

Durable Powers of Attorney

Durable powers of attorney are very useful tools when planning for the possibility of physical or mental incapacity. Durable powers of attorney allow for the management of one's financial affairs or the making of medical decisions in spite of incapacity.

In order to understand a durable power of attorney, it is necessary to first understand powers of attorney in general. A power of attorney is used to give one person the right to act on another person's behalf. The person who grants the power of attorney is called the "principal." The individual who is given the power is called the "attorney-in-fact." There are two types of powers of attorney, special and general.

A special power of attorney gives the attorney-in-fact the right to act for the principal in connection with a specific transaction or for some other limited purpose. For example, you could use a properly drafted special power of attorney to give, say, your Florida lawyer the right to handle a real estate closing in Florida while you remain in New York. A general power of attorney is much broader. A general power of attorney grants the attorney-in-fact the ability to do for you almost anything you could do for yourself.

Traditionally, powers of attorney expired fewer than three circumstances; when revoked by the principal, when the principal died, and when the principal became incapacitated. A durable power of attorney is durable because it does not expire if the principal becomes incapacitated. It is this durability that makes it such a useful tool.

A variation of the durable power of attorney is the "durable power of attorney for health care" With this type of power of attorney the principal designates another to make health care decisions in the event of the principal's incapacity. This type of durable power of attorney is broader in scope than a living will. Generally, a living will is used to place limits on heroic medical treatment in the event of a life threatening illness.

Durable powers of attorney are helpful estate planning tools and are appropriate for many situations. However, they should generally be viewed as a supplement to, and not a substitute for wills or living trusts. Check with your attorney for your particular situation for the best recommendations. **This article is not meant as legal advice.**