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A program of Tennessee Alliance for Legal Services

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Durable Power of Attorney

What is a power of attorney?

A power of attorney is a document that authorizes someone to make decisions for you with regard to finances, property, and other similar matters. The person giving the power of attorney is called the “principal.” The person named in the power of attorney to make decisions is the “attorney-in-fact.”

Why is it important to have a power of attorney?

A power of attorney is an important document for everyone to have. If you do not have a power of attorney and become unable to make decisions for yourself (for example, due to your health), no one will be able to handle your business for you, like paying your bills. Your family or friends would have to file a conservatorship to have someone named as your decision-maker. A conservatorship is a formal proceeding in a court, usually requires an attorney, and is usually very expensive.

What does the “durable” mean in the title?

A power of attorney should have language making it “durable,” meaning that it will continue to be in effect even if you become incapacitated, or unable to make decisions for yourself. If a power of attorney is not durable, it will not be effective after you become incapacitated.

When does a power of attorney go into effect?

Most people have their power of attorney go into effect immediately, meaning that once you sign it, your agent can use it to make decisions for you. A power of attorney can also be “springing,”

meaning it goes into effect if you deemed incompetent by your doctor. With current health privacy laws, it can be difficult to get the necessary proof of incompetency for a springing power of attorney to go into effect.

What can my agent do on my behalf under a power of attorney?

A power of attorney is usually very broad. Some of the usual acts an agent can do include, but are not limited to: dealing with tax authorities, buying and canceling insurance, dealing with banks, taking out loans, buying and selling property, and hiring professionals (like doctors, nurses, attorneys, and accountants) to help you. A power of attorney can also be limited. For example, you might sign a power of attorney for a one-time transaction like a car or home purchase.

Who should I choose as my agent?

You should choose a trusted family member or friend as your agent. It is best to choose someone who lives local since some decision-making and transactions may require in-person contact. If you need an agent but have no trusted family or friends to act as your agent, the Public Guardianship Program could be an option. You must be over the age of 60 to qualify. For more information about the Public Guardianship Program, visit www.tn.gov/aging/our-programs/public-guardianship.html.

What do I do with my power of attorney once I sign it?

You should give copies to your bank, insurance company, and any other companies with which you regularly do business. If you own real estate, you should record a copy with the Register of Deeds in your county.

What if I change my mind?

You can revoke your durable power of attorney at any time by signing a statement that you no longer want the durable power of attorney in place. You should give copies of your revocation to any companies or people to which you gave copies of your power of attorney. If you registered your power of attorney with the Register of Deeds, you should also register your revocation.

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<http://www.help4tn.org/senior-services/legal-information/planning-ahead/power-of-attorney>

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