



By: **RUSSELL D. MAYER, ADV. – DECEMBER 2017**

SUBJECT: **BEING PRO-ACTIVE FOR THE FUTURE - ONGOING POWER OF ATTORNEY**

This year, Israel took an evolutionary leap forward in anticipating and addressing the needs of the elderly and others who may become incapacitated, by adopting Amendment 18 of the Legal Capacity and Guardianship Law, 5722-1962 (the “Law”). The revisions to the law are intended to empower individuals, not only the elderly, by giving them the ability to determine their own destiny with respect to their care and the management of their affairs. The Law fills a dual gap in Israeli practice to date: (a) the lack of an Israeli equivalent to a Durable Power of Attorney which continued to be effective once the grantor is no longer mentally capable and (b) preserving the independence and self-respect of those who suffer from diminished capacity.

Until the Amendment came into effect this year, an Israeli Power of Attorney, would generally lapse once a person would become mentally incompetent at which point a guardian would need to be appointed by the Court to care for the person’s finances. Furthermore, there was no mechanism in place to allow an individual to choose the person who would become their guardian so that the decision was left solely to the discretion of the Court. The new documents complete a comprehensive set of procedures which will allow those who choose to adopt at least some of these choices, to determine their care.

In addition to a properly executed Last Will and Testament, the documents which one should consider executing while one has the mental capacity to do so, are as follows:

1. **Regular” Power of Attorney.** This document, which must be signed in the presence of an Israeli Notary, gives the authority to another person to act on your behalf. It is useful in the event that you become physically incapacitated, unable to go to the bank or post office or otherwise manage your affairs at a time when you are immobile. Unlike a Durable Power of Attorney, available as an option in many countries and many states in the U.S. but not in Israel, generally, a Power of Attorney ceases to be effective once a person is no longer mentally competent.
2. **Ongoing Power of Attorney.** This new document supplements a regular power of attorney as it provides a legal mechanism which fills the gap between not having a regular power of attorney in place and the ultimate appointment of a guardian as it is designed to come into effect specifically once a person is no longer competent whether due to age, Alzheimer’s, an accident or otherwise. The Ongoing Power of Attorney

allows the individual to determine their own future course of care – whether regarding their possessions, person, living arrangements and otherwise. It further empowers the grantor to cancel authority previously given. The intention behind the change is to grant individuals more autonomy in crafting their futures, to preserve their dignity and express their preferences – while the person is still in a position to do so.

An individual may, while still competent, execute an Ongoing Power of Attorney allowing the person to decide in advance:

- (a) under what conditions the authority will become effective (e.g. as determined by an expert, upon a certain event or at particular date);
- (b) who will be authorized to act at that time on behalf of the individual;
- (c) whether the authority will apply to possessions, the person, medical decisions or even business;
- (d) the individual can exclude or limit the various authorities granted;
- (e) whether the individual would be allowed to rescind the authority in the future or whether it would lapse upon a certain condition applying;
- (f) who would be appointed guardian if or when it becomes necessary;
- (g) whether the proxy holder would be able to commit the individual or require him to undergo psychiatric evaluation or release the grantor from commitment;
- (h) who is to be notified at the time that the authority is being triggered;
- (i) who is authorized to see the details of the Ongoing Power of Attorney;
- (j) appointment of a replacement guardian for guardianship for a third party;
- (k) appointment of a healthcare proxy.

The Ongoing Power of Attorney may only be prepared and executed under the supervision of an Israeli lawyer who was specially trained for this purpose by the Administrator General (“Specially Trained and Authorized Israeli Lawyer”). There are only a limited number of Israeli lawyers who have received the certification. The Author is the Specially Trained and Authorized Israeli Lawyer at our law firm.

3. **Preliminary Instructions.** Yet another new provision in the Law allows an individual to designate in advance who would ultimately be appointed as Guardian if or when it becomes necessary. This document must also be prepared and executed under the supervision of one of the Specially Trained and Authorized Israeli Lawyers.
4. **Healthcare Proxy.** The revisions to the Law adopted a new form of Healthcare Proxy together with the new obligation to file the Healthcare Proxy with the office of the Administrator General. The Healthcare Proxy allows an individual to choose who will be authorized to make medical decisions on behalf of one who is unable to make his or

her own decisions at that time (due to temporary or other incapacity, unconsciousness, in an operation or otherwise). The document must be witnessed by one of 5 professionals (doctor, lawyer, nurse, social worker or psychologist) who certifies on the document that the person giving as well as the person accepting the authority, are mentally competent at the time of signing and understood the ramifications of the document. The Healthcare Proxy does NOT address end of life decisions.

5. **Living Will.** The Living Will, or as technically referred to the “Advanced Directive for a Dying Patient” is the document in which an individual can, in advance, make end of life care decisions. It is a detailed document which has numerous choices for an individual to make as to what types of treatments one wants or declines to receive at a time when the patient has been certified as “dying” (akin to under hospice care). The document must include the certification of the patient’s regular doctor as to the medical condition of the patient and the doctor is to explain to the patient the ramifications of the numerous choices available to the patient. Signature on the document must be witnessed by 2 witnesses.

While not available until next year, the Law also provided for the selection of a “supporter” who would assist the individual in making decisions during the difficult transition time between being fully competent and once the individual becomes incompetent.

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***This article is not to be considered as a legal opinion.
For legal advice, we suggest you contact legal counsel directly.***