

August 2009

NEW STATUTORY SHORT FORM POWER OF ATTORNEY FOR NEW YORK
Effective September 1, 2009

Effective Tuesday, September 1, 2009, New York law requires a new statutory short form Power of Attorney (POA). Copies of the new POA, a sample Major Gifts Rider and a Full Force and Effect Affidavit tailored for use with housing company transactions, are attached to this memo.

Anyone asked to accept a new short form POA should review the following. This is only a brief outline of the new requirements. Norris McLaughlin & Marcus, P.A.'s New York Cooperative and Condominium Law Group is available to advise regarding use of the new POA in particular situations. If any questions arise, promptly contact us for guidance.

Mandatory Acceptance. The law now requires that parties who are asked to accept a POA to be used in a transaction must accept a statutory short form POA¹, if properly completed to apply to the transaction. Allowable exceptions for "reasonable cause" in limited circumstances are described in the statute. See attached Schedule "A". **Review any questionable situation with legal counsel.**

Both Principal's and Agent's Signature Required. The POA must be signed (with notarized acknowledgment) by the Principal. In addition, the Agent(s) must also sign the POA (with notarized acknowledgment) at Paragraph (o). However, the Agent(s) do not have to sign the POA at the same time as the Principal signs.

Multiple Agents. If the Principal appoints more than one Agent and wants each of the Agents to be able to act separately and not together, the principal must initial the appropriate section in Paragraph (b) that states, "My agents may act SEPARATELY." Otherwise all of the named Agents will have to act together except in limited emergency circumstances described in the statute.

Use of Proper Form. The POA must be in the proper form for the date it was signed; the new statutory form must be used if signed on or after September 1, 2009.

Gifts (Including Changes in Stock and Lease Ownership Without a Sale). A separate rider (the statutory "Major Gifts Rider") must be properly completed and signed at the same time as the POA for almost all gift transactions. With very limited exceptions, without a Major Gifts Rider, an Agent does not have the authority under POA to make gifts to him or herself or to anyone else.

- Gift transactions include, for example, (a) adding to or deleting a tenant-shareholder's name from the stock and proprietary lease for a cooperative apartment without a sale, and (b) transfers of the Principal's assets to the Agent himself/herself, including but not

¹ If a Power of Attorney in the old statutory form is signed and notarized prior to September 1, 2009, that Power of Attorney will still be acceptable if it is properly completed to apply to the transaction and, under the new statute, cannot be rejected without "reasonable cause". However, only the new form can be used if signed on or after September 1, 2009.

limited to adding the Agent's name to stock and proprietary leases for cooperative apartments.

- If a POA is signed after September 1, 2009, and is being used for a gift transaction, a properly completed and signed Major Gifts Rider must be attached to the POA *and* Paragraph (f) of the POA must also be initialed by the Principal.
- **Review any gift transaction using a POA with legal counsel.**

Full Force and Effect Affidavit. Anyone accepting a POA for a transaction should require the Agent(s) to sign (with notarization) a Full Force and Effect Affidavit. The form of this Affidavit accompanying this memorandum has been tailored for housing transactions and can be readily modified as needed for other transactions, as well.

This *Cooperative ("Co-op") and Condominium Law Alert* was written by **Burt Allen Solomon** with contribution by **David Cronheim** and **Pamela H. Muschler**. Burt, a Member of Norris, McLaughlin & Marcus, P.A., has more than 40 years of experience practicing law and spends a considerable amount of his time practicing in the areas of cooperative and condominium law, affordable housing, real estate, and trusts & estates, but also has an established banking and corporate practice. His practice often combines these areas, including handling the mortgage re-financings of, and unsecured financings for, construction and rehabilitation work at cooperatives. His trusts & estates experience is applied in advising cooperatives on estate transfer issues and requests to transfer cooperative apartments' stock and proprietary leases into trusts. He advises Boards of Directors and management regarding financing options and arrangements, renovation and construction plans and agreements, government supervisory issues and shareholder disputes, as well as a wide range of daily financial and operational matters. If you have any questions regarding the information in this alert or any other related matters, please feel free to contact Burt or any of the attorneys in our New York Cooperative and Condominium Law Group.

