



with the Power to Protect Your Assets

by Sharon Ravenscroft, Esq.



The durable power of attorney is a fundamental tool to protect your assets. It allows you to name an agent to handle your assets, if you become ill or incapacitated, are traveling or unavailable for some reason. Even assets held in joint tenancy or community property require the signature by both owners. If either owner is incapacitated, then the other owner would be unable to make a necessary sale without a durable power of attorney. A spouse cannot help a sick spouse with access to a 401K or IRA without a durable power of attorney.

A power of attorney is “durable” if it remains effective even if the maker or principal becomes incapacitated. For a power of attorney to be durable, A.R.S. §14-5501 requires that it specifically say the power of attorney is not affected by subsequent disability or incapacity of the principal or lapse of time.” The principal can still revoke and change the power of attorney at any time, as long as the principal has capacity and understands the consequences of his actions and his finances.

The person you name to assist you with finances is your “agent.” It is a good idea to list an alternate agent in case the first agent cannot serve. For example, if you list your spouse as your agent, but your spouse is ill or injured too, then you need an alternate agent.

It is advisable not to have durable powers of attorney contingent upon

your incapacity. You may need assistance while you have capacity but are too sick or injured to handle credit card companies or accounting departments yourself. Also, once you are declared incapacitated you lose the right to make legal decisions, including the ability to change your agent.

Durable powers of attorney are necessary even if a person holds his or her assets in trust, in order to have access to retirement plans, like an IRA, or to contract for services for health or personal care needs. **Z**

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Durable Power of Attorney = Tool for Asset Protection

SPOUSE TO ACCESS IRAS OR JOINT ASSETS IF ONE IS INCAPACITATED.

NEEDS TO BE EFFECTIVE WITHOUT BEING DECLARED INCAPACITATED AND BE EFFECTIVE EVEN WHEN INCAPACITY OCCURS.

NAME AN ALTERNATE AGENT IN CASE YOU AND YOUR FIRST AGENT ARE ILL OR INJURED.