



## CHANGES TO THE NYS POWER OF ATTORNEY

Changes to the New York State Power of Attorney (“POA”) law took effect on June 13, 2021. These changes do not impact an existing POA document that was signed before June 13, 2021.

### What is a POA?

A Power of Attorney (“POA”) is a document that gives another person (or persons) written authorization to act on another's behalf in:

- a. private affairs
- b. business
- c. financial management
- d. other legal matters

The person who signs the POA is called the “Principal.” The person to whom the Principal gives authority is called the “Agent.”

A POA may be used in a variety of circumstances. A POA is usually effective as soon as the Principal signs the document. A POA can help plan for unexpected events and ensure that a trusted Agent is available to help the Principal, if needed.

# What are the Major Changes?

1 The language used when filling out a POA form must now "**substantially conform**" to the official language used by New York State, rather than contain the exact wording. This means that minor errors no longer invalidate an entire form.

2 A Principal may now ask someone else to sign the POA on their behalf.

This is helpful in situations where the Principal understands the document, but is physically unable to sign it.

3 The Statutory Gifts Rider ("SGR") has been eliminated. The SGR was previously an optional form used to authorize the Agent to make "gifts" of the Principal's assets (i.e., a transfer of property for less than fair market value or change of beneficiary).

- Now, Agents can make gifts of up to \$5,000 in a single year (increased from the previous limit of \$500/year).
- An Agent's authority to "Gift" over \$5,000 per year must be granted in the "Modifications" section of a POA. No separate document is needed.

4 Under certain circumstances, third parties may be financially penalized for unreasonably refusing a valid POA.

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In addition to signing the POA in front of a notary public, Agents now must also date the document.

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In addition to being notarized, the POA now must be witnessed by two individuals who are not named in the document as Agents or recipients of gifts.

## Questions You May Have

**Does this change in the law mean that my old POA is now invalid?**



No. Any POA that was validly executed prior to June 13, 2021, will remain valid. However, if your circumstances have recently changed and you would like to revisit your POA document, you may consider speaking with an attorney.

**Can one of the witnesses of the POA also serve as an agent?**



No. Witnesses to a POA must be “disinterested,” meaning that they cannot be named as Agents or as persons who are entitled to receive gifts under the POA.

**Can one of the witnesses of the POA also sign for the Principal?**



No. The person signing the POA for the Principal cannot be a witness or anyone named in the document as an Agent or recipient of gifts.

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**Do I need to work with a lawyer to complete a POA?**



No. A Principal can execute a POA without the assistance of a lawyer. However, working with a lawyer will help ensure that the document and execution process is done properly.

**If you would like to discuss your individual circumstances in more detail, please contact an attorney.**

**If you are a resident of New York State, Age 55+, you can call or email the Center for Elder Law & Justice's Senior Legal Advice Helpline at 1-844-481-0973 or [helpline@elderjusticenyc.org](mailto:helpline@elderjusticenyc.org) for a brief consultation with an attorney.**



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