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STATE OF ALASKA
THE LEGISLATURE

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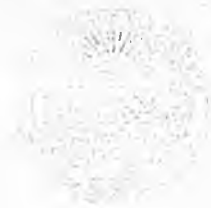
May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H.JUD 4-25-88 1:30 p.m.

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3704



REPRESENTATIVE JOHNNY ELLIS

M E M O R A N D U M

TO: The Honorable John Sund
Chair, House Judiciary Committee

FROM: Rep. Ellis *JE*

RE: CSHB 491

DATE: April 19, 1988

Today the HESS Committee passed out CSHB 491; establishing a statutory form power of attorney.

The bill represents the work of Alaska Legal Services, the probate section of the Alaska Bar Association, and the staff of the Older Alaskans Commission.

This statutory form has several benefits for Alaskans, especially elderly Alaskans and those on fixed incomes. It shortens the amount of time one must spend with an attorney or other drafter, and thus the cost involved. It contains a provision for sustaining the power throughout or starting the power upon disability and outlines the procedure for a third party to determine disability has set in. It contains a detailed health care decisions provision which, if taken advantage of, will give the agent clear authority to make the necessary care decisions should the principal become incapacitated.

I would greatly appreciate your committee holding a hearing on CSHB 491 as soon as possible.

CHANGES FROM THE ORIGINAL BILL

CHANGES TO THE FORM:

1) Page 1, line 22: "IF YOU HAVE ANY QUESTIONS ABOUT THIS DOCUMENT, YOU SHOULD SEEK COMPETENT ADVICE."

- self-explanatory

2) minor language changes throughout the form to make it more easily understood (i.e. the word "document" is substituted for the word "instrument")

3) Page 2, line 10: (B) "tangible personal property" is added to clarify this section (also added in the corresponding statutory interpretation)

4) Page 2, line 20: (K) "government programs and" is added to the benefits section (also added in the corresponding statutory interpretation)

- at the request of the Older Alaskans Commission to assure that benefits such as Longevity Bonus and Permanent Fund will be collectable for the principal

5) Page 3, entire page has been converted to "check-off" from "fill-in" format

- optional time limitation added

- "NOTICE TO THIRD PARTIES" added to enforce the power and limit liability

6) Page 4, line 17: notarization requirement added

7) Page 4 and 5: Optional provisions specifically designed for Senior citizens have been added

- notification of existence of a "Living Will"

- specification of alternate attorney-in-fact

- nomination of a guardian or conservator

STATUTORY CHANGES:

8) Page 5, line 19: explanation of how to fill out the form

9) Page 5, line 26 - Page 6, line 15: default provisions

CSHB 491: CHANGES (CONT'D.)

10) Pages 24 and 25: changes within the gifting section to clarify the agent's authority to gift to himself or herself only if the principal has specifically allowed it under (O) of the form. (This language is particularly important if the agent is a family member or friend whom the principal would wish to benefit from his or her estate.)

11) Page 36, line 12: affidavit of disability must be signed by two physicians instead of one

12) Page 37, line 25 - Page 38, line 12: EFFECT ON PREVIOUSLY CREATED POWERS OF ATTORNEY

- in essence, substantiates pre-existing powers and applies the enforcement and default provisions of this new statute to any pre-existing power



Older Alaskans Commission

Box C
Juneau, Alaska 99811-0209
907/465-3250

POSITION PAPER -- APRIL 22, 1988

CSHB 491 (HESS)

"An Act Establishing a Statutory Form Power of Attorney"

The Older Alaskans Commission strongly supports passage of this bill. Senior citizens can best keep their own financial and personal affairs in order through the use of "advance directives" or Life Planning, by use of a Durable Power of Attorney. A previously signed Durable Power of Attorney would often eliminate the need for family or caregivers of an incapacitated senior to seek a guardianship. Petitioning the court for a guardianship takes up to four months, and is quite cumbersome and costly to both the petitioner's and the public's pocketbook.

At an OAC sponsored Workshop for Professionals on the Guardianship System in Alaska, March 31 and April 1, nearly 100 representatives from nursing homes, hospitals, social service agencies, the court system, the Offices of the Attorney General and the Public Guardian discussed the many problems surrounding the need for guardianship for people no longer competent to make decisions.

The workshop group reached a strong consensus on the need to avoid court guardianship proceedings whenever possible. They agreed that Alaska needs a statutory form Durable Power of Attorney which is easy and inexpensive to use. Once this exists, seniors should be strongly encouraged to use the forms; through a series of clinics at senior centers, hospitals, and certainly upon admission to a nursing home.

Although durable powers of attorney are currently authorized under AS 13.26.325, each person must pay a lawyer to draft the power, a job which can easily cost over \$ 500, because the lawyer must try to specify and define all sorts of contingencies about numerous types of financial and personal transactions.

The primary benefits of CSHB 491 (HESS) are that it provides a statutorily approved form Power of Attorney, and defines in detail the specific powers which an agent may exercise under the power of attorney. This will enable many individuals to enact a Durable Power of Attorney without any expense for consultation with a lawyer.

In addition, CSHB 491 requires that third parties presented with a properly executed statutory Power of Attorney must honor it. The opposite frequently happens now, to even the best drafted Power of Attorney: when the agent presents it to a stock brokerage firm, bank or insurance company, the third party refuses to honor it and asks for a differently formatted Power--but if the principal is in the hospital in a coma, it is too late to get the principal's signature on a new form.

CSHB 491 might at first glance appear to be rather long, but the lengthy definitions are needed to ensure that third parties know what their obligations are to carry out the agent's instructions.

CSHB 491 makes several other improvements upon current law because it provides for a simple method to determine "disability," without requiring a judicial determination, provides a hold harmless guarantee to third parties, and ties in with the Living Will statute so that a person may appoint an agent for all health care decision-making.

In summary, the Commission strongly supports this bill in its present form. CSHB 491 (HESS) makes Alaska's current statute on powers of attorney much more beneficial and accessible for seniors and their families, friends, and caregivers who wish to plan for the senior's future.

APPROVED BY:

for Connie Shippe, Exec. Director
Dove Kull, Chair
Legislative Committee
Older Alaskans Commission

DATE: April 22, 1988

REVIEWED BY:

John M. Andrews
John M. Andrews, Commissioner
Department of Administration

DATE: 4/25/88

HOUSE COMMITTEE REPORT

4/28

(7)

Date referred: 4/20/88

FURTHER REFERRALS:

Ruler

DATE: April 25, 1988

The Judiciary Committee has considered HB 491

"An Act establishing a statutory form power of attorney."

RECOMMENDS:

- replace with CS HB 491 (Jud) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 4/20/88
- zero with analysis

SIGNING DO PASS:

[Signature]

Frank Wilmer

Mc [unclear]

John H. Taylor

Ronnie L. Barnes

Mike Varone

Jan Coste

SIGNING OTHER RECOMMENDATIONS:

[Signature]

 Chairman's signature

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WHILE IN SESSION
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(907) 465-3704

ALASKA STATE HOUSE

OFFICE OF MAJORITY WHIP



CO-CHAIR
HEALTH, EDUCATION & SOCIAL SERVICES

LABOR & COMMERCE
SUBCOMMITTEE ON FOREIGN TRADE

REPRESENTATIVE JOHNNY ELLIS

*file
no
Committee*

M E M O R A N D U M

TO: House Judiciary Committee Member

FROM: Rep. Ellis *JE*

RE: CSHB 491; "Establishing a Statutory Form Power of Attorney"

DATE: April 21, 1988

CSHB 491 passed out of the HESS Committee on Monday, April 19 and will be heard by the Judiciary Committee on Monday, April 25th.

I am distributing a copy of the bill as well as some back-up information a few days before the hearing because CSHB 491 is fairly lengthy and I think members should have an opportunity to go over it before the hearing. After reviewing the legislation it will no doubt be clear to you why, in order to have a short and simple form, there must be a long and detailed statute.

A statutory form can provide several benefits for Alaskans. It shortens the amount of time one must spend with an attorney or other drafter, and thus reduces the cost involved. It contains a provision for sustaining the power throughout disability or starting the power upon disability and outlines the procedure for a third party to determine disability has set in. It contains a detailed health care decisions provision which, if chosen as an option, will give the agent clear authority to make the necessary care decisions should the principal become incapacitated.

My staff has been working closely with Connie Sipe, Executive Director of the Older Alaskans Commission, and members of the probate section of the Alaska Bar to craft this legislation. Please do not hesitate to contact Deborah Bonito in my office, (X3704), if you have any questions about the bill.

Thank you for taking the time to consider this piece of legislation.

You and...

To: Reg Jellis
From: Prant GAZAWAY

THE LAW: When to draft a durable power of attorney

By Ron Landsman

Couples who have always done everything together and trusted each other throughout their married life are often shocked to find that if one partner becomes incapacitated the other doesn't have authority to handle some of the property or benefits they own together. In a time of extreme stress the situation is made worse because the healthy partner is denied access to much-needed assets.

This limitation applies to most forms of joint property apart from joint bank accounts. For example:

Real property. Most couples own their homes as "tenants by the entirety" or "joint tenants with right of survivorship." These clumsy phrases mean that if either partner dies the survivor becomes the sole owner. With this kind of ownership, *both* current owners must sign any deed transferring ownership or placing the property under a mortgage or deed of trust. If one spouse is unable to sign, only someone with legal authority to act for that person can sign for him or her.

Intangible personal property. This includes money, credit, investments, bank accounts, stocks, corporate and government bonds, etc. Other than bank accounts, most jointly owned investments cannot be sold, transferred, or borrowed against unless both husband and wife or their legally appointed representative authorize the transaction.

Retirement benefits. Most decisions covering retirement benefits can be made only by the individual whose account it is. Again, only someone with legal authority can exercise those options on that person's behalf. (Spouses do, however, have certain rights to each other's pension

benefits in the event of death or divorce.)

The one exception to this litany of legal restrictions is government-funded benefits (Social Security, Veterans Administration, Railroad Retirement, etc). Despite its reputation for stodginess, the government provides a quick and easy method for spouses to handle each other's bene-

What rights do you have if your spouse can't cope?

fits: It's known as "representative payeeship." One spouse can be named representative for the other who can no longer act for him- or herself, regardless of whether the acting spouse has obtained any other legal authority.

There are two ways in which couples can get legal authority to act on each other's behalf. One is by being appointed guardian or conservator of the other's property by proving the other unable to manage his or her affairs. Relatively simple as legal proceedings go, this is more expensive, time consuming and less flexible than the alternative: establishing a durable power of attorney while both partners are still competent.

In a power of attorney the principal names another person, or two, or even an institution such as a bank, to serve as his or her attorney-in-fact. In most states, a power of attorney is durable *only* if it stipulates it will

continue in effect even when the principal is incompetent. Other restrictions vary from state to state.

Married couples or individuals thinking of setting up individual durable powers of attorney should indicate very specifically what property they want the other person to manage. It may also be prudent to include power to make gifts, forgive debts, fund trusts, and make elections and disclaimers. For individuals with large estates (in excess of \$600,000), however, this can have significant federal estate tax consequences and the power to make a gift should be executed only with expert legal advice.

In many states, important health-care decisions can be included in a power of attorney; other states have a separate medical power statute with different requirements.

