



Protecting Your and Your Clients' Interests in the Event of Your Disability or Death

by Frank Overton Brown, Jr.

The Senior Lawyers Conference (SLC) of the Virginia State Bar is working to encourage and assist lawyers in protecting their clients', as well as their own, interests by planning for the lawyer's own disability or death.

The fundamentals of estate planning are the same for lawyers as they are for other individuals, but there are additional aspects of estate and disability planning that apply to lawyers and to senior lawyers in particular—especially sole practitioners. This article is written from the particular point of view of a lawyer who is a resident of Virginia; however, federal tax law provisions and the basic planning principles will be the same throughout the United States. Estate planning consists of fact gathering, determining client intent and formulating goals; analyzing the effects of various taxes and other factors; and designing, drafting and implementing the estate plan. Estate planning includes periodic review and adjustment, based upon changes in laws, personal and asset situations or client wishes.

Fact gathering is a critical first step. Well-organized forms are essential. Care must be taken to gather complete and accurate data, including personal, asset, liability and other information. It is recommended that the checklist for lawyers contain the items shown in the sidebar to this article. The “three P’s of estate planning” should be used as a guide in the planning process:

- **People:** Who are the people involved, and what are their needs which must be addressed?
- **Property:** What is the property available to meet the needs of the people involved?
- **Plan:** After identifying the people and property, what is the plan which meets the needs of the people involved, using the property available and considering the effects of estate and gift, generation skipping transfer, income taxes and other applicable laws and rules?

Under the current unified United States estate and gift tax laws, the estate of every person dying in 2002 has an estate tax unified credit exclusion amount (which has also been called the applicable exclusion amount or equivalent exemption) of \$1 million, which passes free of estate and gift taxes (commonly called an equivalent exemption because there is a direct credit against the tax owed, which direct credit is equivalent to an exemption of \$1 million). This exemption may be used up during one's lifetime and/or at death, and is in addition to the exclusion of \$11,000 per donee per year for gifts during the donor's lifetime. It is also in addition to the lifetime exclusion of “qualified transfers” paid directly to an educational institution for the education or training of an individual or directly to a provider of medical care for an individual.

There is an unlimited estate tax deduction for any amount of property given to a qualified charity at death. As a result of the

marital deduction for estate and gift tax purposes, an unlimited amount of property may pass estate and gift tax free from one spouse to the other at the time of the first spouse's death. This transfer may be outright, in trust (such as a general power of appointment marital trust or a qualified terminable interest property marital trust), or, if the recipient spouse is not a United States citizen, in a qualified domestic trust. An estate of any size can pass to the surviving spouse free of estate and gift taxes. The surviving spouse's estate may then be larger than the equivalent exemption as shown below, resulting in substantial estate taxes at the surviving spouse's death. The Economic Growth and Tax Reconciliation Act of 2001 established an increasing estate tax unified credit exclusion amount to be phased in over a period of years. The dollar amounts of the phase-in are somewhat “back-loaded”; that is, the most significant relief comes toward the end of the time period shown:

2002	\$1,000,000	50%
2003	\$1,000,000	49%
2004	\$1,500,000	48%
2005	\$1,500,000	47%
2006	\$2,000,000	46%
2007	\$2,000,000	45%
2008	\$2,000,000	45%
2009	\$3,500,000	45%

Effective for decedents dying on or after January 1, 2010, the estate tax will be repealed; however, the estate tax will be reinstating on January 1, 2011, with a \$1 million exclusion amount, unless Congress passes, and the president signs, new legislation continuing the repeal.

For generation-skipping transfer tax purposes, each decedent has an exemption of \$1.1 million, reduced by whatever amount has been used during the decedent's lifetime.

