CONNECTICUT DURABLE POWERS OF ATTORNEY

A power of attorney is a broad and sweeping authorization for someone you designate as your agent to act on your behalf. The person you designate as your agent will have the ability to make binding financial, business, and legal decisions for you. In Connecticut, a power of attorney does not give your agent the power to make medical decisions on your behalf.

In 2016, Connecticut revised its power of attorney law, modeling it after the Uniform Power of Attorney Act (UPOAA). The new law will be applicable to all powers of attorney executed on or after October 1, 2016. A power of attorney executed before that date is still valid if it complied with the law as it existed at the time of its execution. This memorandum summarizes the key provisions of the law.

I. Creating a Power of Attorney

The person creating the power of attorney, the principal, must personally sign the document, or have someone sign it on the principal's behalf in the principal's conscious presence. The document must be signed and dated in the presence of two witnesses (neither of whom can be the agent). Although notarization is not required by the law, if the principal's signature is acknowledged before a Notary Public, the signature is presumed to be genuine.

Unless the power of attorney provides otherwise, a photocopy or electronically transmitted copy of the original has the same effect as the original. Therefore, to prevent an unintended use of the power of attorney, care should be taken to safeguard not only the original document, but also all copies.

The most common type of power of attorney is a durable power of attorney, which will continue to allow an agent to act on a principal's behalf after the principal has become incapacitated. Under the Connecticut statute, a power of attorney is presumed to be durable unless otherwise provided.

In most instances, a power of attorney becomes effective as soon as it is executed. However, there is a less common form of power of attorney, known as a springing power of attorney. A springing power of attorney becomes effective at a time stated in the document, usually upon a specific event, such as the principal's incapacity. The document will often name a person (such as a doctor or family member) to determine if that event has occurred, which would thereby cause the power of attorney to become effective. A springing power of attorney is

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often not an ideal choice, as the time it takes to determine whether a certain event has occurred is time that a designated agent will not have authority to act on the principal's behalf. In the interest of expedient action in the event of a principal's incapacity, a durable power of attorney effective at the time of execution may be preferable.

Creating a new power of attorney will not revoke a prior power of attorney unless the new power of attorney specifically revokes the former power. Therefore, if a principal no longer desires a power of attorney to be used, it is important for the principal to revoke it, either in a subsequently executed power, or in another way (such as a written revocation of the power).

II. Selecting an Agent

Selecting an agent is critically important, as an agent can exercise a significant amount of authority on a principal's behalf. An agent must be someone whom the principal trusts with full access to his or her financial, legal, and business affairs. It is beneficial for a principal to discuss his or her expectations with a prospective agent before actually appointing the agent. The most frequent choice for an agent is a spouse, but a principal may also choose to name another family member, or a trusted friend or advisor.

A principal may select multiple agents. If the principal decides to have multiple agents, the principal may require that any decisions made on the principal's behalf be made jointly. This requires all agents to act together. Or, the principal may allow each individual agent to have full, "several" authority. In this case, regardless of which agent makes a decision on the principal's behalf, that decision is binding. Connecticut law presumes that a power of attorney naming multiple agents creates a joint relationship, and all agents must agree, unless the power of attorney provides otherwise by use of the word "severally".

A principal can also designate a successor agent to act in case the original agent resigns, dies, becomes incapacitated, is not qualified to serve, or refuses to serve. The successor agent will possess the same authority as the original agent, unless otherwise provided.

Under Connecticut law, an agent is entitled to reimbursement of its expenses reasonably incurred on behalf of the principal, as well as to reasonable compensation.

An agent signifies acceptance of his or her appointment under a power of attorney by exercising authority under the document, performing duties, or by any other conduct indicating acceptance.

III. Agent's Responsibilities and Liability

The law confers several obligations upon an agent. First, an agent must act in accordance with the principal's reasonable expectations. For this reason, before naming an agent, a principal should discuss his or her expectations with the agent. If the principal's expectations are unclear, the agent must make reasonable efforts to discover the principal's expectations. If this is not possible, the agent must act in the principal's best interest.

Second, an agent must act in good faith, meaning the agent must honestly believe he or she is acting within the principal's reasonable expectations. Third, an agent must act only within the limits of the authority granted to the agent in the power of attorney. Finally, if an agent is aware of a breach or imminent breach of fiduciary duty by a co-agent, the agent must alert the principal, or if the principal is incapacitated, the agent must take reasonable action to safeguard the principal's interest. An agent that does not participate in or conceal a breach of fiduciary duty committed by a co-agent or predecessor agent is not liable for the actions of the other agent.