Many institutions will not honor a power of attorney unless the type of property is specifically defined. For example, a title-insurance company may not issue a policy to the buyer of real property one spouse wants to sell unless the property is clearly identified in the power. Sometimes the power of attorney must be recorded with the deed. State law may also require that the power be executed with the same formality as a deed.

A lawyer who prepares a power of attorney should collect the special forms most banks, insurance firms and government institutions provide. This will avoid delays if their legal counsels insist on reviewing the power of attorney or decline to comply because it is not specific. ■

Ron Landsman is an attorney with a Washington, D.C., law firm.

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3704

REPRESENTATIVE JOHNNY ELLIS

M E M O R A N D U M

TO: HESS Committee Members

FROM: Representative Johnny Ellis *JE*

RE: HB 491

DATE: March 17, 1988

I introduced HB 491; "An Act establishing a statutory form power of attorney" in order to address the concerns of several active Anchorage Seniors relating to Alaska's existing durable power of attorney statute, (AS 13.26.325).

The first concern is the vagueness of the existing statute and the problems this has caused drafters of durable power authorizations. Because the existing statute does not explicitly describe the powers which the principal may delegate to an agent, many institutions do not honor powers of attorney drafted under the statute.

HB 491 sets into statute the actual form an individual may use to assign specific powers to an agent in the event of disability. It sets out a list of powers which are authorized and gives the principal the option of deleting those powers he or she does not wish to delegate. Each power is described in detail in statute to avoid any question of the agent's authority.

A second major concern is the durability of the existing power of attorney in the event that the principal becomes disabled or otherwise incapacitated. Alaskan Seniors are finding that it is in their best interest and that of their loved ones to appoint a person whom they trust to make important decisions regarding their property and health care before the onset of a disabling illness or in the event of an accident.

The form created in HB 491 has a section which specifically addresses the durability of the power of attorney established by the form. Each individual has the option of stating in this section (t)his instrument shall continue in effect during the subsequent disability of the principal.

The third and final concern addressed in this legislation has to do with the definition of "disabled" or "incapacitated." The existing statute merely allows for the inclusion of a statement to the effect that the power of attorney remains effective or becomes effective upon the disability of the principal but does not define disability. This has led to challenges of the agent's authority in some circumstances.

HB 491 adds a section to the statutes which calls for a physician or similarly qualified medical professional's affidavit stating that the principal's ability to receive and evaluate information or to communicate decisions is impaired.

In addition to these major issues, the bill also has the potential to greatly reduce the time and fees involved in drafting a durable power from scratch. With the statutory form in place, time spent in legal consultation may be substantially decreased. This will be very beneficial to those Seniors who are on a fixed income.

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: <hr/> Revision Date: Title: An act establishing a statutory form of power of attorney Sponsor: Ellis & Gruenberg Requestor: HESS	Bill Version: HB 491 Publish Date: 2/15/88 Agency Affected: Alaska Court System BRU: Trial Courts Components:
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EXPENDITURES/REVENUES:	(Thousands of Dollars)					
OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL
---------	---------	---------	---------	---------	---------	---------

REVENUE
---------	---------	---------	---------	---------	---------	---------

FUNDING:	(Thousands of Dollars)					
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: <i>Jan Strandberg</i> Division: Alaska Court System	Phone: 264-8228 Date: 03/14/88
Approved by: <i>Stephanie Cole, for</i> Agency: Alaska Court System	Date: 03/14/88

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management & Budget
 - Impacted Agency(ies)
 - Senate Secretary

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act establishing a statutory form power of attorney."
Sponsor: Representative Ell's
Requestor: House HESS

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 14, 1988
Approved by Commissioner: Richard I. Pegues / FOR /
Grace Berg/Schaible, Atty. Gen. Date: March 14, 1988
Agency: Department of Law

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 491

This bill amends AS 13.26 by adding new sections that set out a comprehensive statutory form power of attorney covering most situations where an individual may wish to appoint an agent or agents to personally represent an individual as an attorney-in-fact. Because the bill's provisions would govern matters between private parties they will not have a fiscal impact on the Department of Law.

HB 491 Statutory Form for Power of Attorney
Sponsored by Ellis

Connie Sipe of the Older Alaskans Commission will not be in town to testify on this bill in Judiciary on Monday and wanted to pass on the following:

The bill sets up a "durable" power of attorney. Under present law a power of attorney is good only as long as the person giving it is mentally capable. If the person goes into a coma the power of attorney is no longer valid.

It is possible to get a durable power of attorney now but it costs as much as a will and there are no standards for attorneys to follow.

HB 491 provides for a standard form which would be available in stationary stores. The rest of the bill gives definitions for items on the form.

The Older Alaskans are very supportive of this bill as they are often in the position of being responsible for an incapacitated spouse.

Older Alaskans Commission

Box C
Juneau, Alaska 99811-0209
907/465-3250

POSITION PAPER -- HB 491 "An Act Establishing a Statutory Form Power of Attorney"

This bill deals with what is commonly known as "Durable Powers of Attorney." Such durable powers are currently authorized in AS 13.26.325. This bill strengthens the efficacy of that statute and would provide in the statute a form power of attorney which individuals may use.

A general, non-durable power of attorney is effective only so long as the person who gave the power of attorney remains mentally competent, because the law views a power of attorney as being renewed each and every moment of its existence, and it must be renewed on the basis of the giver's legal ability, including mental competency, to continue to give the power. What this means is that the power of attorney becomes ineffective just at the time when one might most need it-- because one has become incompetent and needs someone else to act in one's behalf.

A Durable Power of Attorney cures this defect, because it either becomes effective upon the giver's reaching a state of disability, or it starts before and remains effective after the disability status is reached. However, Durable Powers of Attorney drafted in accordance with current AS 13.26.325 are sometimes not honored by third parties because there has been no simple way to determine when the disability or incompetency has occurred, or because the third party felt unsure of their legal ability to rely on the power of attorney for certain high-risk actions such as health care decision-making.

HB 491 makes Alaska's current statute on powers of attorney much more beneficial for seniors and their families, friends, and caregivers who wish to plan for the senior's future.

HB 491 improves upon current law because it:

- (1) spells out in detail the specific powers which an agent may exercise under a power of attorney;
- (2) provides for a simple method to determine "disability," without requiring a judicial determination; and
- (3) provides an approved form for use, thereby saving time and expense in the drawing up of a power of attorney.

POSITION PAPER ON HB 491 -- PAGE 2
OLDER ALASKANS COMMISSION

The Older Alaskans Commission strongly supports passage of this bill. In many instances the existence of a Durable Power of Attorney could avoid the need for family or caregivers of a person to seek a judicial guardianship, a cumbersome and possibly costly procedure.

The Commission does suggest two amendments to HB 491:

At page 2, line 17, insert:

"(M) benefits from local, state, or federal
government ()"

[(M)] (N) ..."

The bill would also need a detail section on the powers specific to applying for government benefits, to be inserted at page 30, just before the present line 29.

At page 2, line 24, insert a new portion of the form:

IF YOU HAVE GIVEN THE AGENT AUTHORITY REGARDING HEALTH
CARE SERVICES, CHECK ONE OF THE FOLLOWING:

- () I have executed a separate "Living Will" regarding the use of life-sustaining procedures. I hereby authorize my agent to enforce that Will in keeping with my wishes expressed in it.
- () If I choose in the future to execute a "Living Will," I authorize my agent to enforce that Will.
- () I do not authorize my agent to deal with any "Living Will" which I might choose to execute, now or in the future.

This second amendment would tie together a Power of Attorney with the "Living Will" authorized in AS 18.12.010. This is needed because the powers proposed in the new AS 13.26.340(1) regarding health care do not allow the agent to authorize the termination of life-sustaining procedures. If a person executes a separate Living Will, the person should be able to empower their legal agent to see that the Will is carried out. The Living Will Act does not now provide for any method to ensure that the intent of the will's maker is promptly carried out.

In summary, the Commission strongly supports this bill in its present form, but also urges the two amendments noted above.

APPROVED BY:

Dove M. Kull
Dove M. Kull, Chair
Legislative Committee
Older Alaskans Commission

REVIEWED BY:

John M. Andrews
John M. Andrews, Commissioner
Department of Administration

DATE: 3-14-88

DATE: 3/15/88

ATTACHMENT D
Family Circle Article: Durable Power
of Attorney

FREE! THE LEGAL FORM THAT PROTECTS YOUR LOVED ONES

It's a durable general power of attorney form. And although you may never have heard of it, it's even more important than a will. Use the form on page 9 to protect your family and yourself. It may be the wisest legal step you take. BY BARBARA GILDER QUINT

Two years ago, Clare Richards's husband, Jim, was badly hurt in an automobile crash. Although Jim spent 10 days in the emergency care unit, he's fine now and has returned to work. Looking back, Clare remembers the terror, grief and worry she felt. She also recalls the problems that arose while Jim, heavily sedated, was lying in the hospital, and the family's finances were at a standstill.

"There was a deposit due at college to reserve a place for our daughter for the next term," Clare recalls. "The money was in Jim's savings account, but there was no way I could get at it. I couldn't file our tax return, even though we were counting on a fast refund to pay bills. I couldn't even cash his paycheck."

Fortunately, Jim recovered quickly and was soon able to sign the necessary papers to take care of these and other important matters.

Harriet Danvers's 74-year-old mother suffered a stroke several months ago and became unable to manage her own affairs. The social service department at the hospital suggested a nursing home, but because her mother could not sign the required papers, Harriet could not sell her mother's stocks to raise the necessary money for nursing home care. As a last resort, with the written consent of the rest of the family, Harriet went to court, had her mother declared unable to manage her own affairs and had herself appointed conservator of her mother's assets. Not only was this painful, but it also wasted money. The family lost two months' rent on the mother's apartment because they were unable to sublet sooner and spent \$5,000 on lawyers' and court fees. Moreover, there will be annual fees for accounting reports, which Harriet must file with the court.

Clare and Harriet are among hundreds of thousands of Americans who each year face the problem of handling the financial affairs of a family member who has been temporarily or permanently disabled. One out of every two Americans will undergo a lengthy period of disability during his or her lifetime: A 62-year-old is four times more likely to suffer a disability than to die. If the disability is such that the person is no longer physically or mentally able to make financial decisions, family members may be unable to act for him or her without taking costly and cumbersome legal measures.

But there is a sensible and economical alternative to the court action families are often forced to take in such circumstances. If the disabled person has, in the past, signed a simple legal document called a *du-*

rable general power of attorney, then there will be someone who is legally able to act at once, without any expense or delay. Lawyers suggest that this is a step many families should consider. Read the following questions and answers and then talk with your family about using a durable general power of attorney.

What is a durable general power of attorney? It's a legal form that authorizes someone you designate to act in your behalf. It gives this person a wide variety of powers that you spell out in advance. For example, in the sample form on pages 9 and 10, the powers include the right to draw checks on bank accounts, to have access to a safe-deposit box and to buy and sell stocks and bonds. The idea is that the person to whom you give these powers will use them in your best interest.

To whom should you give a power of attorney? in legal language, the person you choose to act for you when you sign a power of attorney is

in-fact." Don't be confused by this jargon; *this person does not have to be a lawyer*, and actually, in many cases, you will want to choose someone other than an attorney, such as your spouse, a grown child, a close relative or good friend. You should choose someone in whom you have full confidence, because that person could be stepping into your shoes someday to make decisions about you and your property.