In order to reduce or eliminate those estate taxes, husbands and wives may rearrange titling of assets and beneficiary designations in order to equalize their estates and in order to enable the first spouse who dies to establish a "credit shelter" trust for the benefit of the surviving spouse in such a way that the "credit-shelter" trust will provide for the surviving spouse, but will not be taxed in the estate upon the death of the second spouse. One particularly beneficial aspect of the credit shelter trust is that, while the credit shelter trust may be established at the amount of the equivalent exemption for the year of death of the first spouse, if the value of the assets in the credit shelter trust grows prior to the death of the second spouse, that increased value remains sheltered and passes to the remaining beneficiaries free of estate taxes.

In general, some of the important considerations in estate planning for lawyers are: planning for incapacity or disability (avoiding guardianships, conservatorships and receiverships); avoiding intestacy; saving estate taxes; providing financial management; taking care of and protecting beneficiaries; preserving assets; appointing one's own choice of executor, trustee or other fiduciary, and avoiding probate and maintaining privacy.

In addition, lawyers need to be concerned with matters related to the protection of clients' interests, and the winding up or other disposition of a law practice, including: a written plan for the orderly conclusion, transfer or sale of the practice; the

designation of another Virginia-licensed lawyer to assist the executor; and the maintenance and identification of an easily understandable system of records to help the other lawyer carry out his or her responsibilities, such as properly dealing with client property held in trust. In the event that the lawyer has not made such plans and there are matters that must be concluded, the Virginia State Bar will be required to have a receiver appointed to handle the matters. Receivership fees and costs are often substantial and are a drain on the VSB's limited budgetary resources. Therefore, in the June/July 2002 *Virginia Lawyer*, the bar notified all lawyers that, pursuant to Virginia Code Section 54.1-3900.01, effective immediately, the bar will pursue claims against attorneys and their estates for receivership fees and costs.

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Rather than doing no planning, and, in the event of disability or death, relying on the appointment of a receiver to close a law practice, every lawyer should meet his or her ethical duty (and serve his or her own interests) by having a plan in place that renders the lawyer's practice an asset (that can be sold under the provisions of Rule 1.17 of the Rules of Professional Conduct), instead of a drain on the lawyer's estate.

In planning for someone to act in the event of the lawyer's disability or incapacity, the lawyer may wish to have three separate durable powers of attorney: a durable general power of attorney; a durable health care power of attorney; and a durable special power of attorney dealing specifically with the law practice, and appointing a Virginia-licensed attorney at

law as attorney-in-fact to deal with all matters related to the law practice. As a supplement to this article, there is a specimen durable special power of attorney, which may be modified and used by a lawyer to designate another lawyer to act in the event of his or her disability. The provisions contained in the power of attorney may also be modified *mutatis mutandis* to provide part of the basis for a lawyer's Agreement or Last Will and Testament.

The lawyer's professional liability insurance policy will contain a provision regarding the right to obtain an Extended Claim Reporting Period endorsement in the event of the lawyer's death, total or permanent disability, retirement or leaving the practice of law. Usually, the time within which the carrier must be notified is relatively short, and the lawyer should be certain that this information is highlighted on the checklist.

If it is consistent with his or her wishes, the lawyer can execute an advance medical directive ("living will") to assist in decision making should the lawyer become terminally ill. This advance medical directive should be appropriately distributed, including distribution to the lawyer's family members, attending physician and attorney-in-fact.

At death, assets may pass by will, in which case they will be subject to probate and will become a matter of public record, or they may pass by various probate avoidance devices, such as: revocable living trust (which may be funded or unfunded during lifetime); joint tenancy with the right of survivorship as at common law and tenancy by the entirety with right of survivorship as at common law; beneficiary designation; and payable or death designation and transfer on death designation. Care should be taken when using these various probate avoidance devices that the estate tax and other planning structure of the estate plan is not inadvertently circumvented. In other words, the estate plan should be one in which asset titling and values, beneficiary designations and documents are part of an integrated whole, not just a series of unrelated parts.

