

DURABLE POWER OF ATTORNEY FOR FINANCES AND OTHER PROPERTY

Background

The Durable Power of Attorney for Finances and Other Property is designed to make it possible for families to handle problems of disability, without resorting to the Probate Court. It provides the structure for financial and business decisions to be made by an agent during disability. This document is important to all persons, regardless of age, due to the authority that can be transferred under it, without Court intervention, during those periods in which a person becomes disabled, which are often unpredictable and unexpected.

Purpose

Historically, an individual has the right to control all aspects of his or her financial and business affairs. However, if an individual becomes disabled, his or her right to control the aspects of his or her business and financial affairs may be denied, unless that person has previously delegated this authority to another person. Typically, in the case of disability, a guardian is appointed, and that guardian makes decisions on behalf of the disabled person based on what the guardian believes to be in the best interest of the disabled person. However, the appointment of a guardian can be a cumbersome and expensive process, and does not assure the disabled person that his or her desires will be carried out.

The Power of Attorney for Finances and Property Act provides an alternative to the appointment of a Court ordered guardian. Essentially, through the Durable Power of Attorney, the disabled person (the Principal) can delegate his or her decision making power to a trusted agent (the Agent) and can make sure that the Agent's power to make financial and business decisions for the disabled person will be effective to the same extent as though made by the disabled person. The Durable Power of Attorney for Finances and Property not only avoids the need for a Court appointed guardian, but also allows the Principal, before he or she becomes disabled, to set forth specific instructions and preferences with respect to financial and business decisions to be acted upon after disability.

Choices

The basic form of the Durable Power of Attorney is set forth in the Act. However, the form is very flexible and provides for numerous alternatives and modifications that may be made to the basic form, in order to tailor it to the wishes and desires of the Principal executing the document.

Other Provisions in Act

Some pertinent provisions contained in the Act are as follows:

1. Your Agent will be required to keep a record of all receipts, disbursements, and significant actions taken under the Durable Power of Attorney.
2. Although empowered, your Agent is under no duty to exercise the powers granted by the Durable Power of Attorney, or to assume control of or responsibility for any of the Principal's property, care or affairs, regardless of the Principal's physical or medical condition.
3. Whenever a power is exercised, the Agent shall use due care to act for the benefit of the Principal in accordance with the terms of the Durable Power of Attorney, and shall be liable for negligent exercise.
4. The Agent shall not be liable for any loss due to error of judgment, nor for the act or default of any other person.

Duty of Good Faith

An Agent is a "fiduciary" which means that he or she has a duty to act in the highest good faith for the benefit of the Principal.

Good faith means acting in strict accordance with the powers given the Agent in the document. The actions taken by the Agent must be taken using ordinary care and diligence, and must be taken to benefit the Principal.

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