Can anyone sign a power of attorney? A person can sign a power of attorney only if he is "competent" or, as some state laws phrase it, as long as he is not "under a disability." Being "under a disability" is usually defined as being unable to manage one's property effectively for reasons

(Please turn to page 42)

For instructions on how to use the durable general power of attorney form, see page 43.

Feminine itching

simple to relieve

...as easy as a headache

This instantly-soothing medication relieves external feminine itching as easily as aspirin relieves a headache.

That's good news because minor feminine itching is about as common as a headache—caused by everyday things like jogging, pantyhose, even normal perspiration.

VAGISIL® Feminine Itching Creme has been formulated with medication recognized effective by expert gynecologists. In fact, it's been used by over 4 million women who need fast relief from itching and irritation.



Of course, should irritation persist, see your doctor. But if you're like millions of other women, VAGISIL® will relieve the problem. As simply as aspirin relieves a headache.

Feminine moisture

end it now and stay fresher all day

Now stay drier, feel fresher all day with VAGISIL™, the first Feminine Powder with a totally unique formula to solve wetness problems. Its special moisture absorber is 25 times more effective than talc—with a natural skin-protecting emollient. Created with a leading gynecologist—100% talc-free, so safe, even its light, clean scent is hypoallergenic.



Vagisil

FEMININE POWDER & ITCHING MEDICATION

ON THE COUCH (From page 40)

then write it in the space below the dream word.

(Enid's paper looked like this: *Husband (partner), dinner (feeds), fighting (opposed), Dinah Shore (perfect woman), Burt Reynolds (perfect man), watch (time), working (good), garden (grow), see (realize), flower (growth), step (go), hole (nothingness)*)

DR. K.: O.K. Now tell me a story, linking the new words.

ENID: My partner feeds (takes care of) me, but he is opposed to my becoming the perfect woman and is trying to stop us from being the perfect couple. He wants more time. But good comes from growing and realizing my growth (my potential)... But what about the fact that I end up in a hole? I don't like that.

DR. K.: Parts of dreams, like the hole, tell you what your fears are, not what's really going to happen. Many women are afraid of becoming more independent because to them, losing dependence on a man means losing the man. What they don't realize is that most men today appreciate independent women.

ENID: Having a paid job is a little threatening to me. My daughter told me the other day that she didn't want a man to buy her a car when she grows up; she wants to pay for it herself. I didn't think I felt that way, but my dreams say I do.

DR. K.: I think you do. But remember, you don't have to be perfect at everything, as you think Dinah Shore is; and you can involve your husband in helping you work out your new schedule so you still have the time together that you want.

ENID: But how do I know that my interpretation of the dream is right?

DR. K.: Trust your own "reading." If it comes to you instinctively, it's "right." Just for fun you might ask your friends to do these exercises with your dream. In psychology classes where dreams are discussed, about 70% of the students come up with identical "free association" words, and an even higher percentage agree on the overall meaning of a given dream. To gain even more control over your dreams, try changing them so they work out better. The Senoi Indians are famous for doing that, and they—in fact—unless the need arises.

university research proves that it works. When you wake, stay in the dreamy state and "rewrite" the ending to make it more positive. How would you rewrite your dream?

ENID: I'd climb out of the hole and then I'd plant seeds to make more beautiful flowers.

DR. K.: Good. You can also use a technique called "dream incubation." Before going to sleep, think about what you want to dream about, then quietly say: "Help me understand..." When you wake, write down your dream and translate it. You'll gain new insights that can help you with your personal growth.

BOOKS FOR FURTHER READING

• *Dream Workbook*, by Jill Morris (Little, Brown, 1985). • *Living Your Dreams*, by Gayle Delaney (Harper & Row, 1981).

To be considered for a therapy session, write to: Dr. J.K., P.O. Box 1379, Grand Central Station, New York, NY 10163. Describe your problem; include address and phone number.

THE LEGAL FORM THAT PROTECTS (From page 6)

such as mental or physical illness or advanced age. In practical terms, this means that in order for a power of attorney to be legal, it must be signed while a person is still considered competent. Thus, once Harriet Danvers's mother was mentally disabled by a stroke, legally she could no longer sign a paper giving Harriet a power of attorney to act for her.

This power of attorney sounds as if it gives someone else considerable power over your affairs. Is it safe? Most people who sign powers of attorney do so to make sure that there will be someone around to act for them in case they are physically or mentally disabled. However, you may worry that the person to whom you give such a power could take actions while you are still competent to run your own affairs. One way of protecting yourself is to keep control over the signed legal form as long as you can manage your finances. You might consider giving the signed form to a third party, such as your lawyer or a close friend, with instructions that it should not be turned over to the attorney-in-fact unless the need arises.

If I sign a durable general power of attorney, how long does it stay in force? With many durable general powers of attorney (including the form printed on pages 9 and 10), the right to exercise the power begins as soon as you sign. It continues in effect until you either revoke it or notify third parties (such as a bank) that you have terminated it. Such a durable general power of attorney includes a special clause saying that it remains in force even if you become disabled or incompetent. This is especially important because the ordinary power of attorney form does not have this special clause. If you become disabled, the ordinary power of attorney you signed automatically terminates, even though this is precisely when and why you might need it most. □

For More Information

If you're interested in do-it-yourself law and in cutting legal fees, consult the following books:

- *How to Avoid Lawyers: A Step-by-Step Guide to Being Your Own Lawyer in Almost Every Situation*, by Don Biggs (Garland Publishing, Inc.).
- *How to Avoid Probate: Updated!*, by Norman F. Dacey (Crown).

HOW TO USE THE DURABLE GENERAL POWER OF ATTORNEY FORM

1. Read the form carefully. If there are parts you don't understand fully or with which you do not feel comfortable, consult your lawyer before proceeding. The form covers those transactions in which it would be most useful. It does not cover real estate matters because recording requirements for real estate documents vary greatly from state to state.

2. Each state establishes its own rules governing the use of a durable power of attorney. The form reproduced here is not suitable for use in North Carolina, Oklahoma, South Carolina, Wyoming, Florida or Missouri. (If you live in any one of these states, you can consult with your lawyer; preprinted forms similar to the one here are available in stationery stores in your state for about \$1.)

California requires that the attorney-in-fact named in the power of attorney be a resident of the state. Because laws change, it is always good procedure to check with your lawyer on the use and execution of any legal form.

3. In the past, some banks and insurance companies have traditionally been unwilling to accept or act on

any preprinted power of attorney form, recognizing only forms that they have prepared themselves. In an attempt to deal with this problem, we have included in the form reproduced on pages 9 and 10, in capital letters, special language that will protect such third parties and thus encourage them to accept this particular form; however, there can be no assurance that they will do so. You might prefer to contact your bank and discuss its own forms.

4. After reading the form, fill in the name and address of the person giving the power—the principal—on the first and second lines. (Use a pen, not a pencil.) On the next set of lines, fill in the name(s) and address(es) of those to whom the power of attorney is given—the agent(s) or attorney(s)-in-fact. The person giving the power must then sign the form and the person accepting the power must sign his or her name.

The last signature on the form is that of the notary public, indicating that he or she witnessed the signing of the form. In Connecticut, as indicated on the form, two witnesses in addition to the notary public must sign, although the witnesses' signatures need not be notarized. (A notary is authorized by the state or Federal government to administer oaths and attest to the authenticity of signatures.)

FAMILY CIRCLE 6/197 43



If you're allergy sensitive, your world is uncomfortable... irritating... ever-threatening. For relief, ask your doctor or pharmacist about the histamine blocker, Benadryl® — the most prescribed allergy medication ever — available without prescription in full 25 mg. strength. Use Benadryl or Benadryl Decongestant as directed for upper respiratory allergy and cold symptoms. At last, good news for allergy sensitive people.



Prescription Strength Allergy Relief from PARKE-DAVIS®

DURABLE GENERAL POWER OF ATTORNEY

STATE OF _____

COUNTY OF _____

Know all Men by These Presents, which are intended to constitute a DURABLE GENERAL POWER OF ATTORNEY

That I _____
(Insert name of principal)

(Insert address of principal)

do hereby appoint _____
(Insert name of agent)

(Insert address of agent)

and

(Insert name of agent if more than one agent is designated)

(Insert address of agent if more than one agent is designated)

My Attorney(s)-in-Fact TO ACT (jointly), as my true and lawful Attorney(s)-in-Fact, for me and in my name, place and stead:

(A) Power with Respect to Bank Accounts. To establish accounts of all kinds for me with financial institutions of any kind; to modify, terminate, make deposits to and write checks on and endorse checks for or make withdrawals from all accounts in my name or with respect to which I am an authorized signatory; to negotiate, endorse or transfer any checks or other instruments with respect to any such accounts; and to contract for any services rendered by any financial institution.

(B) Power with Respect to Safe-Deposit Boxes. To contract with any institution for the maintenance of a safe-deposit box in my name; to have access to all safe-deposit boxes in my name or with respect to which I am an authorized signatory; to add to and remove from the contents of any such safe-deposit box and to terminate any and all contracts for such boxes.

(C) Power to Sell and Buy. To sell and buy personal, intangible or mixed property, upon such terms and conditions as may seem appropriate; to use any credit card held in my name to make such purchases and to sign such charge slips as may be necessary to use such credit cards; and to repay from any funds belonging to me any money borrowed and to pay for any purchases made or cash advanced using credit cards issued to me.

(D) Power to Exercise Rights in Securities. To exercise all rights with respect to securities that I now own, or may hereafter acquire; and to establish, utilize and terminate brokerage accounts.

(E) Power to Borrow Money (including any Insurance Policy Loans). To borrow money for my account upon such terms and conditions as may seem appropriate and to secure such borrowing by the granting of security interests in any property or interest in property which I may now or hereafter own; to borrow money upon any life insurance policies owned by me upon my life for any purpose and to grant a security interest in such policy to secure any such loans; and no insurance company shall be under any obligation whatsoever to determine the need for such loan or the application of the proceeds therefrom.

CLIP OUT AND SAVE!

(F) Power with Respect to Taxes. To prepare, sign and file Federal, state and/or local income, gift, property or other tax returns, claims, etc.

(G) Power to Demand and Receive. To demand, arbitrate, settle, sue for, collect, receive, deposit, expand for my benefit, reinvest or make such other appropriate dispositions of, as my Agent deems appropriate, all cash rights to payments of cash, property (personal, intangible and/or mixed), rights and/or benefits to which I am now or may in the future become entitled, regardless of the identity of the individual or public or private entity involved (and for purposes of receiving Social Security benefits, my Agent is herewith appointed my "Representative Payee"); to utilize all lawful means and methods for such purposes.

I further give and grant to my said Attorney(s)-in-Fact full power and authority to do and perform every act necessary to be done in the exercise of any of the foregoing powers as fully as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said Attorney(s)-in-Fact shall lawfully do, or cause to be done by virtue hereof.

This instrument may not be changed orally.

This power of attorney is durable and shall not be affected by the subsequent disability or incompetence of the principal.