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An important part of many lawyers' estates is a qualified retirement plan, 401(k) plan or individual retirement account. The selection of the proper beneficiary designation on such plans is important and there are new rules regarding minimum distributions from such plans. For detailed guidance, see "Working with the Minimum Distribution Rules" by Louis A. Mezzullo, in this issue of the *Virginia Lawyer*.

The following short list will be of help to a lawyer as a checklist of some items that may be utilized in the lawyer's estate and disability planning:

- Senior Lawyers Conference Web Site at www.vsb.org/slc;
- Estate Planning Checklist;
- Durable General Power of Attorney;
- Durable Health Care Power of Attorney;
- Durable Special Power of Attorney Regarding Law Practice;
- Agreement Regarding Law Practice;
- Advance Medical Directive;
- Last Will and Testament with appropriate powers to Executor;
- Revocable Living Trust Agreement;
- Professional Liability Insurance Policy;
- Disability Income Insurance Policy;
- Long Term Care Insurance Policy;
- Life Insurance Policies and Beneficiary Designations;
- Retirement Plans and Beneficiary Designations.

In summary, estate and disability planning for a lawyer is essential. Not only will the interests of the lawyer's clients be protected, but the interests of the lawyer and the lawyer's beneficiaries will be protected as well. ☺



Frank Overton Brown, Jr., practices law in the Richmond metropolitan area. He is the immediate past chair of the Senior Lawyers Conference and is a fellow of the American College of Trust and Estate Counsel. He received his undergraduate, graduate and law degrees from the University of Richmond.

WHAT IS THE DATE, AFTER LAWYER'S DEATH, TOTAL OR PERMANENT DISABILITY, RETIREMENT OR LEAVING THE PRACTICE OF LAW WITHIN WHICH THE PROFESSIONAL LIABILITY INSURANCE CARRIER MUST BE NOTIFIED, IN ORDER TO OBTAIN AN EXTENDED CLAIM REPORTING PERIOD ENDORSEMENT? _____

PROPERTY ADDRESS OF ANY PROPERTY OF WHICH YOU ARE THE LESSEE:

NAME, ADDRESS, AND TELEPHONE NUMBER OF LESSOR OF ANY PROPERTY OF WHICH YOU ARE THE LESSEE:

NAME, ADDRESS, AND TELEPHONE NUMBER OF COMPANY PROVIDING SECURITY SERVICES TO YOUR LAW OFFICE:

NAME, POLICY NUMBER, TELEPHONE NUMBER AND ADDRESS OF LONG TERM CARE INSURANCE PROVIDER:

NAME AND TELEPHONE NUMBER OF AGENT: _____

ATTACH COPY OF LONG TERM CARE INSURANCE POLICY _____

NAME, POLICY NUMBER, TELEPHONE NUMBER AND ADDRESS OF DISABILITY INCOME INSURANCE PROVIDER:

ATTACH COPY OF DISABILITY INCOME POLICY _____

LOCATION AND BOX NUMBERS OF LAW FIRM BANK SAFE DEPOSIT BOX(ES) :

NAMES OF PERSONS WHO HAVE ACCESS TO BOXES: _____

NAME, ADDRESS, TELEPHONE NUMBER, AND ACCOUNT NUMBER(S) OF LAW FIRM BANK ACCOUNT(S):

WHO ARE AUTHORIZED SIGNATORIES? _____

WHAT TYPE OF BUSINESS ENTITY IS YOUR LAW FIRM: _____

WHAT TYPE TAX RETURNS IS YOUR FIRM REQUIRED TO FILE: _____

WHAT IS THE EIN (TAXPAYER NO.) OF YOUR LAW FIRM _____

WHAT IS YOUR COMPUTER ACCESS PASSWORD? _____

ADDENDUM:

DURABLE SPECIAL POWER OF ATTORNEY
FOR ATTORNEY AT LAW REGARDING LAW PRACTICE
(PREPARED BY JOHN DOE, ATTORNEY AT LAW,
123 ANYWHERE STREET, RICHMOND, VIRGINIA 23228)

