

LAW BRIEFS

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From The Desk Of Richard D. Meinders :

WHY SHOULD I HAVE A DURABLE POWER OF ATTORNEY?

Most people recognize that a Last Will and Testament is essential in order to ensure that their Estate assets will pass to designated loved ones according to their wishes and will be managed by someone who they know and trust. It is not surprising, therefore, that clients often spend a good deal of time and thought regarding their Wills. It is extremely surprising (and troubling) however that relatively few individuals give equal attention to a document known as a "Durable Power Of Attorney" which can be far more important to themselves and their families in the event of disability.

While the Last Will and Testament governs the disposition of property after death and appoints of an individual, known as an "Executor", to manage Estate property, a Power Of Attorney designates an "Agent" or "Attorney-In-Fact" to manage property prior to death. Most states, including New Jersey, have enacted statutes allowing individuals to execute Powers Of Attorney which either "spring" into effect upon disability (i.e. "Springing" POAs) or remain in effect even after disability (i.e. "Durable" POAs). It is in the area of disability planning that these relatively simple and inexpensive documents can be literally worth their weight in gold.

Few people realize that, in the event of a short or long term disability, even a spouse can be precluded from handling important transactions without a Court order. Classic cases would include the need to sell an automobile which is only in the name of the disabled spouse, the desire to cash in an IRA or the need to sell jointly owned real estate. In the absence of a Durable Power Of Attorney (or a more complex and expensive Living Trust) even a spouse would be required to hire an attorney and formally petition the Court for Letters of Guardianship, which entails obtaining two medical reports, a court appointed attorney, filing fees, notice to all next of kin and at least one Court appearance.

Obviously the situation can become much more complex, contentious and expensive if there is no surviving spouse or if he/she is also disabled. Under these circumstances, friends and family must carry the burden of seeking Letters of Guardianship without clear direction being provided by the individual who has become disabled. This can lead to unnecessary confusion, stress and dissension between loved ones; all of which could have been avoided by a properly drafted, simple and inexpensive Durable Power Of Attorney.

In short the Durable Power Of Attorney is an Estate Planning document which should be seriously considered by all.