

**Practical Probate:
The New Connecticut Uniform
Power of Attorney Act Part 2**

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Preserving powers of attorney as an inexpensive means of incapacity planning that is flexible and private is one of the objectives of the new Connecticut Uniform Power of Attorney Act. But just how are powers of attorney “inexpensive,” “flexible,” and “private”?

The best way to deal with legal incapacity is to plan for it before it occurs. Nearly all the tools to plan for future legal incapacity – powers of attorney, trusts, health care representatives, changing ownership of assets, and advance directives – require the person creating them to have legal capacity to put them into place. Unfortunately, most people fail to plan for legal incapacity, and when it strikes, these options are not available.

One of the few options to manage the affairs of an incapacitated adult who has not planned for incapacity is through the appointment of an involuntary conservator in the probate court. The person for whom the conservatorship is being sought must have legal representation, which they must pay for unless they are indigent. The person making the application should also retain legal counsel to represent them before the probate court; this is particularly important where there is conflict between family members. This adds up to significant preparation and cost,

in addition to the stress and emotional toll of adversarial court proceedings. Conservatorship proceedings and most documents are accessible to the public. An effective power of attorney may preclude the need for a conservator.

Trusts can be a very effective way to plan for management of assets during incapacity. However, creating a trust and transferring assets into it (a necessary but often overlooked step) is costly.

Powers of attorney are far less expensive and time consuming than these other options. The new Connecticut Uniform Power of Attorney Act preserves key elements of powers of attorney that make them inexpensive, flexible and fairly expeditious to create. How does the new law accomplish this?

It provides a suggested form for a power of attorney, making it efficient to draft compared with a trust. This greatly reduces an attorney’s billable time, translating to lower costs for clients.

The power of attorney can grant a number of authorities to the agent, or very narrow authority to an agent - for example, authority over a single financial account. The power of attorney may be drafted so it expires on a particular date, or it may have no

expiration date. This feature makes a power of attorney very flexible.

Powers of attorney are private documents not subject to public inspection, since they don't need to be filed in the probate court or on the public land records.

A power of attorney is just one part of a comprehensive estate plan. It's not necessarily a substitute for a trust or other documents. When lay people attempt to draft their own estate planning documents, the results can be disastrous. Planning for incapacity should only be accomplished through a qualified attorney.

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