KNOW ALL MEN BY THESE PRESENTS: That I, JOHN DOE, a Virginia licensed attorney-at-law and member of the Virginia State Bar, whose Virginia State Bar Number is 00000, and whose Social Security Number is 999-99-9999, whose date of birth is September 5, 1927, of the County of Henrico, Virginia, presently residing at 123 Anywhere Street, Richmond, VA 23228, and whose law practice office address is 345 Barrister Lane, Richmond, Virginia 23228 (and who, for purposes of recordation is the “Grantor”), have made, constituted and appointed and by these presents, do make, constitute and appoint THOMAS R. JONES, a Virginia licensed attorney-at-law and member of the Virginia State Bar, whose Virginia State Bar number is 00001, as my true and lawful attorney-in-fact, referred to herein as “my lawyer attorney-in-fact”, for the following limited purposes. I intend by this instrument to create a Durable Special Power of Attorney, to be used by my lawyer attorney-in-fact for purposes of dealing with my law practice, in the event of my disappearance, disability, incapacity, incompetence, or inability to act on my own behalf (for purposes of this instrument, my “law practice” is defined as

(HERE DESCRIBE THE NATURE AND EXTENT OF THE ENTITY OR ENTITIES INVOLVED, THE INTERESTS INVOLVED AND THE SPECIFIC ASSETS OR PROPERTY INVOLVED)

The affidavit of my lawyer attorney-in-fact that I have disappeared, am disabled, incapacitated or incompetent, shall be conclusive proof of the facts stated in such affidavit. In determining whether I have disappeared, am disabled, incapacitated, incompetent, or unable to act on my own behalf, my lawyer attorney-in-fact may act upon such evidence as my lawyer attorney-in-fact shall deem reasonably reliable, including, without limitation, communications with members of my family or other reliable sources, or written opinions of one or more medical doctors duly licensed to practice medicine. I hereby relieve my lawyer attorney-in-fact from any liability for actions taken in good faith under this instrument. All actions taken pursuant to this Durable Special Power of Attorney by my lawyer attorney-in-fact shall be taken in compliance with all applicable Virginia laws governing attorneys-at-law and all rules and regulations of the Virginia Supreme Court and the Virginia State Bar, including, without limitation, Rules of Professional Conduct adopted by the Virginia Supreme Court and Legal Ethics Opinions; to the extent that any provision of this Durable Special Power of Attorney should be in conflict with any such laws, rules, regulations, or legal ethics opinions, such laws, rules, regulations, or legal ethics opinions shall govern. This power of attorney and the authority of my said lawyer attorney-in-fact hereunder shall not terminate in the event of my disappearance, disability, incapacity, or incompetence, or because of lapse of time. My true and lawful lawyer attorney-in-fact is appointed to manage all property associated with my law practice, real and personal (when the term “property” is hereinafter used, it shall include, whenever applicable, both real and personal property, tangible, intangible and mixed, and any interest or right therein) and to act in and conduct all matters related to my law practice, and for that purpose and in my name, place and stead, and for my use and benefit, and as my act and deed, to do and execute, or to concur with persons jointly interested with myself therein in the doing or executing of, all or any acts, deeds and things, that is to say:

1. **Power To Inventory And To Conduct His/Her Own Conflict Of Interest Check.** To inventory all client case files and client property under my control, and to conduct his/her own conflict of interest check before delving into client files; in the event that my lawyer attorney-in-fact identifies such a conflict of interest, my lawyer attorney-in-fact shall appoint a Successor or Substitute lawyer attorney-in-fact as provided in paragraph 14 below, to deal with that file.
2. **Power To Notify Clients.** To notify all of my clients of my disappearance, disability, incapacity, incompetence, or inability to act on my own behalf, and to take whatever action my lawyer attorney-in-fact deems advisable to protect the interests of my law practice and the interests of my clients, until such time as my clients have obtained substitute counsel or have engaged my lawyer attorney-in-fact as substitute counsel.
3. **Power To Safeguard Client’s Files and Property.** To safeguard client’s files and property, and to deliver client’s files and property as directed in writing by the clients, obtaining proper receipts therefor.
4. **Power To Deal With Financial Institutions.** To open accounts for my law practice with, to add to, withdraw from, or close accounts for my law practice (including operating or general accounts, and attorney escrow or trust accounts) in financial institutions, including, without limitation, banks, trust companies, brokerage firms, mutual fund companies, or other institutions, or to draw upon any such financial institution, corporation, firm, association or individual for any sum or sums of money or other property to

