

# DURABLE POWER OF ATTORNEY

## OF

\_\_\_\_\_

I, \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_  
County, Maine hereby designate \_\_\_\_\_, of \_\_\_\_\_,  
\_\_\_\_\_, my "attorney-in-fact", in my name and for my benefit:

### **I. POWERS**

1. General Grant of Power. I confer upon my attorney-in-fact full power to administer my personal and business affairs and to deal with all my property, whether standing in my name alone or in my name with any other person or persons. My attorney-in-fact shall on my behalf have full power to exercise or perform any act, power, duty, right, or obligation whatsoever that I now have or may hereinafter acquire, relating to any person, matter, transaction, or property, real or personal, tangible or intangible, now owned or hereafter acquired by me, as I might or could do if personally present, including, without limitation, and by way of example, the following specifically enumerated powers.

2. Powers of Collection and Payment. To forgive, request, demand, sue for, recover, collect, receive, and hold all sums of money, debts, dues, commercial paper, checks, drafts, accounts, deposits, legacies, bequests, devises, notes, interests, stock certificates, bonds, dividends, certificates of deposit, annuities, pension, profit sharing, retirement, Social Security, Medicare, insurance, and other contractual benefits and proceeds, all documents of title, all property, real or personal, tangible or intangible property, and property rights, and demands whatsoever, liquidated or unliquidated, now or hereafter owned by, or due, owing, payable, or belonging to me, or in which I have or may hereafter acquire an interest; to have, use, and take all lawful means and equitable and legal remedies and proceedings in my name for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same and to execute and deliver for me, on my behalf, and in my name, all endorsements, releases, receipts, or other sufficient discharges for the same.

3. Power to Acquire, Lease and Sell. To acquire, purchase, exchange, lease, grant options to sell, and sell and convey real or personal property, tangible and intangible, or any interests therein, on such terms and conditions as my attorney-in-fact shall deem proper.

4. Management Powers. To maintain, repair, improve, invest, manage, insure, rent, lease, encumber, and in any manner deal with any real or personal property, tangible or intangible, or any interests therein, that I now own or may hereafter acquire, in my name and for my benefit, upon such terms and conditions as my attorney-in-fact shall deem proper.

5. Banking Powers. To make, receive, and endorse checks and drafts, deposit and withdraw funds, acquire and redeem certificates of deposit, in banks, savings and loan associations, and other institutions, execute or release such deeds of trust or other security agreements as may be necessary or proper in the exercise of the rights and powers herein granted.

6. Motor Vehicles. To apply for a Certificate of Title upon, and endorse and transfer title thereto, for any automobile, truck, pickup truck, van, motorcycle, or other motor vehicle, and to represent in such transfer or assignment that the title to said motor vehicle is free and clear of all liens and encumbrances except those specifically set forth in such transfer or assignment.

7. Tax Powers. To represent me before any office of the Internal Revenue Service for my individual tax returns, including Forms 1040, from the year 1998 and continuing until my death, with the power to receive refund checks and the power to sign my tax returns, refund claims, waivers, agreements and/or other pertinent documents for taxes due or claimed from me by the United States or any state or political subdivision thereof, or any foreign country, and to pay, contest, compromise and settle any such taxes as my Agent shall deem appropriate; to complete or amend Internal Revenue Service Form 2848, power of Attorney and Declaration of Representative (or other comparable prescribed form) on my behalf as well as to perform all other functions contemplated under that form.

8. Safe-Deposit Boxes. To have access at any time or times to any safe-deposit box rented by me or to which I may have access, wheresoever located, including drilling, if necessary, and to remove all or any part of the contents thereof, and to surrender or relinquish said safe-deposit box; and any institution in which any such safe-deposit box may be located shall not incur any liability to me or my estate as a result of permitting my attorney-in-fact to exercise this power.

9. Gift Making Powers. To make gifts, grants, or other transfers of my property of whatsoever kind or nature, including real property and including the forgiveness of indebtedness and the completion of any charitable pledges I may have, without consideration, either outright or in trust as follows: (a) transfer by gift in advancement of a bequest or devise to beneficiaries under my will or in the absence of a will to my descendants in whatever degree; and (b) release of any life interest, or waiver, renunciation, or declination of any gift to me by will or deed.

