

ESTATE PLANNING; DURABLE POWERS OF ATTORNEY FOR FINANCIAL AFFAIRS

**By: Milton Babirak, JD, LLM
BABIRAK CARR, PC
Sterling, Virginia**

What is a Durable Power of Attorney for Financial Affairs?

This document is a common estate planning document in which you appoint an agent to take care of your financial affairs if you become physically or mentally disabled. If you do not have this document and if you become disabled, your family or friends must go through an expensive and time-consuming court proceeding to have a guardian and conservator appointed for you.

Scope

Typically, this document is very powerful because you give broad authority over all your assets to your agent. The document is usually a form document, but the Virginia Uniform Durable Powers of Attorney Act allows you to customize it in almost any way you want.

Appointing an Agent: How Many and What Skills

You should pick one person to be your agent. You should also pick a successor agent in case the first agent cannot do it or predeceases you. Sometimes people want to pick more than one person, such as two or more children. This is a recipe for family disharmony. If they cannot agree, it could get ugly. Further, pick someone that you trust implicitly. If you are not sure, don't pick them. They are going to have full control of your assets and you want someone you can trust. You should pick someone that has financial skills. They need to know how to balance a checkbook, work with a bookkeeper or accountant, file a tax return, etc.

Two Types: Springing and Non-springing

There are two types. A springing power "springs" into effect when you become disabled.

A non-springing power becomes effective when you sign it. Since a durable power is used when you become disabled, you would think that most durable powers are springing. In fact, most are non-springing. The reason is that when an agent holding a springing power presents it to a third party (*e.g.*, banker, real estate agent, insurance agent, etc.), the agent must prove that you are disabled. A third party does not want deal with this. They want a document that is effective on its face.

Durable powers of attorney for healthcare will be discussed in the next issue.

For more information, contact: **mbabirak@babirakcarr.com**.