TO INDUCE ANY THIRD PARTY TO ACT HEREUNDER, I HEREBY AGREE THAT ANY THIRD PARTY RECEIVING A DULY EXECUTED COPY OR FACSIMILE OF THIS INSTRUMENT MAY ACT HEREUNDER, AND THAT REVOCATION OR TERMINATION HEREOF SHALL BE INEFFECTIVE AS TO SUCH THIRD PARTY UNLESS AND UNTIL ACTUAL NOTICE OR KNOWLEDGE OF SUCH REVOCATION OR TERMINATION SHALL HAVE BEEN RECEIVED BY SUCH THIRD PARTY AND I FOR MYSELF AND FOR MY HEIRS, EXECUTORS, LEGAL REPRESENTATIVES AND ASSIGNS, HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS ANY SUCH THIRD PARTY FROM AND AGAINST ANY AND ALL CLAIMS THAT MAY ARISE AGAINST SUCH THIRD PARTY BY REASON OF SUCH THIRD PARTY HAVING RELIED ON THE PROVISIONS OF THIS INSTRUMENT.

In witness whereof, I have hereunto signed my name this _____ day of _____, 19____.

(Signature of Principal)
Specimen Signature of Attorney(s)-in-Fact

Witness

Witness

[In Connecticut power of attorney must be signed by two witnesses.]

CERTIFICATE OF NOTARY

STATE OF)
) ss.:
COUNTY OF)

On the _____ day of _____, 19____, before me personally came _____ whose identity is well known to me and known to me to be the individual described in and who executed the foregoing instrument, and (he) (she) acknowledged to me that (he) (she) executed the same.

Notary Public

NEW YORK COMMENTS

Henry A. Lowet
Kramer, Levin, Nessen, Kamin & Frankel
919 Third Avenue
New York, NY 10022

The special impetus for enacting the legislation which authorized use of the Durable Power of Attorney in New York may have been the Internal Revenue Service. The IRS had been questioning whether "flower bonds" actually were owned by a decedent at the time of death where such bonds were purchased shortly before death by an attorney-in-fact and the competence of the principal was uncertain at the time of purchase. It also was contemplated that enactment would improve, simplify and reduce the cost of planning for persons advanced in age, and of managing their affairs in the event of their later disability or incompetence. The legislation was enacted as Section 5-1601 of the New York General Obligations Law (McKinney 1978) and became effective immediately on June 10, 1975, pursuant to L. 1975, c. 195, § 1.

The legislation was derived from Section 5-501 of the Uniform Probate Code (1969) ("UPC") and requires the express inclusion in the power of the words "this power of attorney shall not be affected by the subsequent disability or incompetence of the principal," or words of similar import.

The New York statute omits the UPC language declaring that a power may be framed to become effective on the future disability of the principal, the so-called "springing power." The statute is silent on the possible effectiveness of a "springing power," should the language of such a power be added to the usual form of durable power. Although not formally a part of the "legislative history," it is well known that the draftsmen of the New York legislation considered a provision authorizing the use of a "springing power," but decided not to offer such a bill because of concern regarding appropriate evidence of disability or incompetence, short of an adjudication of incompetency. This would tend to lead to the conclusion that the modification of a standard durable power form to make it a "springing power" would not be enforceable in New York.

The New York statute also omits the UPC language authorizing the exercise of a Durable Power of Attorney when the attorney-in-fact is either uncertain or does not know whether the principal is dead or alive. A bill to gain this result, S. 4962, was introduced in the state senate in early 1975 but was not enacted. Hence, it is doubtful that acts by an attorney-in-fact are valid after the principal's death, even if the attorney-in-fact had no knowledge of such death, or, indeed, that the power may be exercised if the attorney-in-fact is uncertain whether the principal is dead or alive. It is unclear, if the attorney-in-fact did not know of the principal's death, whether such invalidity may be raised by the attorney or third party who dealt with the attorney-in-fact. The attorney-in-fact nonetheless would bear the risk of liability for loss to the estate due to the attorney-in-fact's actions whether or not the attorney-in-fact knew of the principal's death.

The statutory framework in New York is unusual in that even prior to the enactment of the durable power legislation in 1975, there has existed since 1948 a statutory short form of general power of attorney, derived from the New York General Business Law, L. 1948, c. 422. General Obligations Law § 5-1501 (McKinney 1978 and Supp. 1983). This permits a principal to adopt by reference detailed statutory powers relating to the principal's property (any of which may be omitted by the principal drawing a line through the text of that subdivision and writing in his or her initials in the box opposite).

Attorneys in New York generally use a printed form of durable power which satisfies the requirements of the statute. Nonetheless, the statute expressly permits any "additional provision [to be added] which is not inconsistent with the other provisions of the statute by short form power of attorney." General Obligations Law § 5-1503(3) (McKinney 1978). As a matter of practice, this has encouraged practitioners to add provisions to the usual printed form of power, such as the power to represent the principal in all tax matters (typically using language from the Internal Revenue Service's own form of power of attorney, Form 2848); the power to make charitable donations which the principal had been in the habit of making or which the attorney-in-fact thinks the principal would make if able; and the power to make gifts to the principal's descendants and spouses (including the attorney-in-fact, if a descendant or spouse), but usually not to exceed the largest amount which then qualifies for the annual per donee exclusion allowed for federal gift tax purposes. These additional powers each relate to property rights and appear to be consistent with General Obligations Law § 5-1502(1) (McKinney 1978), which power deals with personal relationships and affairs, and other provisions of the statutory short form power.

New York practice, in the absence of decisional law, seems to indicate, however, that subjects relating to "substitution of judgment," including personal care or health care decisions, are not consistent with the other provisions of the statutory short form power. No case or rule has been found which would authorize the addition of a provision permitting the attorney-in-fact to create a trust for the principal's benefit, to make an election against the will of the principal's deceased spouse, to disclaim an interest in an estate, or to "pull the plug" should the principal be in a vegetative coma or similar state short of literal or absolute death, with no substantial prospect of recovery. Such provisions seemingly would have to await legislative action.

There is no general procedure or requirement for filing a power of attorney. If, however, a power of attorney relates to an interest in a decedent's estate, such as an authorization from an individual residing abroad who seeks to appoint an agent in New York to qualify as the administrator of an estate or to receive the principal's share in an estate, New York Estates, Powers and Trusts Law § 13-2.3 (McKinney 1967 and Supp. 1983) ("EPTL") raises such a requirement. In addition to requiring such power to be in writing and acknowledged in the manner prescribed by the laws of New York for the recording of a conveyance of real property, the statute provides for recording in the office of the surrogate granting letters on such decedent's estate, or, if no such letters have been granted, in the office of the surrogate having jurisdiction to grant them. Such recording confers on the surrogate jurisdiction over the grantor of such power, the attorney-in-fact therein named and any other person acting thereunder. EPTL § 13-2.3(a).

A durable power must be created by a written and acknowledged instrument and may be made by anyone competent to make a contract. There is no limit on those to whom powers may be given. There is no statute or rule which restricts the creation of such a power to, or the conferring of a power upon, residents of New York. If a non-resident executes the usual printed form of statutory power, he or she presumably would be making a "choice of law" decision, since the statutory form expressly must invoke the provisions of the governing New York law relating to such powers. There is no known decision in New York dealing with the validity of a durable power executed by a resident or non-resident of New York in another jurisdiction and then used in New York.

There is no requirement for court approval of a power, nor is there any statute which establishes a specific procedure for enforcing or testing the validity of a power.

While Section 2 of the durable power statute provides that the attorney-in-fact can be made to account to a committee or conservator if one is appointed rather than to the principal, the statute is silent as to accountings when the donor of the power is disabled or incompetent and no committee or conservator has been appointed. Adequate protection for a disabled or incompetent principal does exist under New York law, however, since an attorney-in-fact owes a fiduciary duty to the principal and can be compelled to account to the principal or to the court, on its own initiative, or on the petition of a person interested. It is the same fiduciary duty owed by a trustee under an express deed of trust. *Estate of Raphael Hudis* (NYLJ 2/3/77, p. 25, col. 2; *motion to reargue denied*, NYLJ 4/6/77, p. 15, col. 4).

There is nothing in the statute which expressly authorizes the inclusion in a power of the authority on the part of the attorney-in-fact to nominate the committee or conservator of the principal.

The statutory form of power expressly gives full and unqualified authority to the attorney-in-fact to delegate any or all of his powers to any person or persons whom the attorney-in-fact shall select.

There is scant authority regarding the compensation of an attorney-in-fact. With respect to a power in relation to an interest in a decedent's estate, one court has held that compensation only can be awarded to an attorney-in-fact for services rendered under a valid power of attorney. *In re Braunstein's Estate*, 202 Misc. 244, 144 N.Y.S. 2d 280 (Sur. Ct., N.Y. Cty. 1952). There is also statutory authorization in such a context for the surrogate in any appropriate proceeding to "fix and determine the validity and reasonableness" of the attorney-in-fact's compensation and expenses, "whether or not the same have been previously fixed by agreement . . ." EPTL § 13-2.3(b)(3). This would seem to recognize the right of an attorney-in-fact to receive compensation using the rule of reasonableness which is the standard for the compensation of any agent. Attorneys in this jurisdiction have discussed the possibility of including a "fee clause" in a durable power, under which they are to act as attorneys-in-fact, but such provisions apparently have not come into use.

Sec. 5-1501. Statutory short form of general power of attorney; formal requirements; joint agents.

1. The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this title:

"Notice: The powers granted by this document are broad and sweeping. They are defined in New York General Obligations Law, Article 5, Title 15, sections 5-1502A through 5-1503, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned."

Know All Men by These Presents, which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law:

That I do hereby
(insert name and address of the principal)

appoint
(insert name and address of the agent, or each agent, if more than one is designated)

my attorney(s)-in-fact TO ACT

(a) If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in this blank the word "severally." Failure to make any insertion or the insertion of the word "jointly" will require the agents to act jointly.

In my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

GRANTING THE DURABLE POWER — NEW YORK

[Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (L), inclusive, shall automatically constitute an elimination also of subdivision (M).]

To strike out any subdivision the principal must draw a line through the text of that subdivision AND write his initials in the box opposite.

- (A) real estate transactions;
(B) chattel and goods transactions;
(C) bond, share and commodity transactions;
(D) banking transactions;
(E) business operating transactions;
(F) insurance transactions;
(G) estate transactions;
(H) claims and litigation;
(I) personal relationships and affairs;
(J) benefits from military service;
(K) records, reports and statements;
(L) full and unqualified authority to my attorney(s)-in-fact to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact should select;
(M) all other matters;

[Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of section 5-1503 of the New York General Obligations Law.]

In Witness Whereof I have hereunto signed my name and affixed my seal this day of, 19...

..... (Seal)
(Signature of Principal)

[ACKNOWLEDGEMENT]

The execution of this statutory short form power of attorney shall be duly acknowledged by the principal in the manner prescribed for the acknowledgement of a conveyance of real property.

No provision of this article shall be construed to bar the use of any other or different form of power of attorney desired by the parties concerned.

Every statutory short form power of attorney, to be valid, must contain, in bold face type or a reasonable equivalent thereof the "Notice" which is printed in bold face type at the beginning of this section.

2. A power of attorney is a "statutory short form power of attorney," as this phrase is used in the following sections of this title, when, but only when, it is in writing and has been duly acknowledged by the principal and it contains the exact wording of clause First set forth in subdivision one of this section, except that any one or more of subdivisions (A) to (M) may be stricken out and initialed by the principal, in which case the subdivisions so stricken out and initialed and also subdivision (M) shall be deemed eliminated. A "statutory short form power of attorney" may contain modifications or additions of the types described in section 5-1503 of this chapter.

3. If more than one agent is designated by the principal, such agents, in the exercise of the powers conferred, must act jointly unless the principal specifically provides in such statutory short form power of attorney that they are to act severally.

