

Governor Cuomo Signs Law Enacting New Power of Attorney Form

Anyone who has signed a New York Power of Attorney (POA) form in the last 10 years knows it is a complicated form often requiring the advice of an attorney to ensure its proper execution. The current form is long and technical, and the former law requires it to include exact statutory wording to be valid, with even minor changes to language creating a risk the POA would be deemed invalid. New changes in the law mean that these forms will be more readily accepted by financial institutions; however, careful consideration must be given to the language employed, and consultation with your attorney can ensure you are protected from fraud and elder abuse.

On December 15, 2020, Gov. Andrew M. Cuomo signed Senate Bill No. S3923A simplifying New York's POA form and making it less likely that the document will be rejected by banks and other financial institutions. A POA allows an individual (known as the "principal") to delegate the management of the principal's financial affairs to someone else (known as the "agent"). The new law, which will take effect in June 2021, makes several changes, some of which are mentioned below.

1. The POA form must substantially conform to the statutory short form, rather than be identical to the language in the statutory form.
2. The Statutory Gift Rider is eliminated. Provisions authorizing an agent to make gifts must be included in the "Modifications" section of the form and certain types of gifts must be expressly authorized by the principal.
3. Personal & Family Maintenance. An agent may make gifts up to \$5,000 in the aggregate in one calendar year regardless of any grant of gifting authority in the "Modifications" section. This is an increase from \$500 in the aggregate per calendar year.
4. Signing Requirements. A third party can sign for the principal at the principal's direction. This allows for physically disabled adults who otherwise have capacity to execute a POA.
5. Rejecting the Form. There are now defined time constraints when a third party must honor or reject the POA. If the POA is "unreasonably" rejected, the court may award damages, including attorney's fees and costs. Parameters on what constitutes "unreasonable" rejection have not yet been defined.

An amendment to the new law is anticipated to be signed in early 2021 with the same effective date as the new law. The proposed amendment will require the principal to sign the POA in the presence of two witnesses in addition to having his signature notarized.

The new law and above changes do not take effect until June 2021. Any POA signed before then must be in compliance with the current law to be valid.

With financial institutions less likely to scrutinize a POA and more likely to accept a form that does not exactly match the statutory form, it will be more important for attorneys, witnesses, and financial institutions to be on the lookout for elder abuse.

If you have any questions or concerns regarding a new or existing power of attorney, please contact [Lindsay M. McKenna](#) or the attorney at Bond, Schoeneck & King with whom you are normally in contact.

