

STATUTORY DURABLE POWER OF ATTORNEY

Contributed by Joseph A. Cipparone of Cipparone & Zaccaro, PC, in New London, CT.

Author's Comments: This Durable Power of Attorney is based on the Connecticut Statutory Short Form Power of Attorney Act, CGS §1-42 to 1-56. You will notice this form is not short, however. That is because the Act is almost 50 years old – before the personal computer, before the Internet, before electronic banking transactions and before Individual Retirement Accounts (IRA). Consequently, my firm adds a lot into this form. Fortunately, both the Connecticut Bar Association Estates & Probate Section and the Connecticut Bar Association Elder Law Section have proposed changes in the Act based on the Uniform Power of Attorney Act (UPOA) which the General Assembly will debate in hearings. Watch for the passage of a new Act. This form incorporates some of the provisions of the UPOA. Be sure to customize this form to each client as some of the clauses will not apply or will not be appropriate. This form is not meant for a single real estate transaction but contemplates many uses of the form for an elderly client. For an excellent article on the use of powers of attorney in Connecticut, see Paul Czepiga, Practitioner's Musings, CTNAELA Practice Update, Sept. 2011, under the CTNAELA Practice Update Archives under the Members Only section of www.ctnaela.org.

Last revision: January 30, 2013

[*REVISE (P), (Q), (R) & (S) DEPENDING ON MARITAL STATUS AND/OR DESCENDANTS]

DURABLE POWER OF ATTORNEY

Notice: The powers granted by this document are broad and sweeping. They are defined in Connecticut Statutory Short Form Power of Attorney Act, Sections 1-42 to 1-56, inclusive, of the General Statutes, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned. The grantor of any power of attorney or the agent may make application to a court of probate for an accounting as provided in subsection (b) of Section 45a-175.

OPTION 1: - 1 ATTY, NO SUCCESSOR

I, [NAME], of [Town], Connecticut, appoint my _____, _____,
my true and lawful agent for me.

OPTION 2: - ATTY WITH ONE SUCCESSOR

I, [NAME], of [Town], Connecticut, appoint my _____, _____,
but if _____ shall die, resign or become incapable, my _____, _____,
my true and lawful agent for me. The death, resignation or incapacity of my agent shall

be established by the written affidavit of the designated successor agent in accordance with Sections 1-56h and 1-56i of the Connecticut General Statutes.

OPTION 3: - JOINT & SEVERAL

I, [NAME], of [Town], Connecticut, appoint my _____, _____, and my _____, _____, *or either one of them*, my true and lawful agent for me.

OPTION 4: - JOINT O/W ALONE

I, [NAME], of [Town], Connecticut, appoint my _____, _____, and my _____, _____, or either of them if the other shall die, resign, or become incapable, my true and lawful agent for me. The death, resignation or incapacity of an agent shall be established by the written affidavit of the other designated agent in accordance with Sections 1-56h and 1-56i of the Connecticut General Statutes.

OPTION 5: - TWO ATTY'S JOINTLY ONLY

I, [NAME], of [Town], Connecticut, appoint my _____, _____, and my _____, _____, my true and lawful agent for me.

OPTION 6: - ONE INITIAL AGENT WITH CO-SUCCESSOR AGENTS

I, [NAME], of [Town], Connecticut, appoint my _____, _____, but if _____ shall die, resign or become incapable, my _____, _____, and my _____, _____, or either of them if the other shall die, resign, or become incapable, my true and lawful agent for me. The death, resignation or incapacity of an agent shall be established by the written affidavit of a designated successor agent in accordance with Sections 1-56h and 1-56i of the Connecticut General Statutes.

FIRST: I grant my agent the authority to act in my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in the Connecticut Statutory Short Form Power of Attorney Act to the extent that I am permitted by law to act through an agent:

(Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (K), inclusive, shall automatically constitute an elimination also of subdivision (L). To strike out any subdivision, the principal must draw a line through the text of that subdivision AND write his/her initials in the box opposite.)

- | | | |
|-----|---|------------|
| (A) | real estate transactions; | () |
| (B) | chattel and goods transactions; | () |
| (C) | bond, share and commodity transactions; | () |
| (D) | banking transactions; | () |
| (E) | business operating transactions; | () |
| (F) | insurance transactions; | () |
| (G) | estate transactions; | () |
| (H) | claims and litigation; | () |
| (I) | personal relationships and affairs; | () |
| (J) | benefits from military service; | () |
| (K) | records, reports and statements; | () |
| (L) | all other matters | () |

In addition to the above powers, I grant my agent the authority to do all of the following:

(M) to authorize electronic fund transfers and wire transfers to and from any accounts at a financial institution; to access any account by cell phone or computer and conduct any transaction online;

(N) to have access to any safe deposit box in my name;

(O) to transfer any property owned by me to the Trustee of any revocable living trust created by me; to exercise my power to change the Trustee of any trust; to disclaim any interest in real or personal property; to create a limited partnership, limited liability company, limited liability partnership, or corporation to hold assets of mine; to examine and obtain copies of all documents relating to my estate planning, including Wills, codicils, trusts, and amendments; to exercise my rights as account owner under a qualified tuition program;