which I may be entitled as I might or could do; to execute and deliver any instruments, checks or other negotiable instruments with respect to the accounts with such financial institutions; to contract for any services rendered by such financial institutions; upon receipt of any checks, drafts, dividends, interest, income or moneys, to deposit the same in the appropriate account in my name in any financial institution;

5. **Power To Enter My Law Office.** To enter my law office and to use the office equipment and supplies as necessary;
6. **Power Regarding Mail And Courier Deliveries.** To receive, to sign for, and to open my law practice mail and courier deliveries and to process and respond to them, as necessary; To deal with the United Postal Service;
7. **Power To Examine Files And Records.** To examine files and records of my law practice and to obtain information as to any pending matters requiring attention;
8. **Power To Obtain Client Consent To Obtain Extensions Of Time.** To obtain client consent to obtain extensions of time and to contact opposing counsel and courts/agencies to obtain extensions of time;
9. **Power To Apply For Extensions Of Time.** To apply for extensions of time regarding any pending matters;
10. **Power To Prepare And File Accountings and Bills.** To prepare and file or submit accountings and bills to my clients and others;
11. **Power To Preserve Client Confidences And Secrets.** To preserve confidences and secrets of my clients and to protect the attorney-client privilege;
12. **Power To Screen Files For Conflicts Of Interest.** To screen my client files for conflicts of interest on the part of my lawyer attorney-in-fact or any other attorney to whom a client is referred;
13. **Power To Mediate And Arbitrate.** To submit to mediation and/or arbitration on my behalf;
14. **Power To Appoint Successor Or Substitute Lawyer Attorney-In- Fact.** If my lawyer attorney-in-fact is unable or unwilling to act on my behalf under this instrument, either as to a specific matter, or overall, then my lawyer attorney-in-fact is empowered to appoint in writing another discreet and competent attorney-at-law licensed in the State of Virginia as a Successor or Substitute lawyer attorney-in-fact to act on my behalf, with full powers to act under the terms of this instrument;
15. **Power To Collect Accounts Receivable.** To collect accounts receivable belonging to my law practice.
16. **Power To Deal With Creditors.** To determine the nature and amounts of all claims of creditors, including clients, of my law practice and to deal appropriately with said creditors.
17. **Power To Sell My Law Practice.** To sell my law practice, partially or in its entirety, including good will, in accordance with Rule 1.17 of the Rules of Professional Conduct. My lawyer attorney-in-fact is empowered to purchase my law practice, partially or in its entirety, but only if such purchase is pursuant to a written agreement entered into between my lawyer attorney-in-fact and me prior to my disappearance, disability, incapacity, incompetence, or inability to act on my own behalf.
18. **Power To Request Appointment Of Receiver.** If deemed necessary and appropriate in my lawyer attorney-in-fact's discretion, to seek the appointment of my lawyer attorney-in-fact or other discreet and competent attorney-at-law as receiver, in accordance with the provisions of Virginia Code Section 54.1-3900.01.
19. **Power To Terminate Attorney-Client Relationship And To Appear Before Court Or Other Tribunal To Request Withdrawal Of Appearance.** To terminate the attorney-client relationship with a client by proper notice to the client, and to appear before court or other tribunal to request withdrawal in a pending matter;
20. **Power To Sell, Encumber And Dispose Of Real and Personal Property.** To sell, pledge or otherwise encumber or dispose of any real or personal property belonging to my law practice;
21. **Power To Purchase Real And Personal Property.** To buy, or otherwise acquire, any property, including stocks, bonds, Treasury securities, or other investments, all in a prudent manner;
22. **Power To Invest And Manage.** To invest or reinvest, lease or let, or otherwise manage any of the property of my law practice, real and personal, tangible and intangible; to make investments and re-investments on behalf of my law practice, being bound by the Prudent Investor Rule, including, without limitation, taking the following actions: exercising all rights with respect to investments

