



## **Memorandum of Support**

### **Reforms the statutory short form and other powers of attorney for purposes of financial and estate planning.**

#### **A 5630A /S 3923A**

Volunteers of Legal Service (VOLTS) supports this legislation which would amend the New York State General Obligations Law, reforming the statutory short form and other powers of attorney for purposes of financial and estate planning. Our support of this legislation stems from the strong belief that there will be a positive impact on the ability of elderly, disabled, and other at-risk New Yorkers to be able to properly plan for their futures, and that proper planning is more important than ever in light of the COVID-19 crisis.

Founded in 1984 by the NYC Bar Association as well as law firm and corporate law department leaders, VOLTS was created to provide high-quality free legal services to New York City's most vulnerable citizens, through partnerships with law firms and companies who agree to provide their services pro bono. VOLTS legal staff carries out its work through nine projects in collaboration with a network of community organizations, who help identify low-income New Yorkers in need of legal assistance

The work of three of our projects focuses on providing Life Planning Documents, including powers of attorney, to our clients. These projects are the VOLTS COVID-19 Frontline and Healthcare Workers Initiative, the Elderly Project, and our Veterans Initiative.

We counsel our clients that the most important document that they can have in place should they become incapacitated is the durable power of attorney. A client who has a properly executed a power of attorney empowers their agent to pay bills, sign leases, apply and recertify for housing subsidies and other governments benefits, along with dealing with a host of other foreseen and unforeseen issues. Having a properly empowered agent under a power of attorney is an eviction prevention tool, can facilitate access to life sustaining benefits, and ensure access to health insurance when someone's health is critically important.

One of the vital reforms in this bill would allow a principal to direct someone in their presence to sign a power of attorney on their behalf, and would make this important vehicle available to scores of physically disabled New Yorkers who retain their mental capacity but are physically unable to sign the document.

We have seen many situations in which a client could benefit from the ability to have someone else sign for them. We recently worked with a senior who, as a result of a stroke, was left as a functional quadriplegic. While he had extremely limited use of his extremities, he was still able to speak and communicate his wishes. The client, along with his wife, and adult son, had resided in the same rent stabilized apartment for over 3 decades. Their lease had expired, and the landlord sent a renewal lease to him as required by law. The client was limited in his ability to

physically sign the lease and the landlord refused to allow anyone else to sign on his behalf. The landlord then began to threaten the family with eviction. After consulting with the client, it was clear that a power of attorney would allow an agent to sign the lease on his behalf. We visited the client in the rehabilitation facility where he was staying, and he clearly communicated to us that he wanted to execute a durable power of attorney and he wished to name his son as his agent. The client struggled to initial the document – a power of attorney requires the person executing it to write their initials multiple times. The process left our client frustrated and exhausted. His initials and signature were indecipherable. While we believe this power of attorney is valid, if it is not honored, the family will have no other choice than to commence an Article 81 Guardianship proceeding in court – a lengthy and invasive process that strips a person of their rights and autonomy. Had our client been able to direct someone to sign and initial the document on his behalf, as envisioned in this legislation, this risk could be easily avoided.

Another important reform put forth in this legislation is the simplification of the gifts giving provisions of the statutory short form. The current statutory gifts rider is confusing and counter intuitive. VOLS works with experienced trusts and estates attorneys from some of the New York City's largest and most prestigious law firms to draft life planning documents for our low-income clients. We frequently field questions from these attorneys about the need for a Statutory Gifts Rider to accompany the powers of attorney being drawn up for our clients. The presumption is that because our clients do not have the means to give gifts exceeding \$500, they will not need the gifts rider. We educate our pro bono partners about the need to include the gifts rider for Medicaid planning purposes and that contributions to "pooled income trusts" may be considered gifts by the State. When smart, highly educated attorneys who practice in this field of law every day are surprised by this statutory interpretation, it should come as no shock that the statutory gifts riders are often omitted from powers of attorney. The lack of the gifts rider may tie the hands of a principal's agent to engage in needed Medicaid planning. This can lead to costly, time-consuming and invasive Article 81 Guardianship proceedings, which are not only a drain on clients and their families but also tie up judicial resources. The reform of this counterintuitive part of the statute will allow for simpler planning for incapacity and will avoid unnecessary litigation.

A power of attorney is an important vehicle for elderly, disabled, and workers serving on the frontlines of the COVID-19 crisis to avoid guardianships and empower their caregivers and loved ones to carry out their wishes. We should be doing everything needed to make this tool available to those who need it most. For the reasons stated above, Volunteers of Legal Service supports this legislation.

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