Connecticut law also imposes other obligations on an agent, although these may be negated by the principal in the power of attorney. An agent must (i) act loyally for the principal's benefit, (ii) avoid conflicts of interest that would impair the agent's ability to act in the principal's best interest, (iii) act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances, (iv) keep a record of all receipts, disbursements, and transactions, (v) cooperate with whomever has the authority to make the principal's health care decisions to carry out the principal's reasonable expectations, and (vi) attempt to preserve the principal's estate plan if it is known by the agent.

If an agent breaches its duty to the principal, the agent must restore any loss in value to the principal's property caused by the agent's action, and also reimburse the principal for the principal's reasonable fees and costs incurred as a result of the breach.

Connecticut law gives a principal standing to petition a court to review an agent's conduct, and, if necessary, grant appropriate relief. Other individuals who have similar standing are the agent; a guardian, conservator, or other fiduciary acting on the principal's behalf; the principal's health care proxy; the principal's spouse, parent, or descendant; a person who qualifies as the principal's presumptive heir; a beneficiary of the principal's property, estate or trust; a representative of Protective Services For The Elderly; a caregiver; or a third party asked to accept the power of attorney. If a principal objects to a petition filed by another individual, the court will dismiss it unless the court finds the principal is incapacitated.

The Connecticut statute provides certain protections for an agent. Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines. In addition, an agent acting in good faith is not liable to any beneficiary of the principal's estate for failure to preserve the principal's estate plan. If an agent delegates authority to a third party, the agent is not liable for an act or error of judgment of that party if the agent exercises care, competence, and diligence in selecting and monitoring the party.

A principal may include a provision in the power of attorney relieving an agent of liability for breach of duty, so long as it does not relieve the agent of liability for acting dishonestly, with improper motive, or with reckless indifference to the purposes of the power of attorney or the principal's best interest.

IV. Things Agents Can Do With General Authorization

The Connecticut statute provides a form of a power of attorney which gives an agent authority over the following subject matters pertaining to the principal:

(1) Real property
(2) Tangible personal property
(3) Stocks and bonds
(4) Commodities and options
(5) Banks and other financial institutions
(6) Operation of entity or business
(7) Insurance and annuities
(8) Estates, trusts and other beneficial interests
(9) Claims and litigation
(10) Personal and family maintenance
(11) Benefits from governmental programs or civil or military service
(12) Retirement plans
(13) Taxes

The specific powers given to an agent with respect to these subject matters are enumerated in the statute.

If a principal does not wish to give an agent authority over one or more of these subject matters, the principal can strike out and initial the subject matter in the power of attorney.

The statute does not preclude a principal from conferring other powers upon an agent in addition to the ones enumerated above.

V. Things Agents Can Do With Specific Authorization

The Connecticut statutory form of power of attorney also contains a list of other powers that a principal can confer upon an agent, as long as the principal affirmatively places his or her initials next to the power. These powers include:

(1) Create, amend, revoke, or terminate an inter vivos trust
(2) Make a gift
(3) Create or change rights of survivorship
(4) Create or change a beneficiary designation
(5) Authorize another person to exercise the authority granted under the power of attorney
(6) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
(7) Exercise fiduciary powers that the principal has authority to delegate
(8) Disclaim or refuse an interest in property

Although these powers can be beneficial for a principal's estate plan, they can also significantly reduce the value of the principal's property or change the distribution of the principal's property at the principal's death. Therefore, it is highly advisable for a principal carefully to consider whether such authority should be conferred upon an agent. If needed, the principal should obtain guidance from legal and other counsel.

VI. Terminating a Power of Attorney

A power of attorney may be terminated in several different ways. The principal may (i) revoke the power of attorney, (ii) die, (iii) become incapacitated (in the case of a non-durable power of attorney), (iv) provide for termination in the document, or (v) lose an agent to death, incapacity, resignation, or revocation of authority, with no successor agent named in the document. In addition a court may terminate a power of attorney where appropriate. Finally, in cases where a principal names a spouse as agent, if an action for divorce, annulment, or legal separation is filed by either the principal or agent, the agent's authority is terminated.

Termination of a power of attorney or of an agent's authority under a power is not effective as to third parties that lack actual knowledge of the termination and act in good faith under the power of attorney. Thus, prudent practice would be for the principal to notify third parties (such as banks, brokerage firms, and any other party in possession of the principal's property) of the termination of the power.

This outline is intended as a broad overview, and does not constitute legal advice. Whether or not a power of attorney is appropriate for you, and if so, the form of the power of attorney, must be determined on the basis of your specific circumstances and desires.