which my law practice now owns or may hereafter acquire, including, without limitation, the right to buy, sell, grant security interests in, or otherwise deal with such investments; opening, establishing, utilizing, or closing investment and brokerage accounts; to sell, assign, endorse and transfer any stocks, bonds, options or other securities of any nature whatsoever standing in the name of my law practice, and to execute any and all documents necessary to effectuate the foregoing, including, without limitation, stock and/or bond powers and certificates, and affidavits of domicile;

23. **Power To Sue And Defend.** To commence or carry on, or to defend, at law or in equity, all actions, suits or other proceedings touching my law practice, or touching anything in which my law practice may be in any wise concerned;
24. **Power To Demand And Receive.** To demand, settle, collect, sue for, receive, enforce payment of, submit to arbitration or mediation, compromise, receive, give receipts or discharges for, or make such other appropriate disposition regarding such matters related to my law practice as my lawyer attorney-in-fact deems appropriate, of all moneys, rights to payment, property (real and personal, tangible and intangible), securities, debts, chattels, causes of action, or other property whatsoever now belonging or hereafter to belong to my law practice;
25. **Power To Settle, Compromise, Arbitrate Or Mediate.** To settle or compromise, or submit to arbitration or mediation, all debts, taxes, accounts, claims, causes of action or disputes between my law practice and any other person or entity, regardless of the identity of the person or entity involved;
26. **Power To Borrow.** To make or endorse promissory notes, or to renew the same from time to time, without personal liability on the part of my lawyer attorney-in-fact;
27. **Power To Deal With Taxes And Tax Agencies.** To inspect, prepare, execute or file income, information, or other tax returns or forms and to act on behalf of my law practice in dealing with any office of the Internal Revenue Service, any office of the Virginia Department of Taxation, or any office of any other tax department or agency in connection with any income, withholding, employment or other tax matters (including, without limitation: signing a waiver agreeing to a tax adjustment or an offer of waiver of restriction on assessment or collection of a tax deficiency, or a waiver of notice of disallowance of claim for credit or refund; signing a consent to extend the statutory time period for assessment or collection of a tax; signing a closing agreement under section 7121 of the Internal Revenue Code; receiving a refund check and negotiating it on behalf of my law practice; representing me at a conference with the tax agency; filing a written response on my behalf with the tax agency; signing employment tax returns; receiving confidential tax information); designating in writing any other person or agent to act on my behalf regarding the foregoing tax matters;
28. **Power To Employ And Dismiss.** To employ or dismiss agents, accountants, attorneys, or others, and to compensate them;
29. **Power Regarding Insurance.** To apply for, take out, renew, maintain, pay premiums on, modify, make claims against, collect benefits from, surrender, or cancel fire, casualty, professional liability, or other liability insurance policies on me, on my lawyer attorney-in-fact, or any property of my law practice; to apply for, take out, renew, maintain, pay premiums on, modify, make claims against, take loans against, collect benefits from, surrender or cancel policies of disability insurance, long term care insurance, office overhead insurance, life insurance, or other insurance; the foregoing powers apply to private and public insurance plans, including, without limitation, Medicare, Medicaid, SSI, and Workers' Compensation;
30. **Power To Execute Instruments.** Regarding my law practice, to execute, acknowledge or deliver in my name, or to sign my name to, any deed, contract, instrument, certificate or document, including giving all necessary covenants, warranties and assurances, and to sign, seal, acknowledge and deliver the same; to execute disclosures, disclaimers, affidavits or any other documents on my behalf;
31. **Power Regarding Safe Deposit Boxes.** Regarding my law practice, to rent or surrender safe deposit boxes, and to enter any safe deposit boxes which I may now or hereafter have and to remove any of the contents therefrom or to place items therein;
32. **Power To Deal With Any Governmental Agency.** Regarding my law practice, to act on my behalf in dealing with any governmental department or agency;
33. **Power To Resign As Fiduciary And To Appoint Successor Fiduciary.** When authorized by the governing instrument, to resign any position which I may hold as fiduciary, and to appoint a successor fiduciary in my place and stead, including the appointment of my lawyer attorney-in-fact as such successor fiduciary.
34. **Power To Petition Court To Permit My Resignation as Fiduciary And For Appointment Of Substituted Or Successor Fiduciary.** To petition the Court of appropriate venue and jurisdiction on my behalf to permit my resignation as fiduciary and to request the appointment of a substituted or successor fiduciary in my place and stead, including the appointment of my lawyer attorney-in-fact as such successor or substituted fiduciary;

