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***Concentrating in Elder and Special Needs Law***

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**Instructions for Use of a DFPOA**

A Durable Financial Power of Attorney (DFPOA) is a document under which you name one or more persons to help you handle your financial affairs while you are alive but incapacitated. In it you — the “principal” — name someone whom you trust to act as your “agent” in making your financial and property decisions in the event that you become unable to do so. With this document you can still handle your own financial affairs as long as you choose to or are able to.

***“Durable”***

The term “Durable” pertains to specific essential language which enables your agent to act on your behalf if, and especially when, you become temporarily or permanently incapacitated. This language is important, as if it is missing financial institutions and title companies are very reluctant to allow your agent to use the document. Upon your death or the death of all of your agents the document will be canceled and the agent’s power to act for you will end. This document does not give someone the power to make medical decisions or personal decisions for you.

If, at some time in the future, you either are not able or simply choose not to make a financial or property decision for yourself, then your agent can step in and made that decision on your behalf. In order to do that, the agent will need to present the original signed, witnessed, and notarized DFPOA document to the company or entity with which he needs to do business.

***Access Bank Accounts***

For example, if your agent has the authority under the DFPOA to access funds in your bank account to pay your bills, he would take the original DFPOA to the bank. The bank would review the document to be certain that the agent had the requisite authority. The bank may then ask for identification from the agent, would likely make

a copy of the document, and then would allow the agent to withdraw funds or write checks from your account.

### ***Buy or Sell Real Property***

Similarly, if the agent needed to sell your real estate the closing attorney would ask to see the original DFPOA. The attorney would look for language in the document that gives the agent the specific authority to sell the real estate in question. If that language is in the document, the attorney would then proceed with the closing. The agent would sign his name on the deeds and other closing documents, and the original DFPOA would be recorded at the courthouse along with the other closing documents, thus providing evidence to individuals in the future that the agent had the authority to sell the property. Closing attorneys and title companies are very particular about the kind of language that they will accept in order for an agent to act on behalf of a principal to sell real property, so it is important to have a well drafted and up-to-date DFPOA.

### ***Stock Transactions***

Another situation in which the agent may act on behalf of the principal is with regard to buying, selling, or transferring stock. For example, when dealing with a transfer agent to change the title on stock certificates, the transfer agent will want to see the original or an attorney-certified copy of the DFPOA. Again, the transfer agent will be looking for language that authorizes the agent to engage in the contemplated transaction. If the requisite language is in the document, the transaction should be completed as requested.

### ***Maintain Control of the Original***

After a transaction is completed, the agent should always get the original DFPOA document back so that it will be available for future use.

### ***Revocation***

If you, as the principal, revoke the DFPOA during your lifetime, you should write, sign, and date a revocation of power of attorney and give it to the agent as well as to anyone else who has been relying upon the DFPOA and dealing with the agent.

