

Ira M. Bloom & William P. LaPiana on

NEW POWER OF ATTORNEY LEGISLATION FOR NEW YORK

2009 Emerging Issues 4068

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*Bloom & LaPiana on***NEW POWER OF ATTORNEY LEGISLATION FOR NEW YORK****I. Introduction**

On September 1, 2009 a new power of attorney law made up of several new and amended sections of the New York's General Obligations Law will come into effect. The new statutory scheme differs in many ways from the old power of attorney statute, although the statutory short form as modified survives as the centerpiece of the statutory scheme. The new provisions, including a new Statutory Major Gift Rider form, apply to all powers of attorney executed on or after the effective date. The new provisions do not affect the validity of existing powers of attorney, although certain provisions of the new law do apply to pre-September 1, 2009 powers of attorney. Those sections will be duly noted.¹

CAVEAT ON TECHNICAL CORRECTIONS LEGISLATION: As of this writing in early July 2009, a technical corrections bill, with changes effective on September 1, 2009, was pending in the legislature. Pursuant to the technical corrections, changes are made to both the new statutory short form and the new Statutory Major Gift Rider form. This technical corrections bill will be addressed in the Appendix.

For the convenience of the reader, this Pamphlet is organized as follows:

Part I This Introduction

Part II sets forth Title 15 of Article 5 of New York's General Obligations Law as of September 1, 2009. Title 15 now reads: STATUTORY SHORT FROM AND OTHER POWERS OF ATTORNEY FOR FINANCIAL [AND] ESTATE PLANNING

Part III provides an explanation for the substantive changes made to Title 15 of Article 5 of New York's General Obligations Law by [Chapter 644 of the Laws of 2008](#). In addition, reference will be made to the provisions of the technical corrections bill so that the reader will be prepared should it become law.

Part VI sets forth the new Statutory Short Form Power of Attorney form and the new Statutory Major Gift Rider form

Part V sets forth [Chapter 644 of the Laws of 2008](#), which enacted the amendments to Title 15 of Article 5 of New York's General Obligations Law, to be effective March 1, 2009. Also included is [Chapter 4 of the Laws of 2009](#), which was the chapter amendment that extended the effective date of [Chapter 644 of the Laws of 2008](#) until September 1, 2009.

Part VI provides legislative history for [Chapter 644 of the Laws of 2008](#) and for [Chapter 4 of the Laws of 2009](#).

¹ The sections, listed in III.7., *below*, are:

[GOL § 5-1502J](#), Benefits from governmental programs or civil or military service, discussed in III.6., *below*;
[GOL § 5-1502K](#), Health care billing and payment matters, discussed in III.6., *below*;
[GOL § 5-1504](#), Acceptance of statutory short form power of attorney, discussed in III.4., *below*;
[GOL § 5-1505](#), standard of care; fiduciary duty; compelling disclosure of record, discussed in III.3.A. and B., *below*; and
[GOL § 5-1510](#), Special proceedings, discussed in III.D., *below*.

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Part VII sets forth and explains the pending technical corrections legislation. Included are the Statutory Short Form Power of Attorney form and the new Statutory Major Gift Rider form that will be required if the technical corrections legislation is enacted.

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*Bloom & LaPiana on***NEW POWER OF ATTORNEY LEGISLATION FOR NEW YORK****II. Title 15 of Article 5 of New York's General Obligations Law as of September 1, 2009****GENERAL OBLIGATIONS LAW****ARTICLE 5. CREATION, DEFINITION AND ENFORCEMENT OF CONTRACTUAL OBLIGATIONS****TITLE 15. STATUTORY SHORT FORM AND OTHER POWERS OF ATTORNEY FOR FINANCIAL [AND] ESTATE PLANNING****§ 5-1501. Definitions**

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, re-voicing, 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.
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

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