35. **Power To Maintain, Repair, Or Demolish Property.** To contract with and to pay contractors or workmen to maintain, make repairs to, or demolish any property which I may own in connection with my law practice;
36. **Power To Enforce Acceptance Of This Durable Special Power Of Attorney.** To initiate any litigation that may be necessary in order to require third parties to recognize the validity of this power of attorney and to seek damages, including punitive damages, for injury to me and my law practice because of any nonrecognition;
37. **Power To Coordinate And Cooperate With Any Other Fiduciary Acting On My Behalf.** To coordinate and cooperate with any other attorney-in-fact or other fiduciary acting on my behalf, in order to carry out the powers conferred on my lawyer attorney-in-fact herein;
38. **Power To Notify Professional Liability Insurance Carriers.** To notify any professional liability insurance carriers of my disappearance, disability, incapacity, incompetence, or inability to act on my own behalf, and to cooperate with such insurance carriers regarding matters related to my insurance coverage, including the addition of my lawyer attorney-in-fact as an insured under my policy or policies.

Except as otherwise limited in this instrument, I do give and grant unto my said lawyer attorney-in-fact full power and authority to do and perform all and every lawful act, deed, matter and thing whatsoever in and about my law practice and property associated with my law practice as effectually to all intents and purposes as I might or could do in my own proper person if personally present, the above specially enumerated powers being in aid and exemplification of the power herein granted regarding my law practice and not in limitation or definition thereof; and I hereby ratify all that my said lawyer attorney-in-fact shall lawfully do or cause to be done by virtue of these presents.

And I hereby declare that any act or thing lawfully done hereunder by my said lawyer attorney-in-fact shall be binding on me, and on my heirs, legal and personal representatives, and assigns, whether the same shall have been done before or after my death, or other revocation of this instrument, unless and until reliable intelligence or notice thereof shall have been received by any party who, upon the faith of this instrument, accepts my said lawyer attorney-in-fact as authorized to represent me. I intend that this power of attorney be a substitute for the necessity of any court or agency proceeding to appoint a guardian, conservator, trustee, representative payee, receiver, or other similar fiduciary for my law practice, since I wish to avoid the necessity for such a proceeding; however, should it become necessary for the court or agency to appoint such a guardian, conservator, trustee, representative payee, receiver, or other fiduciary, I nominate my above named attorney-in-fact to be such guardian, conservator, trustee, representative payee, receiver, or other fiduciary. I intend that the agency created by this power of attorney shall not be subsumed, nullified, or in any way impaired by the court or agency appointment of such a guardian, trustee, conservator of my person or estate, representative payee, receiver, or any other similar fiduciary. I intend that any such fiduciary shall not be entitled to revoke, impair, or alter the agency relationship created by this power of attorney. I intend that, in accordance with the law of every state or other jurisdiction (including, in the Commonwealth of Virginia, the statutory provisions of Title 11 of the Code of Virginia, 1950, as amended, regarding survival of powers of attorney after appointment of a guardian) this power of attorney shall continue in force after any such appointment, and shall in every respect be superior to and prevail over any such appointment, regardless of the jurisdiction appointing the guardian, conservator, trustee, representative payee, receiver, or other fiduciary for the administration of my affairs regarding my law practice during my lifetime.