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SCHEDULE “A”

“Reasonable Cause” to Refuse a New York Statutory Short Form Power of Attorney

New York’s statute lists examples of “reasonable cause” to refuse a statutory form POA. Examples of reasonable cause, for which a Recipient may refuse such a POA, are:

- The Agent fails or refuses to produce the original or a properly certified copy of the POA
- The Recipient has actual knowledge that anyone (including the Recipient itself) has filed a report with an adult protective services agency alleging neglect, exploitation or abandonment of the Principal by the Agent
- The Recipient has actual knowledge of or a reasonable basis for believing any of the following:
 - that the Principal has died
 - that the Principal was incapacitated at the time the POA was executed (consult with legal counsel in this type of situation)
 - that the POA was procured through fraud, duress, or undue influence (consult with legal counsel in this type of situation)
 - that the Principal has become incapacitated, but only if the POA is not “durable” in form but, instead, terminates upon the incapacity of the Principal (consult with legal counsel in this type of situation)
 - Under the new law, a POA is usually a “durable” POA unless it specifically states that the Principal’s incapacity terminates it. This will only rarely be the case.
- The Recipient has actual notice of the termination of the POA by the Principal or of the Principal’s death.
- The refusal by a title insurance company to underwrite title insurance for a transaction because of a POA issue
- Presentation of a POA to any Recipient for use in connection with a gift exceeding \$500 in value if a proper Major Gifts Rider is not attached.

A Recipient encountering any of the above situations or any other troublesome or questionable POA or transaction should contact legal counsel before proceeding further with the transaction. Additionally, if a Recipient has any other reason for suspicion or is concerned about any potential irregularities, contact legal counsel and explain the situation in detail for counsel’s review.

The new statute also lists a number of grounds which are not “reasonable cause” for refusing to accept a POA. Under the statute, a Recipient encountering any of the circumstances below, in the absence of other irregularities reviewed with counsel, would not have “reasonable cause” for rejecting a POA. Thus, under the new statute, it is unlawful for a Recipient to refuse to accept a POA solely for any of the following reasons:

- the POA is not on the Recipient’s own form (*i.e.*, the Recipient cannot require the Principal and Agent to use a form different from the statutory POA);
- there has been a lapse of time since the POA was signed; or
- there has been a lapse of time between the date the Principal’s signature was acknowledged and the date any Agent’s signature on the POA was acknowledged.

POWER OF ATTORNEY NEW YORK
STATUTORY SHORT FORM

(a) 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 by executing this Power of Attorney, you should provide written notice of the revocation to your prior agent(s) and to 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.senate.state.ny.us or www.assembly.state.ny.us.

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.

(b) DESIGNATION OF AGENT(S):

I, _____

[name and address of principal]

, hereby appoint:

[name(s) and address(es) of agent(s)]

as my agent(s)

If you designate more than one agent above, they must act together unless you initial the statement below.

() My agents may act SEPARATELY.

(c) DESIGNATION OF SUCCESSOR AGENT(S): (OPTIONAL) If every agent designated above is unable or unwilling to serve, I appoint as my successor agent(s):

[name(s) and address(es) of successor agent(s)]

Successor agents designated above must act together unless you initial the statement below.

() My successor agents may act SEPARATELY.

(d) This POWER OF ATTORNEY shall not be affected by my subsequent incapacity unless I have stated otherwise below, under ‘Modifications’.

(e) This POWER OF ATTORNEY REVOKES any and all prior Powers of Attorney executed by me unless I have stated otherwise below, under “Modifications.”

If you are NOT revoking your prior Powers of Attorney, and if you are granting the same authority in two or more Powers of Attorney, you must also indicate under “Modifications” whether the agents given these powers are to act together or separately.

(f) GRANT OF AUTHORITY:

To grant your agent some or all of the authority below, either

(1) Initial the bracket at each authority you grant, or (2) Write or type the letters for each authority you grant on the blank line at (P), and initial the bracket at (P). If you initial (P), you do not need to initial the other lines.

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;
- (H) claims and litigation;
- (I) personal and family maintenance;
- (J) benefits from governmental programs or civil or military service;
- (K) health care billing and payment matters; 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). _____

(g) MODIFICATIONS: (OPTIONAL) In this section, you may make additional provisions, including language to limit or supplement authority granted to your agent. However, you cannot use this Modifications section to grant your agent authority to make major gifts or changes to interests in your property. If you wish to grant your agent such authority, you **MUST** complete the Statutory Major Gifts Rider.

(h) MAJOR GIFTS AND OTHER TRANSFERS: STATUTORY MAJOR GIFTS RIDER: (OPTIONAL) In order to authorize your agent to make major gifts and other transfers of your property, you must initial the statement below and execute a Statutory Major Gifts Rider at the same time as this instrument. Initialing the statement below by itself does not authorize your agent to make major gifts and other transfers. The preparation of the Statutory Major Gifts Rider should be supervised by a lawyer.

(SMGR) I grant my agent authority to make major gifts and other transfers of my property, in accordance with the terms and conditions of the Statutory Major Gifts Rider that supplements this Power of Attorney.