4. Notwithstanding subdivisions one and two of this section, a power of attorney executed either before or after September twenty-seventh, nineteen hundred sixty-four is a "statutory short form power of attorney" as this phrase is used in the following sections of this title when it uses the words "New York General Business Law, Article 13, sections 222-234" and the words "Article 13 of the New York General Business Law" in lieu of the words "New York General Obligations Law, Article 5, Title 15, sections 5-1502A through 5-1503" and "Article 5, Title 15 of the New York General Obligations Law" and in other respects complies with subdivision two of this section.

[L.1963, c. 576, § 1; amended L.1967, c. 197, § 1; L. 1980, c. 140, §§ 1, 2; L. 1981, c. 458, § 1.]

Sec. 5-1502A. Construction — real estate transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "real estate transactions," must be construed to mean that the principal authorizes the agent:

1. To accept as a gift, or as security for a loan, to reject, to demand, to buy, to lease, to receive, or otherwise to acquire either ownership or possession of any estate or interest in land;

2. To sell, to exchange, to convey either with or without covenants, to quit-claim, to release, to surrender, to mortgage, to encumber, to partition or to consent to the partitioning, to revoke, create or modify a trust, to grant options concerning, to lease or to sublet, or otherwise to dispose of, any estate or interest in land;

3. To release in whole or in part, to assign the whole or a part of, to satisfy in whole or in part, and to enforce by action, proceeding or otherwise, any mortgage, incumbrance, lien or other claim to land which exists, or is claimed to exist, in favor of the principal;

4. To do any act of management or of conservation with respect to any estate or interest in land owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, power to insure against any casualty, liability or loss, to obtain or to regain possession or to protect such estate or interest by action, proceeding or otherwise, to pay, to compromise or to contest taxes or assessments, to apply for refunds in connection therewith, to purchase supplies, to hire assistance or labor and to make repairs or alterations in the structures or lands;

5. To utilize in any way, to develop, to modify, to alter, to replace, to remove, to erect or to install structures or other improvements upon any land in which the principal has, or claims to have, any estate or interest;

6. To demand, to receive, to obtain by action, proceeding or otherwise, any money, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of an interest in land or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

7. To participate in any reorganization with respect to real property and to receive and to hold any shares of stock or instrument of similar character received in accordance with such plan of reorganization, and to act with respect thereto, including by way of illustration, but not of restriction, power to sell or otherwise to dispose of such shares, or any of them, to exercise or to sell any option, conversion or similar right with respect thereto, and to vote thereon in person or by the granting of a proxy;

8. To agree and to contract, in any manner, and with any person and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

9. To execute, to acknowledge, to seal and to deliver any deed, revocation, declaration or modification of trust, mortgage, lease, notice, check or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

10. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any real estate transaction or to intervene in any action or proceeding relating thereto;

11. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

12. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to any estate or interest in land.

All powers described in this section 5-1502A of the general obligations law shall be exercisable equally with respect to any estate or interest in land owned by the principal at the giving of the power of attorney or thereafter acquired, and whether located in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

DRAFTING THE DURABLE POWER — NEW YORK

Sec. 5-1502B. Construction — chattel and goods transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "chattel and goods transactions," must be construed to mean that the principal authorizes the agent:

1. To accept as a gift, or as security for a loan, to reject, to demand, to buy, to receive, or otherwise to acquire either ownership or possession of, any chattel or goods or any interest in any chattel or goods;

2. To sell, to exchange, to convey either with or without covenants, to release, to surrender, to mortgage, to encumber, to pledge, to hypothecate, to pawn, to revoke, create or modify a trust, to grant options concerning, to lease or to sublet to others, or otherwise to dispose of any chattel or goods or any interest in any chattel or goods;

3. To release in whole or in part, to assign the whole or a part of, to satisfy in whole or in part, and to enforce by action, proceeding or otherwise, any mortgage, incumbrance, lien or other claim, which exists, or is claimed to exist, in favor of the principal, with respect to any chattel or goods or any interest in any chattel or goods;

4. To do any act of management or of conservation, with respect to any chattel or goods or to any interest in any chattel or goods owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, power to insure against any casualty, liability or loss, to obtain or to regain possession, or to protect such chattel or goods or interest in any chattel or goods, by action, proceeding or otherwise, to pay, to compromise or to contest taxes or assessments, to apply for refunds in connection therewith, to move from place to place, to store for hire or on a gratuitous bailment, to use, to alter, and to make repairs or alterations of any such chattel or goods, or interest in any chattel or goods;

5. To demand, to receive, to obtain by action, proceeding or otherwise, any money or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of a chattel or goods or of any interest in any chattel or goods, or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

6. To agree and to contract, in any manner, and with any person and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

7. To execute, to acknowledge, to seal and to deliver any conveyance, revocation, declaration or modification of trust, mortgage, lease, notice, check or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

8. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any chattel or goods transaction or to intervene in any action or proceeding relating thereto;

9. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

10. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to any chattel or goods or interest in any chattel or goods.

All powers described in this section 5-1502B of the general obligations law shall be exercisable equally with respect to any chattel or goods or interest in any chattel or goods owned by the principal at the giving of the power of attorney or thereafter acquired, and whether located in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502C. Construction — bond, share and commodity transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "bond, share and commodity transactions," must be construed to mean that the principal authorizes the agent:

1. To accept as a gift, or as security for a loan, to reject, to demand, to buy, to receive, or otherwise to acquire either ownership or possession of, any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto, together with the interest, dividends, proceeds or other distributions connected therewith;

2. To sell (including short sales), to exchange, to transfer either with or without a guaranty, to release, to surrender, to hypothecate, to pledge, to revoke, create or modify a trust, to grant options concerning, to loan, to trade in, or otherwise to dispose of any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto;

3. To release in whole or in part, to assign the whole or a part of, to satisfy in whole or in part, and to enforce by action, proceeding or otherwise, any pledge, incumbrance, lien or other claim as to any bond, share, instrument of similar character, commodity interest or any interest with respect thereto, when such pledge, incumbrance, lien or other claim is owned, or claimed to be owned, by the principal;

4. To do any act of management or of conservation with respect to any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto, owned or claimed to be owned by the principal or in which the principal has or claims to have an interest, including by way of illustration, but not of restriction, power to insure against any casualty, liability or loss, to obtain or to regain possession or to protect the principal's interest therein by action, proceeding or otherwise, to pay, to compromise or to contest taxes or assessments, to apply for refunds in connection therewith, to consent to and to participate in any reorganization, recapitalization, liquidation, merger, consolidation, sale or lease, or other change in or revival of a corporation or other association, or in the financial structure of any corporation or other association, or in the priorities, voting rights or other special rights with respect thereto, to become a depositor with any protective, reorganization or similar committee of the bond, share, other instrument of similar character, commodity interest or any instrument with respect thereto, belonging to the principal, to make any payments reasonably incident to the foregoing, to exercise or to sell any option, conversion or similar right, to vote in person or by the granting of a proxy (with or without the power of substitution), either discretionary, general or otherwise, for the accomplishment of any of the purposes enumerated in this section;

5. To carry in the name of a nominee selected by the agent any evidence of the ownership of any bond, share, other instrument of similar character, commodity interest or instrument with respect thereto, belonging to the principal;

6. To employ, in any way believed to be desirable by the agent, any bond, share, other instrument of similar character, commodity interest or any instrument with respect thereto, in which the principal has or claims to have any interest, for the protection or continued operation of any speculative or margin transaction personally begun or personally guaranteed, in whole or in part, by the principal;

7. To demand, to receive, to obtain by action, proceeding or otherwise, any money, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any interest in a bond, share, other instrument of similar character, commodity interest or any instrument with respect thereto, or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

8. To agree and to contract, in any manner, and with any broker or other person, and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release or to modify any such agreement or contract or any other similar agreement made by or on behalf of the principal;

9. To execute, to acknowledge, to seal and to deliver any consent, agreement, authorization, assignment, revocation, declaration or modification of trust, notice, waiver of notice, check, or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

10. To execute, to acknowledge and to file any report or certificate required by law or governmental regulation;

11. To prosecute, to defend, to submit to arbitration, to settle and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any bond, share or commodity transaction or to intervene in any action or proceeding relating thereto;

12. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

13. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to any interest in any bond, share or other instrument of similar character, commodity, or instrument with respect to a commodity.

All powers described in this section 5-1502C of the general obligations law shall be exercisable equally with respect to any interest in any bond, share or other instrument of similar character, commodity, or instrument with respect to a commodity owned by the principal at the giving of the power of attorney or thereafter acquired, whether located in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502D. Construction — banking transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "banking transactions," must be construed to mean that the principal authorizes the agent:

1. To continue, to modify and to terminate any deposit account, or other banking arrangement made by or on behalf of the principal prior to the creation of the agency;

2. To open either in the name of the agent alone, or in the name of the principal alone, or in both their names jointly or otherwise, a deposit account of any type with any banker or in any banking institution selected by the agent, to hire such safe deposit box or vault space and to make such other contracts for the procuring of other services made available by any such banker or banking institution as the agent shall think to be desirable;

3. To make, to sign and to deliver checks or drafts for any purpose, to withdraw by check, order or otherwise any funds or property of the principal deposited with, or left in the custody of, any banker or banking institution, wherever located, either before or after the creation of the agency;

4. To prepare from time to time financial statements concerning the assets and liabilities or income and expenses of the principal, and to deliver statements so prepared to any banker, banking institution or other person, whom the agent believes to be reasonably entitled thereto;

5. To receive statements, vouchers, notices or other documents from any banker or banking institution and to act with respect thereto;

6. To have free access at any time or times to any safe deposit box or vault to which the principal might have access, if personally present;

7. To borrow money by bank overdraft, or by promissory note of the principal given for such period and at such interest rate as the agent shall select, to give such security out of the assets of the principal as the agent shall think to be desirable or necessary for any such borrowing, to pay, to renew or to extend the time of payment of any note so given or given by or on behalf of the principal, and to procure for the principal a loan from any banker or banking institution by any other procedure made available by such banker or institution;

8. To make, to assign, to indorse, to discount, to guarantee, and to negotiate, for any and all purposes, all promissory notes, bills of exchange, checks, drafts or other negotiable or nonnegotiable paper of the principal, or payable to the principal or to his order, to receive the cash or other proceeds of any such transactions, to accept any bill of exchange or draft drawn by any person upon the principal, and to pay it when due;

9. To receive for the principal and to deal in and to deal with any trust receipt, warehouse receipt or other negotiable or nonnegotiable instrument, in which the principal has or claims to have an interest;

10. To apply for and to receive letters of credit or travelers checks from any banker or banking institution selected by the agent, giving such indemnity or other agreements in connection therewith as the agent shall think to be desirable or necessary;

11. To consent to an extension in the time of payment with respect to any commercial paper or any banking transaction in which the principal has an interest or by which the principal is, or might be, affected in any way;

12. To pay, to compromise or to contest taxes or assessments and to apply for refunds in connection therewith;

13. To demand, to receive, to obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any banking transaction conducted by the principal himself, or by the agent in the execution of any of the powers described in this section, or partly by the principal and partly by the agent so acting, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred upon him by the statutory short form power of attorney;

14. To execute, to acknowledge, to seal and to deliver any instrument of any kind, in the name of the principal or otherwise, which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

15. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any banking transaction or to intervene in any action or proceeding relating thereto;

16. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

17. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with any banking transaction which does or might in any way affect the financial or other interests of the principal.

