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## New York Amends Power of Attorney Law to Exclude Most Corporate Transactions

### Overview

The New York Power of Attorney Law will be amended to correct a number of perceived problems that its 2009 amendments created for various business and commercial transactions, and the new amendments will be deemed to be effective, retroactively, to the effective date of the 2009 amendments.<sup>1</sup>

### 2009 Law

In 2009, New York significantly revised its power of attorney law (NY General Obligations Law §5-1501 et seq.) in an attempt to reduce perceived abuses of powers of attorney primarily in the context of elder care. The new law set forth rigid requirements for a valid power of attorney in terms of format and means of execution. Because the 2009 law was drafted very broadly, it was thought that routine powers of attorney used in commercial and business transactions were required to comply with the 2009 law in order to be valid. The 2009 law also set forth a presumption that granting of a new power of attorney revokes any and all prior powers of attorney previously executed by the same principal, unless the principal affirmatively states otherwise.

### 2010 Amendments

The New York Legislature recently passed amendments to the 2009 law. These amendments were signed by Governor Patterson on August 13, 2010 and will become effective 30 days thereafter. The amendments recognize that a routine power of attorney for a commercial or business purpose does not need to comply with the rigid requirements imposed on those for estate planning purposes.

Section 5-1501(1), as amended, will now explicitly apply to all powers of attorney “except powers of attorney excluded from this title by section 5-1501C of this title.” Instead of the prior broad definition, “power of attorney” is now defined as a written document, “other than a document referred to in section 5-1501C of this title.” Section 5-1501C will then in turn list the excluded powers of attorney as the following:

1. a power of attorney given primarily for a business or commercial purpose, including without limitation:
  - (a) a power to the extent it is coupled with an interest in the subject of the power;

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<sup>1</sup> 2009 Law: N.Y. GEN. OBLIG. LAW §§ 5-1501~1504. Amendments: Assemb. A08392C, 2010 Leg., Reg. Sess. (Ny 2010). The text of the amendments can be viewed at [http://assembly.state.ny.us/leg/?default\\_fld=&bn=A08392%09%09&Summary=Y&Memo=Y&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A08392%09%09&Summary=Y&Memo=Y&Text=Y).

- (b) a power given to or for the benefit of a creditor in connection with a loan or other credit transaction;
  - (c) a power given to facilitate transfer or disposition of one or more specific stocks, bonds or other assets, whether real, personal, tangible or intangible;
2. a proxy or other delegation to exercise voting rights or management rights with respect to an entity;
  3. a power created on a form prescribed by a government or governmental subdivision, agency or instrumentality for a governmental purpose;
  4. a power authorizing a third party to prepare, execute, deliver, submit and/or file a document or instrument with a government or governmental subdivision, agency or instrumentality or other third party;
  5. a power authorizing a financial institution or employee of a financial institution to take action relating to an account in which the financial institution holds cash, securities, commodities or other financial assets on behalf of the person giving the power;
  6. a power given by an individual who is or is seeking to become a director, officer, shareholder, employee, partner, limited partner, member, unit owner or manager of a corporation, partnership, limited liability company, condominium or other legal or commercial entity in his or her capacity as such;
  7. a power contained in a partnership agreement, limited liability company operating agreement, declaration of trust, declaration of condominium, condominium bylaws, condominium offering plan or other agreement or instrument governing the internal affairs of an entity authorizing a director, officer, shareholder, employee, partner, limited partner, member, unit owner, manager or other person to take lawful action relating to such entity;
  8. a power given to a condominium managing agent to take action in connection with the use, management and operation of a condominium unit;
  9. a power given to a licensed real estate broker to take action in connection with a listing of real property, mortgage loan, lease or management agreement;
  10. a power authorizing acceptance of service of process on behalf of the principal; and
  11. a power created pursuant to authorization provided by a federal or state statute, other than this title, that specifically contemplates creation of the power, including without limitation a power to make health care decisions or decisions involving the disposition of remains.

Another major change in the newly amended law will be elimination of the presumption of automatic revocation. The statutory short form of power of attorney will now read as “(e) this POWER OF ATTORNEY does not revoke any Powers of Attorney previously executed by [the principal] unless [the principal has] stated otherwise.”

## **Effect**

The 2010 amended provisions will be deemed to have been in full force and effect on and after September 1, 2009. Thus, powers of attorney in corporate or other business transactions that were properly executed but not in compliance with the 2009 law on and after September 1, 2009 will be effectively validated.

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If you would like additional information or have any questions, please contact:**

### Corporate

#### *New York*

Carlos T. Albarracín  
+1 (212) 408-1081  
[calbarracin@chadbourne.com](mailto:calbarracin@chadbourne.com)

Peter K. Ingerman  
+1 (212) 408-5422  
[pingerman@chadbourne.com](mailto:pingerman@chadbourne.com)

Edward P. Smith  
+1 (212) 408-5371  
[esmith@chadbourne.com](mailto:esmith@chadbourne.com)

Marc A. Alpert  
+1 (212) 408-5491  
[malpert@chadbourne.com](mailto:malpert@chadbourne.com)

Sey-Hyo Lee  
+1 (212) 408-5122  
[shlee@chadbourne.com](mailto:shlee@chadbourne.com)

Kevin C. Smith  
+1 (212) 408-1092  
[ksmith@chadbourne.com](mailto:ksmith@chadbourne.com)

A. Robert Colby  
+1 (212) 408-5571  
[rcolby@chadbourne.com](mailto:rcolby@chadbourne.com)

Jonathan M.A. Melmed  
+1 (212) 408-1002  
[jmelmed@chadbourne.com](mailto:jmelmed@chadbourne.com)

#### *London*

Claude S. Serfilippi  
+44 (20) 7337-8030  
[cserfilippi@chadbourne.com](mailto:cserfilippi@chadbourne.com)

William Greason  
+1 (212) 408-5527  
[wgreason@chadbourne.com](mailto:wgreason@chadbourne.com)

J. Allen Miller  
+1 (212) 408-5454  
[amiller@chadbourne.com](mailto:amiller@chadbourne.com)

#### *Washington*

Sean P. McGuinness  
+1 (202) 974-5680  
[smcguinness@chadbourne.com](mailto:smcguinness@chadbourne.com)

Morton E. Grosz  
+1 (212) 408-5592  
[mgrosz@chadbourne.com](mailto:mgrosz@chadbourne.com)

Soo-ah Nah  
+1 (212) 408-5334  
[shah@chadbourne.com](mailto:shah@chadbourne.com)

Charles E. Hord, III  
+1 (212) 408-5353  
[chord@chadbourne.com](mailto:chord@chadbourne.com)

Marc M. Rossell  
+1 (212) 408-1057  
[mrossell@chadbourne.com](mailto:mrossell@chadbourne.com)

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