



YIGAL ARNON & Co.
LAW FIRM

Client Update – April 2019

Durable Power Of Attorney

The recent amendment to the Legal Competency and Guardianship Law has revolutionized this sector, primarily because of the new provision allowing for a Durable Power of Attorney.

A Durable Power of Attorney enables the person who grants the authority (referred to as the “Principal”) to decide how his medical and other affairs should be handled if he is no longer capable of deciding for himself. The principal chooses his agent and defines the agent’s responsibilities and powers, and the circumstances that would trigger the Durable Power of Attorney.

A Durable Power of Attorney gives the Principal the power to control his own destiny, spares the time and trouble involved in complex legal proceedings and limits government involvement (through the office of the Administrator General) and the court system.

Unlike a standard general power of attorney, which expires if the Principal becomes legally incapacitated, the Durable Power of Attorney will usually enter into effect once the Principal becomes legally incompetent, thus limiting any unwanted State intervention and supervision which may be triggered by law when a person becomes legally incompetent.

Only lawyers who have received special training by the Administrator General are authorized to draft Durable Powers of Attorney. Advocates Guy Sagiv and Avi Schoen of our Family Wealth Management Group have such necessary credentials.

Powers Granted to the Agent

The Principal may grant the agent the following powers:

- **Financial matters.** The agent can be authorized to decide on and perform transactions with regard to the Principal’s assets, including management of bank accounts, selecting an investment policy, management of real property, etc.
- **Personal affairs.** The agent can be authorized to make decisions and carry out actions with regard to the Principal’s well being and quality of living, including where the Principal would reside and whether he should be moved to a residential care facility.
- **Medical affairs.** The Principal can authorize the agent to decide on his medical affairs, including surgery and urgent medical care. The agent can also be empowered to decide on psychiatric care or hospitalization in a psychiatric ward or facility (subject to certain restrictions prescribed by law).



Note that a Durable Power of Attorney does not cover medical decisions and care in case of a “dying patient”, as defined in the Dying Patient Act of 2005. To date, instructions regarding medical care or withholding of care and life prolonging treatment, can be provided by use of special forms provided by the Health Ministry.

Advance Directives

The Durable Power of Attorney may include advance directives to the agent. Such directives may be in general terms or may specifically prescribe what the agent should do in specific circumstances. If several agents are appointed, the Principal can designate a decision-making procedure (by ordinary or special majority, referral to a third-party arbitrator, etc.) for any particular matter or for all of his affairs.

Supervising the Agent

As compared to a guardianship, the agent is not required to file reports with the Administrator General and is not subject to its supervision, unless the principal has required so. However, the Durable Power of Attorney allows the Principal to appoint another person, which the Law refers to as the “informed person”, and specify cases in which the agent must submit reports to such person on a regular basis, upon performing certain actions or when a specific event occurs – as directed by the Principal.

Entering into Effect

The Durable Power of Attorney is deposited with the Administrator General until it enters into effect. Unless the Principal has stipulated otherwise, the Durable Power of Attorney becomes effective once a medical opinion is submitted to the Administrator General stating that the principal is no longer competent to make decisions about his person or property.

Amendment, Termination and Expiration of A Durable Power of Attorney

As long as the Principal’s condition allows, he may amend the Durable Power of Attorney and change the directives included in it. Also, upon drafting the Durable Power of Attorney, the Principal may stipulate that he reserves the power to terminate the Durable Power of Attorney even after it enters into effect and may stipulate the circumstances in which it would expire.

The Durable Power of Attorney expires upon the death of the principal. However, the agent may, for up to three months after the Principal’s death, and as long as no other person has been appointed (such as a trustee or an executor for the estate), handle several matters permitted by law, such as routine payments, ongoing management a business or of rented property, etc.

Execution and Deposit of A Durable Power of Attorney

Because of the significance of a Durable Power of Attorney, it can only be drafted by lawyers who have been certified for this purpose by the Administrator General (with the exception of medical powers of attorney). The attorney must meet with the principal and intended agent/s, explain the implications of the Durable Power of Attorney and the duties and responsibilities of the agent/s, obtain the signatures of the Principal and agent/s, and deposit the Durable Power of Attorney with the Administrator General until such time as it enters into effect.



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This newsletter is intended as general legal information and does not constitute legal advice.

Words and expressions importing the masculine gender shall include the feminine gender.