All powers described in this section 5-1502D of the general obligations law shall be exercisable equally with respect to any banking transaction engaged in by the principal at the giving of the power of attorney or thereafter engaged in, and whether conducted in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502E. Construction — business operating transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "business operating transactions," must be construed to mean that the principal authorizes the agent:

1. To the extent that an agent is permitted by law thus to act for a principal, to discharge and to perform any duty or liability and also to exercise any right, power, privilege or option which the principal has, or claims to have, under any contract of partnership whether the principal is a general or special partner thereunder, to enforce the terms of any such partnership agreement for the protection of the principal, by action, proceeding or otherwise, as the agent shall think to be desirable or necessary, and to defend, submit to arbitration, settle or compromise any action or other legal proceeding to which the principal is a party because of his membership in said partnership;

2. To exercise in person or by proxy or to enforce by action, proceeding or otherwise, any right, power, privilege or option which the principal has as the holder of any bond, share, or other instrument of similar character and to defend, submit to arbitration, settle or compromise any action or other legal proceeding to which the principal is a party because of any such bond, share, or other instrument of similar character;

3. With respect to any business enterprise which is owned solely by the principal

a. to continue, to modify, to renegotiate, to extend and to terminate any contractual arrangements made with any person, firm, association or corporation whatsoever by or on behalf of the principal with respect thereto prior to the creation of the agency;

b. to determine the policy of such enterprise as to the location of the site or sites to be utilized for its operation, as to the nature and extent of the business to be undertaken by it, as to methods of manufacturing, selling, merchandising, financing, accounting and advertising to be employed in its operation, as to the amount and types of insurance to be carried, as to the mode of securing, compensating and dealing with accountants, attorneys, servants and other agents and employees required for its operation, to agree and to contract, in any manner, and with any person and on any terms, which the agent thinks to be desirable or necessary for effectuating any or all of such decisions of the agent as to policy, and to perform, to rescind, to reform, to release or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

c. to change the name or form of organization under which such business is operated and to enter into such partnership agreement with other persons or to organize such corporation to take over the operation of such business, or any part thereof, as the agent shall think to be desirable or necessary;

d. to demand and to receive all moneys which are, or may become, due to the principal, or which may be claimed by the principal or on his behalf, in the operation of such enterprise, and to control and to disburse such funds in the operation of such enterprise in any way which the agent shall think to be desirable or necessary, to engage in any banking transactions which the agent shall think to be desirable or necessary for effectuating the execution of any of the powers of the agent described in this subdivision;

4. To prepare, to sign, to file and to deliver all reports, compilations of information, returns or other papers with respect to any business operating transaction of the principal, which are required by any governmental agency, department or instrumentality or which the agent shall think to be desirable or necessary for any purpose, and to make any payments with respect thereto;

5. To pay, to compromise or to contest taxes or assessments and to do any act or acts which the agent shall think to be desirable or necessary to protect the principal from illegal or unnecessary taxation, fines, penalties or assessments in connection with his business operations, including power to attempt to recover, in any manner permitted by law, sums paid before or after the creation of the agency as taxes, fines, penalties or assessments;

6. To demand, to receive, to obtain by action, proceeding or otherwise, any money, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any business operation of such principal, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred upon him by the statutory short form power of attorney;

7. To execute, to acknowledge, to seal and to deliver any deed, assignment, mortgage, lease, notice, consent, agreement, authorization, check or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

8. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any business operating transaction or to intervene in any action or proceeding relating thereto;

9. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

10. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with any business operated by the principal, which the agent shall think to be desirable or necessary for the furtherance or protection of the interests of the principal.

All powers described in this section 5-1502E of the general obligations law shall be exercisable equally with respect to any business in which the principal is interested at the creation of the agency or in which the principal shall thereafter become interested, and whether operated in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502F. Construction — insurance transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "insurance transactions," must be construed to mean that the principal authorizes the agent:

1. To continue, to pay the premium or assessment on, to modify, to rescind, to release or to terminate any contract of life, accident, health, disability or liability insurance or any combination of such insurance procured by or on behalf of the principal prior to the creation of the agency which insures either the principal or any other person, without regard to whether the principal is or is not a beneficiary thereunder;

2. To procure new, different or additional contracts of insurance on the life of the principal or protecting the principal with respect to ill-health, disability, accident or liability of any sort, to select the amount, the type of insurance contract and the mode of payment under each such policy, to pay the premium or assessment on, to modify, to rescind, to release or to terminate, any contract so procured by the agent and to designate the beneficiary of any such contract of insurance, provided, however, that the agent himself cannot be such beneficiary unless the agent is spouse, child, grandchild, parent, brother or sister of the principal;

3. To apply for and to receive any available loan on the security of the contract of insurance, whether for the payment of a premium or for the procuring of cash, to surrender and thereupon to receive the cash surrender value, to exercise any election as to beneficiary or mode of payment, to change the manner of paying premiums, to change or to convert the type of insurance contract, with respect to any contract of life, accident, health, disability or liability insurance as to which the principal has, or claims to have, any one or more of the powers described in this section and to change the beneficiary of any such contract of insurance, provided, however, that the agent himself cannot be such new beneficiary unless the agent is spouse, child, grandchild, parent, brother or sister of the principal;

4. To demand, to receive, to obtain by action, proceeding or otherwise, any money, dividend, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any contract of insurance or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

5. To apply for and to procure any available governmental aid in the guaranteeing or paying of premiums of any contract of insurance on the life of the principal;

6. To sell, to assign, to hypothecate, to borrow upon, or to pledge the interest of the principal in any contract of insurance;

7. To pay, from such proceeds or otherwise, to compromise or to contest, and to apply for refunds in connection with, any tax or assessment levied by a taxing authority with respect to any contract of insurance or the proceeds thereof or liability accruing by reason of such tax or assessment;

8. To agree and to contract, in any manner, and with any person and on any terms, which the agent may select for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release or to modify any such agreement or contract;

9. To execute, to acknowledge, to seal and to deliver any consent, demand, request, application, agreement, indemnity, authorization, assignment, pledge, notice, check, receipt, waiver or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

10. To continue, to procure, to pay the premium or assessment on, to modify, to rescind, to release, to terminate or otherwise to deal with any contract of insurance, other than those enumerated in subdivisions one or two of this section, whether fire, marine, burglary, compensation, disability, liability, hurricane, casualty, or other type, or any combination of insurance, to do any act or acts with respect to any such contract or with respect to its proceeds or enforcement which the agent thinks to be desirable or necessary for the promotion or protection of the interests of the principal;

11. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to any claim existing in favor of, or against, the principal based on or involving any insurance transaction or to intervene in any action or proceeding relating thereto;

12. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section and for the keeping of needed records thereof; and

13. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with procuring, supervising, managing, modifying, enforcing and terminating contracts of insurance in which the principal is the insured or is otherwise in any way interested.

All powers described in this section 5-502F of the general obligations law shall be exercisable with respect to any contract of insurance in which the principal is in any way interested, whether made in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502G. Construction — estate transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "estate transactions," must be construed to mean that the principal authorizes the agent:

1. To the extent that an agent is permitted by law thus to act for a principal, to apply for and to procure, in the name of the principal, letters of administration, letters testamentary, letters of trusteeship, or any other type of authority, either judicial or administrative, to act as a fiduciary of any sort;

2. To the extent that an agent is permitted by law thus to act for a principal, to represent and to act for the principal in all ways and in all matters affecting any estate of a decedent, absentee, infant or incompetent, or any trust or other fund, out of which the principal is entitled, or claims to be entitled, to some share or payment, or with respect to which the principal is a fiduciary;

3. To accept, to reject, to receive, to receipt for, to sell, to assign, to release, to pledge, to exchange, or to consent to a reduction in or modification of, any share in or payment from any estate, trust or other fund;

4. To demand, to obtain by action, proceeding or otherwise any money, or other thing of value to which the principal is, or may become, or may claim to be entitled by reason of the death testate or intestate of any person or of any testamentary disposition or of any trust or by reason of the administration of the estate of a decedent or absentee or of the guardianship of an infant or incompetent or the administration of any trust or other fund, to initiate, to participate in and to oppose any proceeding, judicial or otherwise, for the ascertainment of the meaning, validity or effect of any deed, will, declaration of trust, or other transaction affecting in any way the interest of the principal, to initiate, to participate in and to oppose any proceeding, judicial or otherwise, for the removal, substitution or surcharge of a fiduciary, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

5. To prepare, to sign to file and to deliver all reports, compilations of information, returns or papers with respect to any interest had or claimed by or on behalf of the principal in any estate, trust, or other fund, to pay, to compromise or to contest, and to apply for refunds in connection with, any tax or assessment, with respect to any interest had or claimed by or on behalf of the principal in any estate, trust or other fund or by reason of the death of any person, or with respect to any property in which such interest is had or claimed;

6. To agree and to contract, in any manner, and with any person and on any terms, which the agent may select, for the accomplishment of the purposes enumerated in this section, and to perform, to rescind, to reform, to release, or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

7. To execute, to acknowledge, to verify, to seal, to file and to deliver any consent, designation, pleading, notice, demand, election, conveyance, release, assignment, check, pledge, waiver, admission of service, notice of appearance or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

8. To submit to arbitration or to settle, and to propose or to accept a compromise with respect to any controversy or claim which affects the estate of a decedent, absentee, infant or incompetent, or the administration of a trust or other fund, in any one of which the principal has, or claims to have, an interest, and to do any and all acts which the agent shall think to be desirable or necessary in effectuating such compromise;

9. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants, when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

10. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to the estate of a decedent, absentee, infant or incompetent, or the administration of a trust or other fund, in any one of which the principal has, or claims to have, an interest, or with respect to which the principal is a fiduciary.

All powers described in this section 5-1502G of the general obligations law shall be exercisable equally with respect to any estate of a decedent, absentee, infant or incompetent, or the administration of any trust or other fund, in which the principal is interested at the giving of the power of attorney or may thereafter become interested, and whether located in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502H. Construction — claims and litigation

In a statutory short form power of attorney, the language conferring general authority with respect to "claims and litigation," must be construed to mean that the principal authorizes the agent:

1. To assert and to prosecute before any court, administrative board, department, commissioner or other tribunal, any cause of action, claim, counterclaim, offset or defense, which the principal has, or claims to have, against any individual, partnership, association, corporation, government, or other person or instrumentality, including, by way of illustration and not of restriction, power to sue for the recovery of land or of any other thing of value, for the recovery of damages sustained by the principal in any manner, for the elimination or modification of tax liability, for an injunction, for specific performance, or for any other relief;

2. To bring an action of interpleader or other action to determine adverse claims, to intervene or to interplead in any action or proceeding, and to act in any litigation as *amicus curiae*;

3. In connection with any action or proceeding or controversy, at law or otherwise, to apply for and, if possible, to procure a libel, an attachment, a garnishment, an order of arrest or other preliminary, provisional or intermediate relief and to resort to and to utilize in all ways permitted by law any available procedure for the effectuation or satisfaction of the judgment, order or decree obtained;

4. In connection with any action or proceeding, at law or otherwise, to perform any act which the principal might perform, including by way of illustration and not of restriction, acceptance of tender, offer of judgment, admission of any facts, submission of any controversy on an agreed statement of facts, consent to examination before trial, and generally to bind the principal in the conduct of any litigation or controversy as seems desirable to the agent;

5. To submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of or against the principal, or any litigation to which the principal is, or may become or be designated a party;

6. To waive the issuance and service of a summons, citation or other process upon the principal, to accept service of process, to appear for the principal, to designate persons upon whom process directed to the principal may be served, to execute and to file or deliver stipulations on the principal's behalf, to verify pleadings, to appeal to appellate tribunals, to procure and to give surety and indemnity bonds at such times and to such extent as the agent shall think to be desirable or necessary, to contract and pay for the preparation and printing of records and briefs, to receive and to execute and to file or deliver any consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument which the agent shall think to be desirable or necessary in connection with the prosecution, settlement or defense of any claim by or against the principal or of any litigation to which the principal is or may become or be designated a party;

7. To appear for, to represent and to act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, whether of the principal or of some other person, with respect to any reorganization proceeding, or with respect to any receivership or application for the appointment of a receiver or trustee which, in any way, affects any interest of the principal in any land, chattel, bond, share, commodity interest, chose in action or other thing of value;

8. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section;

9. To pay, from funds in his control or for the account of the principal, any judgment against the principal or any settlement which may be made in connection with any transaction enumerated in this section, and to receive and conserve any moneys or other things of value paid in settlement of or as proceeds of one or more of the transactions enumerated in this section, and to receive and endorse checks and to deposit the same; and

10. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with any claim by or against the principal or with litigation to which the principal is or may become or be designated a party.