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

I wish to designate _____ ,
whose address(es) is (are) _____ ,

as monitor(s). Upon the request of the monitor(s), my agent(s) must provide the monitor(s) with a copy of the power of attorney and a record of all transactions done or made on my behalf. Third parties holding records of such transactions shall provide the records to the monitor(s) upon request.

(j) COMPENSATION OF AGENT(S): (OPTIONAL) Your agent is entitled to be reimbursed from your assets for reasonable expenses incurred on your behalf. If you ALSO wish your agent(s) to be compensated from your assets for services rendered on your behalf, initial the statement below. If you wish to define "reasonable compensation", you may do so above, under "Modifications."

() My agent(s) shall be entitled to reasonable compensation for services rendered.

(k) ACCEPTANCE BY THIRD PARTIES: I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this Power of Attorney. I understand that any termination of this Power of Attorney, whether the result of my revocation of the Power of Attorney or otherwise, is not effective as to a third party until the third party has actual notice or knowledge of the termination.

(l) TERMINATION: This Power of Attorney continues until I revoke it or it is terminated by my death or other event described in section 5-1511 of the General Obligations Law. Section 5-1511 of the General Obligations Law describes the manner in which you may revoke your Power of Attorney, and the events which terminate the Power of Attorney.

(m) SIGNATURE AND ACKNOWLEDGMENT:

In Witness Whereof I have hereunto signed my name on _____ ,20 ____ .

PRINCIPAL signs here: => _____

State of _____)
County of _____) ss.:

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____ , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual taking acknowledgment

(n) IMPORTANT INFORMATION FOR THE AGENT:

When you accept the authority granted under this Power of Attorney, a special legal relationship is created between you and the principal. This relationship imposes on you legal responsibilities that continue until you resign or the Power of Attorney is terminated or revoked. You must:

- (1) act according to any instructions from the principal, or, where there are no instructions, in the principal's best interest;
- (2) avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) keep the principal's property separate and distinct from any assets you own or control, unless otherwise permitted by law;
- (4) keep a record of all receipts, payments, and transactions conducted for the principal; and
- (5) disclose your identity as an agent whenever you act for the principal by writing or printing the principal's name and signing your own name as "agent" in either of the following manner: (Principal's Name) by (Your Signature) as Agent, or (Your Signature) as Agent for (Principal's Name).

You may not use the principal's assets to benefit yourself or give major gifts to yourself or anyone else unless the principal has specifically granted you that authority in this Power of Attorney or in a Statutory Major Gifts Rider attached to this Power of Attorney. If you have that authority, you must act according to any instructions of the principal or, where there are no such instructions, in the principal's best interest. You may resign by giving written notice to the principal and to any co-agent, successor agent, monitor if one has been named in this document, or the principal's guardian if one has been appointed. If there is anything about this document or your responsibilities that you do not understand, you should seek legal advice.

Liability of agent:

The meaning of the authority given to you is defined in New York's General Obligations Law, Article 5, Title 15. If it is found that you have violated the law or acted outside the authority granted to you in the Power of Attorney, you may be liable under the law for your violation.

(o) AGENT'S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT: It is not required that the principal and the agent(s) sign at the same time, nor that multiple agents sign at the same time.

I/we, _____, have read the foregoing Power of Attorney. I am/we are the person(s) identified therein as agent(s) for the principal named therein. I/we acknowledge my/our legal responsibilities.

Agent(s) sign(s) here:==> _____

==> _____

State of _____)

County of _____) ss.:

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual taking acknowledgment

State of _____)

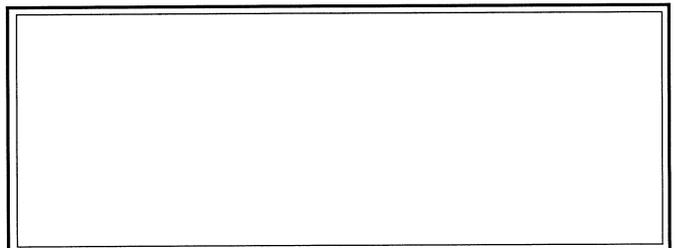
County of _____) ss.:

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual taking acknowledgment



RETURN BY MAIL TO:



[] The Power of Attorney appoints the people named above as the Agents as the Principal's Agents, with full authority to act, provided all of them act together.

3. **Copy of Power of Attorney Attached.** A true and complete copy of the Power of Attorney is attached to this Affidavit .

4. **No Knowledge of Revocation or Modification; Competency of Principal at Signing.**
(a) The Power of Attorney was validly and duly granted to my by the Principal, who at the time of signing, had the legal capacity to sign the Power of Attorney. (b) I have neither any knowledge of, nor any actual notice of, the termination or revocation of the Power of Attorney and no notice of any facts indicating that the Power of Attorney has been terminated or revoked. (c) I have no actual notice that the Power of Attorney has been modified in any way that would affect my ability as Agent to authorize or engage in the transaction, and no notice of any facts indicating that the Power of Attorney has been so modified.

