



New York State Teachers' Retirement System

10 Corporate Woods Drive
Albany, NY 12211-2395

(800) 356-3128 or 447-2666 (Albany-area calls)

Web Site: www.nystrs.org

Thomas K. Lee, Executive Director

Office of the General Counsel
FAX (518) 447-2679

Chapter 644 of the Laws of 2008 *Summary and Fact Sheet*

Summary

Chapter 644 of the Laws of 2008, signed into law January 27, 2009, amends various provisions of Title 15 of Article 5 of the General Obligations Law relating to both the content and the execution of the statutory short form power of attorney.¹ The effective date of this Chapter was delayed from March 1, 2009 to September 1, 2009 by Chapter 4 of the Laws of 2009.²

Impact

Beginning September 1, 2009, a NYSTRS member wishing to execute a power of attorney granting another person the authority to make decisions regarding his/her current and future Retirement System benefits must take one of the following actions:

- ▶ Complete and submit a *New York Public Employee Retirement System Special Durable Power of Attorney*, available upon request by calling (800) 782-0289 or from the System's Web site at www.nystrs.org. This non-statutory form is for use by all members of New York State retirement systems and is specifically limited to retirement benefit transactions.

OR

- ▶ Complete and submit a short form power of attorney **and** a Statutory Major Gift Rider (SMGR). Both forms must be executed simultaneously and submitted in order for an agent to have the power to make gifts and other transfers, including the authority to change or designate beneficiaries on retirement benefit plans.

PLEASE NOTE: A short form power of attorney properly executed in accordance with the law in effect prior to September 1, 2009, remains valid and will be honored by the System.

¹ Chapter 644 amends sixteen sections of title 15 of article 5 of the General Obligations Law, repeals four sections of such title and adds thirteen new sections into the existing title.

² Chapter 4 of the Laws of 2009 was signed into law on February 25, 2009.

Key Facts

- In general, Chapter 644 addresses, among other things:
 - An agent's fiduciary obligations;
 - The documents required to delegate authority to an agent to make gifts and other asset transfers;
 - The circumstances under which an agent is authorized to make gifts to himself/herself;
 - A principal's ability to revoke a power of attorney and to appoint a designee to monitor an agent's actions;
 - The circumstances under which a third party may reasonably refuse to accept the instrument; and,
 - The procedure for challenging a power of attorney (POA) or the acts of the agent.
- Under Chapter 644 a new §5-1501A of the General Obligations Law was added and mandates that a power of attorney is now "durable" unless it expressly provides it is terminated by incapacity of the principal. Any subsequent incapacity of the principal shall not revoke or terminate the authority of an agent who acts under the durable POA.
- General Obligations Law §5-1502L (the Benefit Transactions section) has been amended to require the creation and filing of a Statutory Major Gifts Rider (SMGR) along with a statutory short form POA or a non-statutory POA in order to add, delete or otherwise change the designation of a beneficiary in effect for any retirement benefit or plan.
- In order for an authorized agent to distribute retirement benefit-related gifts, a statutory short form POA must contain the gift giving authority initialed by the principal **AND** the POA must be accompanied by a valid SMGR, which was created on the same day as the POA. This SMGR must be executed pursuant to the requirements of General Obligations Law §5-1514, which includes being acknowledged and witnessed by **TWO** witnesses, in the same manner as the execution of a will.
- The statutory short form POA and a SMGR which supplements it must be read together as a single instrument. In other words, the statutory short form POA must be executed simultaneously with the SMGR. The System will need to review each POA and SMGR received and treat these instruments as one. Both forms will need to be on file in order for an agent to act on the member's behalf with regards to their NYSTRS benefits.
- Under Chapter 644, a non-statutory power of attorney (a.k.a., a Special Durable Power of Attorney) is still permissible. However, a non-statutory power of attorney which contains gift giving authority must now be acknowledged and witnessed.
- If the member chooses to file the Special Durable Power of Attorney provided by the System solely to handle retirement benefit transactions, the form must contain a valid notarization of the principal's signature, the signature of two witnesses and a valid notarization of the agent's signature.

- Under Chapter 644 a new §5-1501B was added to the General Obligations Law making the effective date for the authority granted within the power of attorney (including the short form and non-statutory form) **the date on which the agent’s signature is acknowledged**. If there is the designation of two or more agents, the instrument takes effect when all agents have signed said instrument and their signatures have been acknowledged.
- In implementing the provisions of both Chapters 173 and 644 of the Laws of 2008, the System, for the purposes of a POA on file, will need to review the member’s file to determine if there has been notice to the System of a divorce or annulment. Under Chapter 644, the authority in the instrument is revoked due to divorce, annulment or declaration of nullity. The authority is revived if the principal remarries the former spouse.
- The System will honor all New York statutory short form POA and SMGR forms, provided they were properly executed under the laws in effect at the time of execution.
- Under a new section of General Obligations Law §5-1511, a third party (such as the System) does not incur any liability in acting on a short form power of attorney unless the third party has actual notice that the power is revoked or otherwise terminated. Under the statute, the System is deemed to have actual notice of the revocation or termination when the System has had reasonable opportunity to act on the written notice of such following its receipt.

Disclaimers

Chapter 644 is comprehensive in its changes and makes various amendments throughout Title 15 of Article 5 of the General Obligations Law. NYSTRS recommends you consult with an attorney to make sure you use the correct form tailored to protect you and your family.

If you have any questions on this topic, please contact NYSTRS’ Legal Department at (800) 348-7298.

Important Reminder: A properly executed statutory short form power of attorney, executed in accordance with the law in effect at the time of its execution prior to September 1, 2009, remains valid and will be honored by the System. The provisions of Chapter 644 with respect to the form and execution of the short form power of attorney only apply to all POAs executed on or after September 1, 2009 and do not affect the validity of any power of attorney or conveyance of authority executed prior to such date.