All powers described in this section 5-1502H of the general obligations law shall be exercisable equally with respect to any claim or litigation existing at the giving of the power of attorney or thereafter arising, and whether arising in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502I. Construction — personal relationships and affairs

In a statutory short form power of attorney, the language conferring general authority with respect to "personal relationships," must be construed to mean that the principal authorizes the agent:

1. To do all acts necessary for maintaining the customary standard of living of the spouse and children, and other dependents of the principal, including by way of illustration and not by way of restriction, power to provide living quarters by purchase, lease or by other contract, or by payment of the operating costs, including interest, amortization payments, repairs and taxes, of premises owned by the principal and occupied by his family or dependents, to provide normal domestic help for the operation of the household, to provide usual vacations and usual travel expenses, to provide usual educational facilities, and to provide funds for all the current living costs of such spouse, children and other dependents, including, among other things, shelter, clothing, food and incidentals;

2. To provide, whenever necessary, medical, dental and surgical care, hospitalization and custodial care for the spouse, children and other dependents of the principal;

3. To continue whatever provision has been made by the principal, prior to the creation of the agency or thereafter, for his spouse, children and other dependents, with respect to automobiles, or other means of transportation, including by way of illustration but not by way of restriction, power to license, to insure and to replace any automobiles owned by the principal and customarily used by the spouse, children or other dependents of the principal;

4. To continue whatever charge accounts have been operated by the principal prior to the creation of the agency or thereafter, for the convenience of his spouse, children or other dependents, to open such new accounts as the agent shall think to be desirable for the accomplishment of any of the purposes enumerated in this section, and to pay the items charged on such accounts by any person authorized or permitted by the principal to make such charges prior to the creation of the agency;

5. To continue the discharge of any services or duties assumed by the principal, prior to the creation of the agency or thereafter, to any parent, relative or friend of the principal;

6. To supervise and to enforce, to defend or to settle any claim by or against the principal arising out of property damages or personal injuries suffered by or caused by the principal, or under such circumstances that the loss resulting therefrom will, or may fall on the principal;

7. To continue payments incidental to the membership or affiliation of the principal in any church, club, society, order or other organization or to continue contributions thereto;

8. To demand, to receive, to obtain by action, proceeding or otherwise any money or other thing of value to which the principal is or may become or may claim to be entitled as salary, wages, commission or other remuneration for services performed, or as a dividend or distribution upon any stock, or as interest or principal upon any indebtedness, or any periodic distribution of profits from any partnership or business in which the principal has or claims an interest, and to endorse, collect or otherwise realize upon any instrument for the payment so received;

9. To prepare, to execute and to file all tax, social security, unemployment insurance and information returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government, to prepare, to execute and to file all other papers and instruments which the agent shall think to be desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation, and to pay, to compromise, or to contest or to apply for refunds in connection with any taxes or assessments for which the principal is or may be liable;

10. To utilize any asset of the principal for the performance of the powers enumerated in this section, including by way of illustration and not by way of restriction, power to draw money by check or otherwise from any bank deposit of the principal, to sell any land, chattel, bond, share, commodity interest, chose in action or other asset of the principal, to borrow money and to pledge as security for such loan, any asset, including insurance, which belongs to the principal;

11. To execute, to acknowledge, to verify, to seal, to file and to deliver any application, consent, petition, notice, release, waiver, agreement or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

12. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any transaction enumerated in this section or to intervene in any action or proceeding relating thereto;

13. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereon; and

14. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, for the welfare of the spouse, children or dependents of the principal or for the preservation and maintenance of the other personal relationships of the principal to parents, relatives, friends and organizations.

All powers described in this section 5-1502I of the general obligations law shall be exercisable equally whether the acts required for their execution shall relate to real or personal property owned by the principal at the giving of the power of attorney or thereafter acquired and whether such acts shall be performable in the state of New York or elsewhere.

Sec. 5-1502J. Construction — benefits from military service

In a statutory short form power of attorney, the language conferring general authority with respect to "benefits from military service," must be construed to mean that the principal authorizes the agent:

1. To execute vouchers in the name of the principal for any and all allowances and reimbursements payable by the United States, or by any state or subdivision thereof, to the principal, including by way of illustration and not of restriction, all allowances and reimbursements for transportation of the principal and of his dependents, and for shipment of household effects, to receive, to indorse and to collect the proceeds of any check payable to the order of the principal drawn on the treasurer or other fiscal officer or depository of the United States or of any state or subdivision thereof;

2. To take possession and to order the removal and shipment, of any property of the principal from any post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, to execute and to deliver any release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument which the agent shall think to be desirable or necessary for such purpose;

3. To prepare, to file and to prosecute the claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is, or claims to be, entitled, under the provisions of any statute or regulation existing at the creation of the agency or thereafter enacted by the United States or by any state or by any subdivision thereof, or by any foreign government, which benefit or assistance arises from or is based upon military service performed prior to or after the creation of the agency by the principal or by any person related by blood or by marriage to the principal, to execute any receipt or other instrument which the agent shall think to be desirable or necessary for the enforcement or for the collection of such claim;

4. To receive the financial proceeds of any claim of the type described in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

5. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any benefits from military service or to intervene in any action or proceeding relating thereto;

6. To hire, to discharge, and to compensate any attorney, accountant, expert witness, or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section; and

7. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, and which the agent shall think to be desirable or necessary, to assure to the principal, and to the dependents of the principal, the maximum possible benefit from the military service performed prior to or after the creation of the agency by the principal or by any person related by blood or marriage to the principal.

All powers described in this section 5-1502J of the general obligations law shall be exercisable equally with respect to any benefits from military service existing at the giving of the power of attorney or thereafter accruing, and whether accruing in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502K. Construction — records, reports and statements

In a statutory short form power of attorney, the language conferring general authority with respect to "records, reports and statements," must be construed to mean that the principal authorizes the agent:

1. To keep records of all cash received and disbursed for or on account of the principal, of all credits and debits to the account of the principal, and of all transactions affecting in any way the assets and liabilities of the principal;

2. To prepare, to execute and to file all tax, social security, unemployment insurance and information returns, required by the laws of the United States, of any state or of any subdivision thereof or of any foreign government to prepare, to execute and to file all other papers and instruments which the agent shall think to be desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation;

3. To prepare, to execute and to file any record, report or statement, which the agent shall think to be desirable or necessary for the safeguarding or maintenance of the principal's interest, with respect to price, rent, wage or rationing control, or other governmental activity;

DRAFTING THE DURABLE POWER — NEW YORK

4. To hire, to discharge, and to compensate any attorney, accountant, broker, agent, or other assistant or assistants when the agent shall think such action to be desirable for the proper execution of any of the powers described in this section; and

5. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with the preparation, execution, filing, storage or other utilization of any records, reports or statements of or concerning the principal's affairs.

All powers described in this section 5-1502K of the general obligations law shall be exercisable equally with respect to any records, reports or statements of or concerning the affairs of the principal existing at the giving of the power of attorney or thereafter arising, and whether arising in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502L. Construction — all other matters

In a statutory short form power of attorney, the language conferring general authority with respect to "all other matters," must be construed to mean that the principal authorizes the agent to act as an alter ego of the principal with respect to any and all possible matters and affairs which are not enumerated in sections 5-1502A to 5-1502K, inclusive, of this chapter, and which the principal can do through an agent.

[L.1963, c. 576, § 1.]

Sec. 5-1503. Modifications of the statutory short form power of attorney

A power of attorney which satisfies the requirements of subdivision two of section 5-1501 of this chapter is not prevented from being a "statutory short form power of attorney," as this phrase is used in the sections of this title, by the fact that it also contains additional language which:

1. Eliminates from the power of attorney one or more of the powers enumerated in one or more of the constructional sections of this title with respect to a subdivision of the statutory short form power of attorney not eliminated therefrom by the principal; or
2. Supplements one or more of the powers enumerated in one or more of the constructional sections in this title with respect to a subdivision of the statutory short form power of attorney not eliminated therefrom by the principal, by specifically listing additional powers of the agent; or
3. Makes some additional provision which is not inconsistent with the other provisions of the statutory short form power of attorney.

[L.1963, c. 576, § 1.]

Sec. 5-1601. Powers of attorney which survive disability or incompetence

1. The subsequent disability or incompetence of a principal shall not revoke or terminate the authority of an attorney-in-fact who acts under a power of attorney in a writing executed by such principal which contains the words "This power of attorney shall not be affected by the subsequent disability or incompetence of the principal," or words of similar import showing the intent of such principal that the authority conferred shall be exercisable notwithstanding his subsequent disability or incompetence.

2. All acts done by an attorney-in-fact pursuant to a power granted pursuant to subdivision one of this section during any period of disability or incompetence shall have the same effect and inure to the benefit of and bind a principal and his distributees, devisees, legatees and personal representatives as if such principal were competent and not disabled. If a committee or conservator thereafter is appointed for such principal, such attorney-in-fact, during the continuance of the appointment, shall account to the committee or conservator rather than to such principal. The committee or conservator shall have the same power such principal would have had if he were not disabled or incompetent to revoke, suspend or terminate all or any part of such power of attorney.

[N.Y. Gen. Oblig. Law § 5-1601 (McKinney 1978) (effective June 10, 1975); L. 1975, c. 195, § 1.]



ALASKA STATE LEGISLATIVE COMMITTEE

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Fairbanks, AK 99712
(907) 457-4386

MAR 25 1988

3/22/88

and
Representatives Niilo Koponen
and Johnny Ellis, Co-Chairmen
House HESS Committee
PO Box V
Juneau, AK 99811

Dear Representatives Koponen and Ellis:

AARP/Alaska State Legislative Committee is pleased to see legislation such as HB 491, "An Act establishing a statutory form power of attorney."

We feel such legislation is vital to clearly defining for Alaskans both general and durable powers of attorney. Such clarification is important not only to those who deal with complex legal issues through attorneys or who can afford to have attorneys draw up their powers of attorney, but also to those whose lower incomes cause them to rely on pre-printed forms for these matters.