(P) to contribute to retirement plans for my benefit; to select any payment option under any retirement plan; to transfer retirement plan benefits from one plan to another; to apply for and receive such benefits; to waive rights given to non-employee spouses under state and federal law; to borrow money and purchase assets from and sell assets to retirement plans; and to consent to or waive consent in conjunction with the designation of beneficiaries and the selection of joint and survivor annuities under any such plan;

(Q) to pay the premiums on, modify, exchange, rescind, release, or terminate an insurance or annuity contract; procure new contracts of insurance and annuities for me or anyone dependent on me, and select the amount, type of insurance or annuity, and mode of payment; apply for and receive a loan secured by a contract of insurance or annuity; surrender a contract of insurance or annuity; exercise an election under the insurance or annuity contract; collect, sell, assign, hypothecate, borrow against, or

pledge the insurance or annuity contract; and select the form and timing of the payment of proceeds from insurance or annuity;

(R) to make gifts each year to or for the benefit of my descendants, or any of them, in such amounts as are within the federal gift tax exclusions under Internal Revenue Code Sections 529(c)(2), 2503(b) and 2503(e), and to make gifts to my wife/husband, charitable organizations, and irrevocable life insurance trusts in any amount; to consent to any gift and to utilize any gift splitting provision or other tax election; if my agent sets forth in an affidavit that I have become permanently disabled or incompetent based on available medical evidence, I remove any gift restrictions provided that any gift is consistent with my existing estate plan or proper Medicaid, estate or disability planning as determined by my agent; a gift to my agent or my agent's descendants shall not be deemed to be self-dealing because they are beneficiaries under my estate plan.

(S) to make any judgment necessary for the proper and adequate care and custody of my children and take all actions for their well-being. To fire, employ and pay for such domestic help, doctors, and nurses as my agent may determine is in the best interest of my children's health, and the power to give an informed consent with respect to my children's physical or mental health care, including specifically, by way of illustration only and not by way of limitation:

- (1) Any medical care, diagnosis, surgical procedure, therapeutic dental procedure and/or other treatment of any type or nature;
- (2) Any psychiatric or psychological care or treatment;
- (3) The admission to any hospital, medical center, nursing home, or mental institution;
- (4) The use of any drugs or other medicines or therapeutic items related to my children's health;
- (5) The execution of waivers, medical authorizations and such other approval as may be required to permit or authorize care which either of my children may need; and
- (6) The waiver of any doctor-patient privilege.

and to execute any permission slips for school trips. The expenses and compensation incurred in furtherance of the foregoing are all to be within the sole and absolute discretion of my agent.

(T) to appoint any lawyer, certified public accountant, or enrolled agent to represent me before the IRS or any taxing authority and to prepare and sign IRS Form 2848 or 8821, or other comparable form, to signify such representation; to execute waivers and offers of waivers of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund; to execute consents extending the statutory period for assessment or collection of any taxes; to execute offers in compromise; to execute closing agreements under IRC Section 7121 or any state, local or foreign tax laws; to receive copies of all notices and other written

communications involving my federal, state, local or foreign income or gift taxes at the home or office of my agent.

(U) to convert any assets owned by me to assets that are considered exempt assets for Title XIX (Medicaid) eligibility purposes;

(V) to change my domicile or my fax or e-mail addresses or passwords;

(W) to take all actions with respect to the United States Postal Service and any post office branch that I myself could take, including the power to change my address, forward my mail, and to access post office boxes;

SECOND: I grant my agent full and unqualified authority to delegate any or all of the foregoing powers to any person or persons whom my agent shall select.

THIRD: I ratify and confirm all that my agent or substitute agent does or causes to be done.

FOURTH: This Durable Power of Attorney shall not be affected by my subsequent disability or incompetence or the lapse of time.

FIFTH: Any person receiving an original or certified copy of this executed Durable Power of Attorney may act in reliance thereon and may rely upon the representations of my agent as to all matters related to any power granted to my agent.

SIXTH: No person shall incur any liability to me or my estate as a result of permitting my agent to exercise the powers granted herein. Revocation of this power of attorney shall be ineffective as to any person relying thereon unless that person has received actual notice or has knowledge of the revocation.

SEVENTH: The following persons may petition a court to construe this power of attorney, review my agent's conduct, obtain an accounting, or seek other appropriate relief:

- (1) myself or my agent;
- (2) a guardian, conservator, or other fiduciary acting for me;
- (3) my spouse, parent, or descendant if I have one;
- (4) an individual who would qualify as an heir of mine;
- (5) a person named as a beneficiary to receive any property, benefit, or contractual right on my death or as a beneficiary of a trust created by or for me;
- (6) protective services for the elderly in any state or country in which I reside;
or
- (7) any caregiver who demonstrates sufficient interest in my welfare.

If I am legally divorced or separated and the Power of Attorney names my former spouse as my agent, my spouse shall be deemed to have resigned as my agent under this Power of Attorney.

I declare this to be a grant of my power of attorney.

Date

[Name]

[NAME] declared this to be a grant of his/her power of attorney, and signed it in our presence, and we, at his/her request, in his/her presence and in the presence of each other, have signed our names as witnesses.

Witness

Witness

STATE OF CONNECTICUT)
) ss. _____, 20____
COUNTY OF _____) Town

Subscribed and sworn to before me by [NAME], who acknowledged the same to be his/her free act and deed.

Notary Public
My Commission Expires: