



## New York Residents Should Review Their Estate Plans – New York Changes Law Governing Powers of Attorney

Regardless of wealth, everyone needs a comprehensive estate plan to help protect what they have worked long and hard to accumulate. That plan must be reviewed and potentially revised on a regular basis because of changing life circumstances, such as a new marriage, divorce, birth or adoption of a child, receiving a windfall, and more. Another reason is because of changing laws.

For residents of New York State, recent statutory changes make it a great time to review your estate plan. On December 15, 2020, New York made significant changes to the law governing a Power of Attorney (POA), which is a legal document that is widely used. It is also a vital component of a comprehensive estate plan. In this case, we're talking about a Financial Power of Attorney (FPOA), not to be confused with a Healthcare Power of Attorney a/k/a Healthcare Directive, which designates individuals to make healthcare decisions on your behalf when you are unable to. With an FPOA, you (the "principal") appoint one or more individuals to act on your behalf (the "agent") on certain financial matters when you are unable to or unavailable.

Prior to this statutory change, New York's requirements for POAs were fairly rigid. For example, it required POAs to contain the exact language specified in the law, and as a result, minor errors could potentially invalidate the POA, and customization was difficult. It was also not uncommon for some financial institutions to reject POAs and insist that the POA be on their forms, defeating the purpose of the document in the first place—to have an agent quickly act on behalf of the principal. Also, if a principal wanted their agent to have the authority to make significant gifts in excess of \$500, perhaps for estate planning purposes, a separate Statutory Gift Rider form was required, which led to confusion and compliance issues.

The intention of the new law is to increase the acceptance and use of POAs by making them more user-friendly, shorter, and more easily understood. It also encourages acceptance of the POA by third parties by providing protection to third parties for relying upon the validity of the POA and providing a clear procedure for accepting or rejecting a POA. There are also consequences for unreasonably rejecting a POA.

The new law, which takes effect on June 13, 2021, allows the POA to have language that substantially conforms with the statute and is essentially the same, rather than exact wording. Clauses in the POA that are irrelevant to the situation may also be safely deleted without affecting the validity of the POA. Another major change allows the principal to either sign the document or have a disinterested third party sign the document on his or her behalf in his or her presence. This benefits individuals who may have a disability that would otherwise prevent them from signing the document personally, while safeguarding the individual from fraud.

For principals desiring to authorize their agent to make gifts on their behalf, the new law increases the gift amount in the POA from \$500 to \$5,000, with the option to authorize gifts in excess of \$5,000 without the need to execute a separate Statutory Gift Rider. Note, however, that potential recipients of gifts that are made through the POA are not eligible to serve as a witness to the execution of the POA. Clearly, that would constitute a conflict of interest.

The law also discourages third parties from refusing to accept the POA form. It requires that a written refusal to honor a POA be made to the principal and the agent within 10 business days of presentation, with specific reasons for the refusal. If court action is required to compel the acceptance of the POA, the court can award damages, including reasonable attorney's fees.

To induce acceptance of the POA, the law provides that unless a third party has "actual knowledge" that a notarized signature on the POA isn't genuine, the third party may rely upon the notarized POA. Third parties are also protected against void, invalid or terminated POAs in the absence of actual knowledge of same. Third parties are allowed to request the agent to certify, under penalties of perjury, that the POA is valid and still in force. The new law essentially creates a presumption in favor of the validity of the POA.

## Conclusion

While the new law does not impact the validity of any existing POAs which remain effective, now is a great time to meet with your Security Mutual Life Insurance Advisor, along with your estate planning attorney, to see how this new law impacts your estate plan. As a result of the rigidity of the past law, your attorney may not have had the ability to customize your POA to truly fit your needs and objectives, but now has an opportunity to do so. There may also have been other federal and state law changes that occurred that you may not be aware of that impact your estate plan. Now is the time to review and potentially revise your estate plan along with the legal documents implementing that plan.

**For more information, contact:**

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