10. Power to Create and Transfer Assets to Inter Vivos Trust. To create any trust, revocable or irrevocable, for my benefit and that of my issue that I may have power to create myself; to amend or revoke such trust or trusts or any other trust that I may have the power to amend or revoke; to transfer any and all of my tangible or intangible personal property or real property to any such trusts; to exercise such powers as my attorney-in-fact deems appropriate in his or her sole discretion; in this regard, the fact that my said attorney may be a remainderman or a beneficiary in connection with any such transfer hereunder shall not affect the validity thereof, nor, by itself, constitute a breach of his or her fiduciary duty hereunder.

11. Power to Make Statutory Elections and Disclaimers. To make on my behalf any and all statutory elections and disclaimers available to me at law.

12. Retirement Plan Powers. To deal with all retirement plans of which I am a member including individual retirement accounts, rollovers, and voluntary contributions; to direct any pension fund, insurance, or annuity company, the United States Social Security Administration, or any other party making payments to me to make such payments directly to a financial institution for direct deposit into any account.

13. Insurance. To purchase, maintain, surrender; borrow against, pursue all insurance claims, collect, or cancel (a) life insurance or annuities of any kind on my life or the life of anyone in whom I have an insurable interest, (b) liability insurance protecting me and my estate against third party claims, (c) health care insurance, Medicare supplement insurance, long-term care insurance, and disability income insurance, and (d) casualty insurance.

14. Other Powers. In addition to the foregoing, my attorney-in-fact hereunder may act as my alter ego with respect to any and all possible matters and affairs not otherwise enumerated herein and which I as principal can do through an agent.

## **II. INTERPRETATION AND GOVERNING LAW**

This instrument is to be construed and interpreted as a general durable power of attorney. The enumeration of specific powers herein is not intended to, nor does it, limit or restrict the general powers herein granted to my attorney-in-fact. For a third party to construe otherwise would be contrary to my intent. This instrument is executed and delivered in the County of \_\_\_\_\_ and the laws of the State of Maine shall govern all questions as to the validity of this power and the construction of its provisions. I direct that my attorney-in-fact not be required to give bond and, if any bond is required, that no sureties be required. I hereby revoke any earlier powers of attorney I may have granted.

## **III. EFFECTIVE DATE AND DURABILITY**

This General Durable Power of Attorney shall take effect when executed by me and shall not be affected by lapse of time nor by my subsequent disability or incapacity and shall be binding not only upon me but upon my heirs, executor, and administrator up to the time of the receipt by my said attorney-in-fact of a written revocation signed by me or of reliable intelligence of my death.

### **(OR, Alternatively, for a so-called "Springing" POA:)**

This General Durable Power of Attorney shall take effect upon my disability or incapacity. I shall be deemed disabled or incapacitated upon a determination by my physician, \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, that due to illness, cognitive impairment, mental illness, or admission to a facility for the mentally ill, I am no longer capable of managing my own affairs. My physician shall indicate his/her determination of my incapacity by signing his/her name and date on the following lines:

\_\_\_\_\_  
Name (Signature)

\_\_\_\_\_  
Date

If the above-named physician cannot or will not certify to my incapacity, this power of attorney may also take effect upon the determination by two other physicians signing on the lines below that due to illness, cognitive impairment, or mental illness I am no longer capable of managing my own affairs:

\_\_\_\_\_  
Name (Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
Name (Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

I hereby waive any physician-patient privilege that may exist in my favor and authorize physicians to examine me and disclose my physical or mental condition in order to determine my capacity or incapacity for purposes of this instrument.

**IV. THIRD PARTY RELIANCE**

Any party dealing with my attorney-in-fact hereunder may rely absolutely on the authority granted herein and need not look to the application of any proceeds nor the authority of my attorney-in-fact as to any action taken hereunder. In this regard, no person who may in good faith act in reliance upon the representation of my attorney-in-fact or the authority granted hereunder shall incur any liability to me or my estate as a result of such act. I hereby ratify and confirm whatever my attorney-in-fact shall lawfully do under this instrument. Any gift of property made by my attorney-in-fact in the proper exercise of the gift-making power granted herein shall be a full and complete delivery of title upon which third-party purchasers for value may rely.