5. **Principal is Alive and Has Not Revoked; Power Currently in Effect.** I confirm and warrant that the Principal is alive and has not revoked, terminated or repudiated the Power of Attorney and that the Power of Attorney is valid and is still in full force and effect.

6. **Principal as Spouse of Agent.** If the Principal is or has ever been the Agent's spouse, the Principal and the Agent are not divorced and their marriage ha not been annulled.

6. **Successor Agent (where applicable).** If I am a successor Agent, I confirm, represent and warrant that _____, the prior Agent(s), is/are no longer able or willing to serve.

7. **Affidavit Made to Induce the Housing Company and Managing or Transfer Agent to Permit the Agent(s) to Sell and/or Transfer Apartment or Conduct Other Authorized Transactions.** I make this Affidavit to induce the Housing Company to accept the Power of Attorney and my instructions on behalf of the Principal and to permit me to sell and/or transfer the Apartment and/or conduct other transaction(s) authorized by the Power of Attorney for and in the Principal's name, as the Principal's Agent.

(Signature of Agent:) _____

Print Name: _____

(Signature of Second Agent,
if applicable:) _____

Print Name: _____

Sworn to before me on this _____
day of _____, 20____

Notary Public
[Notary's Stamp and/or Seal]

**POWER OF ATTORNEY
NEW YORK STATUTORY MAJOR GIFTS RIDER
AUTHORIZATION TO MAKE MAJOR GIFTS OR OTHER TRANSFERS**

Attached to a New York Statutory Short Form Power of Attorney
dated _____ made by _____

CAUTION TO THE PRINCIPAL: This OPTIONAL rider allows you to authorize your agent to make major gifts or other transfers of your money or other property during your lifetime. Granting any of the following authority to your agent gives your agent the authority to take actions which could significantly reduce your property or change how your property is distributed at your death. "Major gifts or other transfers" are described in section 5-1514 of the General Obligations Law. This Major Gifts Rider does not require your agent to exercise granted authority, but when he or she exercises this authority, he or she must act according to any instructions you provide, or otherwise in your best interest.

This Major Gifts Rider and the Power of Attorney it supplements must be read together as a single instrument.

Before signing this document authorizing your agent to make major gifts and other transfers, you should seek legal advice to ensure that your intentions are clearly and properly expressed.

(a) GRANT OF LIMITED AUTHORITY TO MAKE GIFTS:

Granting gifting authority to your agent gives your agent the authority to take actions which could significantly reduce your property. If you wish to allow your agent to make gifts to himself or herself, you must separately grant that authority in subdivision (c) below.

To grant your agent the gifting authority provided below, initial the bracket to the left of the authority.

() 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. This authority must be exercised pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest.

(b) MODIFICATIONS:

Use this section if you wish to authorize gifts in excess of the above amount, gifts to other beneficiaries or other types of transfers.

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. If you wish to authorize your agent to make gifts or transfers to himself or herself, you must separately grant that authority in subdivision (c) below.

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

(c) GRANT OF SPECIFIC AUTHORITY FOR AN AGENT TO MAKE MAJOR GIFTS OR OTHER TRANSFERS TO HIMSELF OR HERSELF: (OPTIONAL)

If you wish to authorize your agent to make gifts or transfers to himself or herself, you must grant that authority in this section, indicating to which agent(s) the authorization is granted, and any limitations and guidelines.

() I grant specific authority for the following agent(s) to make the following major gifts or other transfers 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.

(d) ACCEPTANCE BY THIRD PARTIES: I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this Major Gifts Rider.

(e) SIGNATURE OF PRINCIPAL AND ACKNOWLEDGMENT:

In Witness Whereof I have hereunto signed my name on _____ 20 ____ .

PRINCIPAL signs here: ==> _____

N.Y. Statutory Short Form Power of Attorney N.Y.
Statutory Major Gifts Rider, Effective 9-1-09

State of _____)
County of _____) ss.:

On the ___ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), Or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual taking acknowledgment

(f) SIGNATURES OF WITNESSES:

By signing as a witness, I acknowledge that the principal signed the Major Gifts Rider in my presence and the presence of the other witness, or that the principal acknowledged to me that the principal's signature was affixed by him or her or at his or her direction. I also acknowledge that the principal has stated that this Major Gifts Rider reflects his or her wishes and that he or she has signed it voluntarily. I am not named herein as a permissible recipient of major gifts.

Signature of witness 1

Signature of witness 2

Date

Date

Print name

Print name

Address

Address

City, State, Zip code

City, State, Zip code

(g) This document prepared by: _____