_\_\_\_\_ to serve as guardian.

### **GIFTING PROVISIONS**

***NB: If you're doing this for planning purposes for either health care coverage or for estate planning, please make the required provisions in the Modifications Section. Be aware that gift equalizing provisions could conflict with later planning requirements.***

***[Choose one provision only as they are inconsistent with each other]***

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.

***or***

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## ➤ Suggested Modifications.

I grant the following authority to my agent to make gifts pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest:

- (a) make gifts up to a specified dollar amount \$ \_\_\_\_\_
- (b) make gifts unlimited in amount;
- (c) make gifts to any person or persons;
- (d) make gifts to the following persons and/or organizations;

Gift Recipient Name or Class

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***[Make sure to exclude the witnesses]***

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## ➤ Suggested Modifications.

- (d) I grant specific authority for the following agent(s) to make the following gifts 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.

***[Make sure to include the names of agents and successor agents that can make gifts to themselves]***

**Make gifts in any of the following ways (edit where necessary):**

- 1. Gifting through banking transactions**
- 2. Gifting by changing beneficiary or modifying life insurance**
- 3. Gifting by changing beneficiary or modifying retirement accounts**

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## ➤ Suggested Modifications.

- **4. Gifting by establishing and funding a revocable or irrevocable lifetime trust or joining and funding a pooled trust**
- **5. Gifting by changing other property interests or beneficiary statements**
- **6. Conveyance of specific real property or a cooperative apartment.**
- **7. Making loans and executing promissory notes.**

**Control over digital assets**

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## ➤ Suggested Modifications.

### **Revocation (not in NYSBA model modifications)**

This document revokes all statutory powers of attorney I have previously executed and I authorize my agent to deliver or record notice of same, in accordance with §5-1511 (3) and §5-1511(4) of New York General Obligations Law; however this document shall not revoke any statutory or non-statutory powers of attorney previously executed by me for a specific or limited purpose, including, but not limited to powers of attorney for the purchase or sale of real property or cooperative apartment, unless I have specified otherwise herein. It shall not revoke any power executed as part of a contract I signed or for the management of any bank or securities account. In order to revoke a prior power of attorney for a specific or limited purpose, I will execute a revocation specifying the power to be revoked and I authorize my agent to deliver or record said revocation, in accordance with §5-1511 (3) and §5-1511 (4) of New York General Obligations Law.

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- 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.

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- Ability for individual to sign at direction of principal who is unable to physically sign.
- Prior forms will still be valid. Out of state forms will still be valid if properly executed according to that state's laws.
- A New York State form can also be executed by an out-of-resident.

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- The form can be found at:

<http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:>

- Search for Sec. 5-1513 of General Obligations Law. (free)

Or

<https://nysba.org/products/power-of-attorney-2021-word/>

- (NYSBA charges \$35 for the form and suggested modifications.)

- Questions?