



DURABLE POWER OF ATTORNEY NOW AVAILABLE IN PUERTO RICO

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A significant limitation of all powers of attorney (“Poderes”) currently in effect in Puerto Rico is the uncertainty as to whether they will continue to be valid if the grantor becomes mentally incapacitated. This uncertainty results from a dictum by our Supreme Court stating that a power of attorney will be rendered null and void, if the grantor (“Poderdante”) becomes mentally incapacitated. The irony of this limitation is that one of the principal objectives of granting a power of attorney is to allow the attorney-in-fact (“Apoderado”) to act on behalf of the grantor when the grantor is not available to do so, and becoming mentally incapacitated is the ultimate reflection of such unavailability. To remedy this limitation, our Legislature recently enacted Act No. 25 of January 18, 2012 (“Act No. 25”).

Pursuant to Act No. 25, any legally capable person in Puerto Rico can execute a new type of power of attorney, **Durable Power of Attorney**, pursuant to which the attorney-in-fact may legally and validly continue acting on the grantor’s behalf, even if the grantor becomes mentally incompetent. **All persons that have previously executed powers of attorney in Puerto Rico, and anyone considering granting a power of attorney, should execute a Durable Power of Attorney in order to benefit from Act No. 25.**

Powers of attorney currently in effect will become null and void upon the grantor’s mental incapacity, as they are not modified or grandfathered by Act No. 25. All powers of attorney must be executed before a Notary Public admitted to practice in Puerto Rico.

It should be noted that with respect to any transaction with grantor's principal residence, Act No. 25 limits the authority of the attorney-in-fact when the grantor is mentally incapacitated, unless approved by the court after a judicial proceeding. Furthermore, pursuant to Act No. 25 a legal description of all real estate holdings of the grantor, with specific identification of the principal residence, should be included in a Durable Power of Attorney.

A **Durable Power of Attorney** is one of the essential legal documents that needs to be considered in planning for your last years and demise (i.e., Estate Planning), together with a comprehensive Will with Testamentary Trusts, lifetime Trusts (if necessary and advisable under your particular circumstances), and a Living Will/Medical Directive. The objective of estate planning is not just to eliminate or mitigate your estate's exposure to federal and Puerto Rico estate tax (commonly known as inheritance or death tax), but to facilitate to your family members, and heirs, the management and conservation of your investments, properties and health care during the final years of your life.

If you have any questions with respect to the above, or if we can help you with these documents and estate planning, please contact any of the following attorneys from our Estate Planning, Wills and Trusts Practice Group, led by Ricardo Muñiz (787) 281-1818; Vanessa I. Raffucci (787) 281-1801; Caridad Muñiz-Padilla, Esq. (787) 281-1817; Myrtelesa Díaz (787) 281-1808; or Emiluz Buonomo (787) 281-1804.

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