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Enduring Power of Attorney in Israel, the power to make a better end

Just imagine the following common scenario: an elderly person begins to suffer from a “degenerative disease” such as Alzheimer’s. At first, the effect of the disease is marginal; but later on, the situation gets steadily worse. This person has entered into a kind of medical “twilight zone,” until the stage where he finds it extremely difficult (and is, perhaps, genuinely unable) to conduct his own affairs.

In the past, there was only one solution for a scenario of this kind: applying to the court to appoint a legal guardian for the person and for his property. However, the appointment of a legal guardian is a proceeding that is rife with bureaucracy, which requires the guardian to fill out reports and to obtain regular authorizations for his activities; at times, it is difficult to know when the medical “twilight” threshold, that justifies the appointment of a legal guardian, has been crossed. Furthermore, the legal proceeding for the appointment can take a long period of time, to such an extent that will place a great burden on the day-to-day care of the person; etc.

In the past, the incapacitated person’s influence over the identity of the legal guardian who would be appointed for him, as well as the manner the legal guardian can act, was extremely limited (if any).

These difficulties have not escaped the attention of the Israeli legislature, which has reached the conclusion that it is necessary to adjust the law in Israel so as to be consistent with the law that exists in many other developed countries in the US and Europe, and to narrow the legal guardian appointment regulations, including the bureaucracy related thereto, and to prefer “leaner” and efficient arrangements that entail far less bureaucracy and judicial intervention.

An enduring power of attorney (“EPA”) is intended to provide a response to this situation. An EPA allows the person to make the requisite preparations, in advance, prior to the onset of any possible deterioration in his condition, and to determine, in advance, detailed arrangements for the handling of his medical, property-related or personal affairs. Through an EPA, a person can guarantee the proper and continuous administration of his property and his business, even if, heaven forbid, his medical or cognitive situation does not allow him to do so by himself; and he can determine, in advance, through his attorney-in-fact, which medical procedures he is willing to undergo.

The EPA is flexible and it contains a multitude of possibilities: it is the person who determines, in advance, the mechanism for the “activation” of the EPA; who will be the attorneys-in-fact, in which areas they will act and to whom they will report; and many other situations. This flexibility makes it possible to “tailor” for each person the arrangement that best suits him, that meets his property-related, medical and personal needs, as well as the sensitivities of his family, which frequently accompany arrangements of this kind.

One significant advantage of an EPA is the absence of the need for judicial intervention: the creation of the EPA, its “activation”, and the use thereof do normally not require the approval of the court or a report to some authority. This is a “private” mechanism, the implementation of which is done in accordance with the instructions of the person who made the EPA, without requiring any additional authorization by any “external” third parties.

Another notable advantage of the EPA is that it “survives” for a period of 90 days after the death of the person who made it. This way, during the critical period after his death, it is possible to continue to handle the property of the person who signed the EPA, and to guarantee the interests of the heirs, in accordance with his instructions.

It is worth mentioning that the Israeli legislature restricted the scope of the use of the EPA (with respect to real-estate transactions, transactions involving significant amounts, etc.), in order to reduce the concern for the abuse of this legal instrument.

It should be noted, to complete the picture, that the EPA does not replace the provisions of the Dying Patient Law, which enable a person to set directives in advance regarding life-prolonging medical treatments that he will go through, in case he is recognized as a "Dying Patient" according to the law.

It should also be noted, parenthetically, that a foreign resident may also draw up an EPA in accordance with the procedure set forth in Israeli law; however, such EPA will be subject, in terms of the substantive law, to the law of the domicile of the appointer and it requires the existence of a legal instrument that is consistent with his country of residence. In cases in which an EPA has already been drawn up in the country of residence, and it is desired that it be recognized in Israel, it may be achieved by a declaratory judgment of from the competent Israeli court.

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