Any provision of the law to the contrary, no person or entity (other than a court of competent jurisdiction and the Virginia State Bar) shall have the authority to require my said lawyer attorney-in-fact to disclose any information relating to the actions taken or not taken by my said lawyer attorney-in-fact hereunder, and no person or entity (other than a court of competent jurisdiction and the Virginia State Bar) shall have the authority to inspect or to permit the inspection of the records maintained by my lawyer attorney-in-fact hereunder. Nonetheless, my lawyer attorney-in-fact may consent to the disclosure of such information and/or the inspection of such records if my lawyer attorney in fact is required to do so by court order or the order of the Virginia State Bar.

My lawyer attorney-in-fact shall be entitled to the payment of reasonable compensation from my law practice for the services which my lawyer attorney-in-fact renders under this instrument.

I reserve the right to amend in writing or to revoke this durable special power of attorney. This power of attorney may be revoked only by a document signed by me, expressly revoking this power of attorney, and recorded in the Clerk's Office of the Circuit Court of the County of Henrico, Virginia. The revocation of this power of attorney shall not affect the validity of any action taken by my said lawyer attorney-in-fact prior to the revocation. This power of attorney expressly supersedes and revokes all other durable special powers of attorney heretofore made by me regarding my law practice.

The actions authorized by this power of attorney are intended to create only the authority to act; this power of attorney is not intended to create any obligation to act on the part of my lawyer attorney-in-fact to act. My lawyer attorney-in-fact shall neither be liable for the failure to act nor for the failure to consider taking any of the actions authorized in this power of attorney. My lawyer attorney-in-fact, while acting in good faith, is released from any liability to me or my estate for any acts or failures to act of my lawyer attorney-in-

fact, except for willful misconduct or gross negligence. I agree to indemnify and hold my lawyer attorney-in-fact harmless from any liability and expense, including attorney's fees, that my lawyer attorney-in-fact may incur as a result of serving under this power of attorney, except for liability or expense arising from willful misconduct or gross negligence. This indemnification agreement does not extend to any acts, errors, or omissions of my lawyer attorney-in-fact while rendering or failing to render professional services in my lawyer attorney-in-fact's capacity as attorney for my former clients, after such clients have become clients of my lawyer attorney-in-fact.

This power of attorney is granted in and shall be governed by the laws of the Commonwealth of Virginia; however, I intend that this power of attorney be universally recognized and that it be universally admissible to recordation.

The captions used in this Durable Special Power of Attorney have been used for ease of reference, and are not to be used for its interpretation.

By signing below, I indicate that I am emotionally and mentally competent to make this document, and that I understand the purpose and effect of this instrument. The signature of my lawyer attorney-in-fact is shown below.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the _____ day of October, 2002.

JOHN DOE (SEAL)

THOMAS R. JONES, Lawyer Attorney-in-Fact (SEAL)

JOHN DOE signed the foregoing durable special power of attorney in my presence. I am a disinterested witness and I am not the spouse or a blood relative of JOHN DOE.

WITNESS

WITNESS

STATE OF VIRGINIA

_____, to-wit:

I, the undersigned Notary Public in and for the jurisdiction aforesaid, in the State of Virginia, do hereby certify that JOHN DOE, whose name is signed to the foregoing power of attorney dated the _____ day of October, 2002 has acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand this the _____ day of October, 2002. My commission expires: _____

Notary Public