**V. REIMBURSEMENT AND SUCCESSOR ATTORNEY**

My attorney-in-fact may be reimbursed for all reasonable expenses incurred in connection with services hereunder and may charge reasonable compensation for services. If my attorney-in-fact shall die, resign by written resignation attached hereto, or become incapacitated as determined by written certification of a physician licensed to practice medicine in any State of the United States of America, which written certification shall be attached hereto, I hereby appoint \_\_\_\_\_

\_\_\_\_\_, of \_\_\_\_\_ to  
serve as successor attorney-in-fact. Every successor attorney-in-fact shall have all the powers and duties given to or imposed upon the original attorney-in-fact. A successor attorney-in-fact shall have no duty to inquire into the acts of any predecessor attorney-in-fact and shall not be liable for any act or omission of any predecessor attorney-in-fact. Any person may, without liability, rely on the written certification of a successor attorney-in-fact that such successor has been appointed and has power to act.

## **VI. PROTECTIVE PROCEEDINGS**

If protective proceedings for my person or my estate are hereafter commenced, I hereby nominate, for consideration by the court, whoever is then serving as my agent under this power of attorney. Nothing in this section shall be construed as a direction that such a petition be filed or such appointment be made, and it is my express wish that such action be taken only when and if absolutely necessary.

## **VII. NOTICE TO PRINCIPAL**

As the "Principal" you are using this Durable Power of Attorney to grant power to another person (called the "Agent" or "Attorney-in-fact") to make decisions about your money and property or both and to use your money and property or both on your behalf. If this written Durable Power of Attorney does not limit the powers you give your Agent, your Agent will have broad and sweeping powers to sell or otherwise dispose of your property and spend your money without advance notice to you or approval by you. Under this document, your Agent will continue to have these powers after you become incapacitated and you may also choose to authorize your Agent to use these powers before you become incapacitated. The powers that you give your Agent are explained more fully in the Maine Revised Statutes, Title 18-A, section 5-501 to 5-508 and in Maine Case law. You have the right to revoke or take back this Durable Power of Attorney at any time as long as you are of sound mind. If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

## **VIII. NOTICE TO AGENT**

As the "Agent" or "Attorney-in-fact", you are given the power under this Durable Power of Attorney to make decisions about the money and property or both belonging to the Principal and to spend the Principal's money, property or both on that person's behalf in accordance with the terms of this Durable Power of Attorney. This Durable Power of Attorney is only valid if the Principal is of sound mind when the principal signs it. As the Agent, you are under a duty (called a "fiduciary duty") to observe the standards observed by a prudent person dealing with the property of another. The duty is explained more fully in the Maine Revised Statutes, Title 18-A, sections 5-501 to 5-508 and Title 18-B, sections 802 to 807 and chapter 9 and in Maine case law. As the Agent, you are not entitled to use the money for your own benefit or to make gifts to yourself or others unless the Durable Power of Attorney specifically gives you the authority to do so. As the Agent, your authority under this form will end when the Principal dies and you will not

have the authority to administer the estate unless you are authorized to do so in accordance with the Maine Probate Code. If you violate your fiduciary duty under this Durable Power of Attorney, you may be liable for damages and may be subject to criminal prosecution. If there is anything about this Durable Power of Attorney or your duties under it that you do not understand, you should ask a lawyer to explain it to you.

**IN WITNESS WHEREOF**, I have on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, executed this General Durable Power of Attorney.

\_\_\_\_\_  
Print Name Here:

Signed and Sealed in  
the presence of:

\_\_\_\_\_  
Witness (signature)

\_\_\_\_\_  
Witness (signature)

\_\_\_\_\_  
Witness (print name)

\_\_\_\_\_  
Witness (print name)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

**STATE OF MAINE**

**COUNTY OF** \_\_\_\_\_, 20\_\_\_\_

Subscribed and sworn to and acknowledged before me by \_\_\_\_\_  
\_\_\_\_\_ as Principal of the within General Durable Power of Attorney  
and acknowledged the foregoing instrument to be his/her free act and deed.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

\_\_\_\_\_  
Printed Name