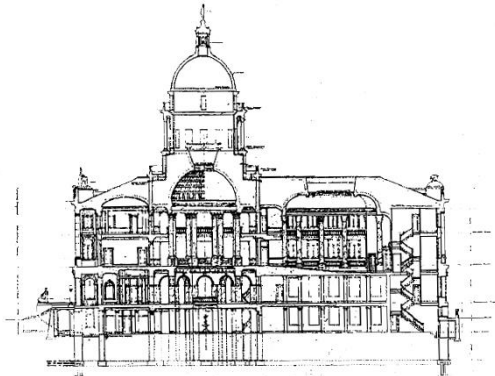


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## POWER OF ATTORNEY

Most people recognize the importance of having an estate plan in place to handle the legal problems that arise upon one's death. However, many individuals fail to engage in "lifetime planning" to deal with the serious legal and management problems that may result from aging, illness or incapacity, including the potential need for long-term care. Power of Attorney.



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Advance planning for possible future incapacity may include a durable power of attorney to authorize a designated person to handle legal, tax and financial matters for you. Such a power can be general, permitting the "attorney-in-fact" (also known as the "agent") to handle all financial matters, or it may be limited in any way the grantor of the power (called the "principal") wishes. A "durable" power of attorney expressly survives the future incapacity of the grantor, and may be structured to only take effect in the event of such incapacity. It is revocable, and is effective only during the principal's lifetime.

If properly drafted, a durable power of attorney should eliminate the need for any costly future Court proceedings to declare the principal incapacitated. If there is no properly drafted Durable Power of Attorney, it may be necessary to seek court appointment of a person as guardian to act on behalf of an incapacitated person. In addition to saving time and money by avoiding court proceedings, a power of attorney insures that the principal

can choose the person or persons who will act on his or her behalf, rather than the person or persons who would be selected by New Jersey statutes and the Court.

Several cautionary notes need to be sounded about durable powers of attorney. The powers granted to the agent (attorney-in-fact) in a power of attorney are extremely broad, and the opportunity for misuse or abuse is correspondingly high. The person selected by the principal to serve as attorney-in-fact must be deemed completely and unequivocally trustworthy by the principal. Due consideration should also be given to selecting a successor attorney-in-fact, in the event the principal's first choice is unable to act. Of course, the successor attorney-in-fact must be equally trustworthy and competent.

Finally, many institutions, such as banks, require the Power of Attorney document to make specific mention of the power to manage assets. Specific language, as set forth in Section 2 of P.L. 1991, Chapter 95 (N.J.S.A. 46:2B-11) must be included in the Power of Attorney document. Otherwise, the financial institution is not required to honor the document. For this reason, the document should include language granting the attorney-in-fact each and every power the principal intends for them to have. For example, the powers to convey real estate, to buy and sell government securities, to access the principal's safe deposit box, to create trusts, to make gifts and to file federal and state income tax returns must be specified.

It should be noted that the extent of the gift giving powers the principal wishes to give to the attorney-in-fact should be finalized only after a full discussion of the adverse financial and tax consequences that may attend unlimited gifting. Many people opt to have the power to make gifts limited to specific people or specific amounts to avoid the risk of too much of their assets being given away. In addition, the possibility of gifting powers to preserve assets, in the event government benefits may be required in the future or to avoid unnecessary estate and inheritance taxes, must be fully explored.

Another important caution is in order. Many powers of attorney permit an agent to change the beneficiary of your retirement accounts, insurance and other assets. This could enable the agent to undermine most of your estate plan. Be certain to understand the implications of each power you give the agent. Signing a form because it is "standard" could be an invitation to disaster.

A Durable Power of Attorney should be witnessed and the principal's signature notarized. The witness should not be related to the principal or agent by blood or marriage, nor be a beneficiary of the principal's estate or pursuant to the principal's Will.