Because low-income elderly persons are often unknowing victims of unclear or scattered statutes, bringing together these materials into a clear package seems especially important.

We urge your committee's support of this legislation and hope that it will include protection of "living wills" and state benefits.

Sincerely yours,

Miss Patricia Oakes, Chairman
AARP/Alaska State Legislative Committee

CARTA

Central Alaska Retired Teachers Association

Advocate for Retired and Pre-Retired Educators

1620 Crescent Drive
Anchorage, AK 99504
April 15, 1988

Representative Johnny Ellis
Alaska State Legislature
PO Box V (MS 3100)
Juneau, AK 99811

APR 20 1988

Dear Representative Ellis:

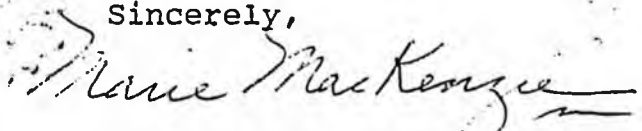
The Legislative Committee of the Central Alaska Retired Teachers Association (CARTA) has studied and considered a number of proposed bills this past year. We recently sent you a report of our activities that led to making our decisions. As we near the end of the session, we strongly urge passage of the following bills:

1. House Substitute for SB56 - Annuity Bill (First Priority)
2. SB67 - Mental Health Insurance Bill
3. HB491 - Establishing a Statutory Form Power of Attorney
4. SB442 - Relating to the Older Alaskan Commission and the protection of elderly persons, establishing the office of Older Alaskan Ombudsman
5. HB306 - Anatomical gifts

CARTA also strongly supports funding the recommendations of the Governor's Commission on Children and Youth.

We appreciate your attention and time for our concerns.

Sincerely,


Marie MacKenzie, Chairman
Legislative Committee

cc: Vera Gazaway, President, CARTA
Joan McKinnon, President, Alaska State Retired Teachers Assn
Patricia Oakes, Chairman, AARP State Legislative Committee
Anchorage Senior Citizens Advisory Committee

Anchorage, Alaska
March 18, 1988

MAR 24 1988

TO: REPRESENTATIVE JOHNNY ELLIS
REPRESENTATIVE MAX GRUENBERG, Jr.

FROM: Thelma P. Langdon - 2363 Capt. Cook Drive - Anchorage 99517

RE: HB NO. 491 - "An Act establishing a statutory form power of attorney"

I am in strong support of this bill. As one of the organizers of the Alzheimer's Disease Family Support Group, I know what a great help it would be to the families of victims of Alzheimer's Disease and Related Disorders.

My own father has a severe and progressive dementia and my sister and I need to have the kind of authority and protection this bill addresses. In carrying out our responsibility we need to have the authority to make decisions he cannot or will not make.

Thank you for introducing this bill.

Thelma P. Langdon

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constit*

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/15/88

FURTHER REFERRALS: Judiciary

DATE: April 19, 1988

The Health, Education and Social Services Committee has considered HB 491

"An Act establishing a statutory form power of attorney."

RECOMMEND

- replace with CSHB 491 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

John Ellis
Nikhil Kopper
Max G...
Bill H...
Reed E. Kelly

SIGNING OTHER RECOMMENDATIONS: -

Nikhil Kopper
 Co-Chairman's signature
 8/1 5/11

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY


MEMORANDUM

April 22, 1988

SUBJECT: CSHB 491 (HESS), sectional analysis

TO: Representative Johnny Ellis, Co-Chair
House Health, Education and Social Services
Committee

FROM: Jack Chenoweth
Legislative Council



This legislation amends existing law governing the use of powers of attorney and adds to that body of law new sections that authorize and direct the use of a statutory form power of attorney.

A person typically uses a power of attorney to designate another to serve as the person's agent or representative. The instrument may be a general power of attorney, giving full power to the designee, but is often a special power of attorney, giving the designee specifically limited authority within time and other constraints. A power of attorney is usually drawn by an attorney or legal representative, but individuals may prepare their own, with or without benefit of preprinted forms.

CSHB 491 (HESS) draws initially upon a model act. In the main, its purpose is to authorize and define use of a power of attorney and to set out a specific form that the maker of a power of attorney should use in order to claim the benefits of the statutory power of attorney statutes. This legislation also prescribes limits on the exercise of authority by the agent or representative within each of 15 different categories for which the statutory power of attorney may be used. Presumably the drafters of the model act believe that these categories cover the most common kinds of personal and business affairs for which a power of attorney is commonly used.

Proposed bill section 1 of CSHB 491 (HESS) contains, first, two statutory form sections.

Proposed AS 13.26.332 sets out the language of the statutory power of attorney. The statutory form power of attorney relies upon the maker to check off and to cross out. As the bill is drafted, the maker of the power of attorney (termed "the principal" in this legislation) turns over to the agent designated in the power of attorney all authority except the authority that the principal chooses to specifically delete from the form in the manner set out at page 2 of the bill. The statutory power of attorney also makes provision for several contingencies, including appointment of more than one agent, the date or time the document is to be given effect, and a provision relating to termination of the power of attorney in the event of the principal's disability. The form also contains a notice to third parties to honor a completed statutory form power of attorney.

In the same bill section, proposed AS 13.26.335 sets out language of several optional provisions that may be included in or with the basic statutory form power of attorney set out in the preceding section. These include provisions covering provision of health care services under a "Living Will," the designation of alternate agents or attorneys-in-fact, and the nomination of a conservator or guardian.

*

The next six sections of this bill section generally explain how the statutory form power of attorney provisions are to be executed, applied, and interpreted.

Proposed AS 13.26.338 specifies that the statutory form power of attorney and any incorporated optional provisions should be crossed out if the principal intends to withhold authority from the agent, and directs that any special limitations or provisions on an executed power of attorney must square with specific requirements of AS 13.26.347.

Proposed AS 13.26.341 incorporates direction as to how the instrument is to be interpreted and applied in the event the maker of the power of attorney elects one or more of several contingencies.

The longest section, AS 13.26.344, sets out guidance as to each of the 15 substantive elements within the statutory

form power of attorney. For each of the categories or subdivisions that the maker of the power of attorney may elect to confer or withhold from the agent (see page 2 of the bill), AS 13.26.344 defines what the grant of authority provided under each of those sections permits the agent to do in the principal's behalf. If authority is not expressly provided under each subsection of AS 13.26.344, the agent may not act on behalf of the principal on the basis of the authority granted by the instrument.

Proposed AS 13.26.347 (beginning at page 34 of the bill) is inserted to affirm that a power of attorney that is not in this statutory form may be valid as a statutory power of attorney (and, therefore, subject to interpretation under earlier provisions of this legislation) even as modified so long as the power of attorney conforms to the requirements of the section.

Generally, a power of attorney may be limited or may expire if the principal becomes disabled or incompetent. In contrast to that general proposition, this legislation favors the continuing viability of the document. Proposed AS 13.26.350(a) prescribes the continued validity of a statutory power of attorney after the maker of the power becomes disabled or becomes an invalid so long as the statutory power of attorney contains "words . . . showing the intent of the principal that the authority conferred shall [continue to] be exercisable." AS 13.26.350(b) affirms the continuing authority of the person acting under the statutory power of attorney to act during periods of disability, incompetence, or uncertainty, and describes the relationship between that person and any conservator who may be appointed for the maker of the power of attorney.

Proposed AS 13.26.353 collects miscellaneous provisions applicable to the preceding sections. Subsection (a) speaks to how disability of a principal who has given a statutory power of attorney may be established. Subsection (b) limits the liabilities of third parties who deal with an agent operating under "a properly executed" statutory power of attorney. Subsection (c) directs third parties to honor a properly executed statutory form power of attorney and prescribes a civil penalty for those who fail to honor the terms of a properly executed statutory power of attorney.

Representative Johnny Ellis
Page 4
April 22, 1988

Finally, proposed AS 13.26.356 adapts and carries forward the principal elements of a provision of existing law [AS 13.26.330, repealed later in this Act] that are applicable to all powers of attorney, whether or not executed in conformance with provisions governing the statutory form power of attorney. These provisions are applicable to determine the validity of the power of attorney in the event of the principal's death or disability.

Bill section 2, an uncodified section, is included in the bill to provide guidance as to how this Act--and specifically the new material added generally by AS 13.26.338 - 13.-26.356--affects an existing power of attorney. The several subsections address, in turn, (a) general powers of attorney, (b) special powers of attorney, and (c) so-called "durable" powers of attorney, that is, a power of attorney that continues to be valid even after the disability of the principal. As a general rule, subject only to the exceptions noted, the language makes the general principles of the material that is set out in bill section 1 applicable to existing powers of attorney.

In bill section 3 the two existing provisions governing the durability of a power of attorney in the event of the principal's death or disability are repealed. The subject is addressed in the material set out earlier in the bill.

JBC:gc
WKG3:029



Alzheimer's Disease Family Support Group

Funded by Older Alaskans Commission

Anchorage and Statewide Support
9210 Jupiter Street
Anchorage, Alaska 99507
346-2366

Northern Region Coordinator
P.O. Box 80188
Fairbanks, Alaska 99708-0188

March 16, 1988

MAR 21 1988

HESS Committee
c/o Representative Johnny Ellis, Co-Chair
PO Box V
Juneau, Alaska 99811

Delo

Dear HESS Committee Members:

My purpose today is to present to you a review of, and support for, HB 491 "An Act establishing a statutory form power of attorney"

In my experiences as Out-reach Worker, Project Director, Board Member and Volunteer with the Alzheimer's Disease Family Support Group of Alaska (ADFSG) I have encountered many individuals needing or wanting a Durable Power of Attorney for themselves or a loved one.

The current statute gives authority for the DPA but does not give guidelines for the development of such a tool. Problems that have been encountered are:

1. There is no uniformity in how a DPA can be drawn up.
2. There is no guideline for identifying who has power and when power can be assumed. Currently anyone can be appointed and anything can be included to determine when a person becomes incapacitated. But this measure has to be expressly written into the DPA. Unfortunately, this measure has been overlooked and persons find themselves needing further legal assistance and may find themselves seeking guardianship.
3. Attorneys often do not understand what can be included in a DPA and find themselves doing a lot of research at the expense of the client. I have had families tell me what they wanted drawn up and what they actually received were worthless. It is imperative that a person seeking the DPA

HESS Committee
March 16, 1988

Page 2 of 2

know and research all aspects of the DPA. But once again the lay person does not usually have skills to interpret legal jargon.

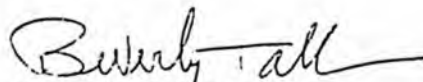
4. The present DPA can be questioned and not accepted by banks, health care agencies, social service agencies and state agencies (for instance, the Longevity Bonus Program does not accept a DPA).

After having reviewed the proposed bill, I can clearly see that the problems addressed above will be eliminated because:

1. The proposed bill will provide a statute that is, stated simply, a guided tour for those drawing up a DPA for a client, for individuals wishing to do it themselves, and for the institutions that may question the DPA. It will state specifically the powers that can be implemented under the DPA statute.

On behalf of the many families I have worked with in the past and will work with in the future, I support this bill as a positive effort in eliminating problems that have occurred with current law, and will streamline the process for families who are already overwhelmed with care issues.

Respectfully submitted:


Beverly Tallman
Outreach Worker

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constit