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INFORMATION ON DURABLE POWER OF ATTORNEY FOR FINANCIAL DECISIONS

The staff at the Law Offices of Chester B. McLaughlin have prepared the following information for clients such as you who are considering completing a Durable Power of Attorney for Financial Decisions.

In a Durable Power of Attorney for Financial Decisions the person signing the document (the Principal) appoints a person (the attorney-in-fact or agent) to make financial decisions on his behalf.

This document is valid only if the principal understands the nature and effect of the document at the time he signs it. If it is necessary for the finances of an incapacitated person to be managed, and there is no Power of Attorney for Financial Decisions in effect, a responsible person may have to apply to the court to obtain authority to manage his finances.

A Durable Power of Attorney for Financial Decisions can either give the person appointed the power to act as of the date of the signing, or it can be “springing”, meaning that the agent only has the power if and when the principal becomes unable to make his own decisions. Our springing power of attorney document requires that this determination of incapacity be made by a physician in writing before the power of attorney becomes effective.

The person appointed as the agent in the Durable Power of Attorney for Financial Decisions has a legal responsibility to ensure that any actions taken with respect to the principal’s finances are consistent with the principal’s wishes or if the wishes are unknown, are in the principal’s best interest. The agent has a legal duty to use and protect the assets of the principal for the principal’s benefit. Therefore, the principal’s finances can not be expended by the agent for the agent’s sole benefit.

Because of the potential for abuse, it is important that the principal thoroughly trust the agent whom he has appointed. The Power of Attorney form which is used by our office gives the agent broad authority to make financial decisions; however, the document can be drafted to place limits on this authority if this is desired.

If you complete a Durable Power of Attorney for Financial Decisions, you should keep the document in a safe place along with your legal documents. In addition, you should provide copies to the person(s) you have named in the document. You may also want to discuss with the person(s) appointed any specific directions that you have with regard to your finances.

We hope that this information will be helpful to you in considering whether to complete a Durable Power of Attorney for Financial Decisions and in understanding its purpose and effect.