A. Introduction – The Historical Context

A power of attorney is very often the most important legal document a client will ever sign. Effective January 1, 2017, Washington became the 19th state to adopt a version of the Uniform Power of Attorney Act, thereby fundamentally changing the law regarding powers of attorney in Washington State. The Uniform Act was first promulgated by the Uniform Laws Commission2 in 2006. As of 2018, 26 states have enacted a version of the uniform statute, and adoptive legislation is pending in two more states, as well as the District of Columbia. The new statute represents a marked departure from Washington’s previous law regarding powers of attorney.

Washington first enacted a comprehensive power of attorney statute in 1974. Before that date most of the Washington state law pertaining to powers of attorney was based on the common law of agency. Some exceptions existed. For example, our domestic relations law made each spouse a sort of general agent for the community, but specific authorization was required for certain spousal actions such as making gifts to third persons.3

At common law, if the principal became incapacitated, any powers delegated to an agent ended, and that is still the general rule absent a statute.4 As a result, incapacity of a principal also terminated any general, non-durable, powers of attorney which that principal had executed.5

However, by the middle of the 20th century people began living longer. By May 1995 the US Census Bureau observed:

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2 The Uniform Laws Commission (“ULC”), also known as the National Conference of Commissioners on Uniform State Laws, is an independent and unincorporated non-profit association. The ULC develops new uniform statutes, and then submits them to the ABA for “endorsement.” The ULC is not directly part of the ABA. However, there is an important relationship between the ULC and the ABA. The ABA house of delegates votes on new or revised uniform law proposals. When the ABA has voted to “endorse” a new or revised uniform law, the ULC deems that statute “approved” by the ABA. However, there is an important relationship between the ULC and the ABA. The ABA house of delegates votes on new or revised uniform law proposals. When the ABA has voted to “endorse” a new or revised uniform law, the ULC deems that statute “approved” by the ABA. Further, there is a very close association between the ABA and the ULC. Every proposed uniform law is assigned an ABA “advisor.” There are generally 3 ABA “advisors” who act as liaisons carrying information and suggestions about drafts of uniform laws, such that drafts of uniform laws do not get voted on by the ABA without a favorable report from the “advisors.”
https://my.uniformlaws.org/projects/overview/typesofcommittees
3 See Bryant v. Bryant, 125 Wn.2d 113, 882 P.2d 169 (1994)
4 Restatement (Third) Of Agency § 3.08 Loss of Capacity (2006)
5 Id. §3.08 (1) reads as follows: An individual principal's loss of capacity to do an act terminates the agent's actual authority to do the act. The termination is effective only when the agent has notice that the principal's loss of capacity is permanent or that the principal has been adjudicated to lack capacity. The termination is also effective as against a third party with whom the agent deals when the third party has notice that the principal's loss of capacity is permanent or that the principal has been adjudicated to lack capacity.
“During the 20th century, the number of persons in the United States under age 65 has tripled. At the same time, the number aged 65 or over has jumped by a factor of 11! Consequently, the elderly, who comprised only 1 in every 25 Americans (3.1 million) in 1900, made up 1 in 8 (33.2 million) in 1994. Declining fertility and mortality rates also have led to a sharp rise in the median age of our Nation’s population -- from 20 years old in 1860 to 34 in 1994.\(^6\)

Even more striking was the observation, in that same report, that the “oldest old,” those persons aged 85 and over, grew by 274% between 1960 and 1974.\(^7\) As a result of our citizens living longer however, the potential for incapacity increased. In conjunction with longer-lived citizens, the incidence of aging related dementia and “Alzheimer’s” increased. As a result of this increase, Washington and several other states have enacted “Alzheimer’s State Plans.”\(^8\)

As a consequence of the increasing potential for incapacity, most countries, and every state in the United States, have now enacted statutes allowing for “durable” powers of attorney; i.e. powers of attorney that can survive incapacity of the principal. Washington enacted a power of attorney statute which mentioned and provided for “durable powers of attorney” in 1974. That statute was placed in our statutes at chapter 11.94 of the Revised Code of the State of Washington (hereinafter “RCW”). There were a number of amendments to RCW chapter 11.94, but that statute remained in effect for over forty years, until it was repealed and archived\(^9\) following passage of the Uniform act.

Meanwhile, on the national level, the Uniform Laws Commission developed a new Uniform Power of Attorney statute in 2006. The hope and expectation of the committee is that most states will adopt its proposed act in whole or in large part. In the 2016 legislative session the Washington state legislature did, in fact, adopt the Uniform Act when it passed Engrossed Substitute Senate Bill (“ESSB”) 5635. Governor Jay Inslee signed the bill into law on April 1, 2016. The new power of attorney statute became effective on January 1, 2017.

The Washington State Code Reviser has now codified the new act as RCW chapter 11.125. There are significant differences between the provisions of the old power of attorney statute, RCW 11.94, and those of the new act. Among these many differences, are a new specific definitions section, significant changes in methods of creating a power of attorney, a new set of duties imposed on every attorney in fact, new rules regarding acceptance of powers of attorney by third parties and changes in the effect of dissolution of marriage upon powers of attorney insofar as the power of attorney names a spouse as agent.

Considering the adoption of this new statute, Washington lawyers, especially our Elder Law bar, have been required to reflect more deeply on the potential needs and desires of most of our clients for powers of attorney. Many clients are concerned about their potential loss of capacity. Many of them want to make certain that a person they desire, not a stranger, can

\(^7\) Id.
\(^9\) A copy of the archived statute as it existed in 2016 can be found in the archival “pdf” maintained on the Washington Legislature’s web site at http://leg.wa.gov/CodeReviser/RCWArchive/Documents/2016/Title%2011%20RCW.pdf
control their finances and make health care decisions for them. If clients understand the potential for guardianship, they almost uniformly want to avoid it.

Often clients do not seriously consider these matters until they meet with a capable attorney. It is at that important point in their lives that clients can be educated and helped to understand that a properly crafted durable power of attorney can continue to operate even in the face of their incapacity and at their time of greatest need.

As the Elder Law bar is keenly aware, Durable powers of attorney can allow a trusted agent (often a family member) to make important financial and health care decisions on behalf of our clients. A well planned and thought out power of attorney can provide for protection for other members of their family; can allow clients’ agents to create special needs trusts in the event that they would be useful; can allow a spouse to make a gift of all of the community or marital property to the well spouse, or make other gifts as appropriate; can provide for the transfer of real property either as a gift or for compensation; and can do many more extraordinary things in order to fulfill the needs and desires of the client.

However, whether a durable power of attorney will properly operate when it is needed most, depends on the knowledge, experience and attention demanded of those attorneys who draft these critical documents. And now for Washington lawyers, that knowledge and experience must include specific knowledge of the changes in our law created by the new power of attorney statute at chapter 11.125 RCW.

At a cursory glance, the new statute changes our previous law in many important ways. As some examples, RCW Ch. 11.125 has specific execution requirements, imposes express duties on agents under powers of attorney, changes the statutory law regarding the effect of divorce or annulment proceedings, limits the agent’s gifting power to the annual exclusion amount unless otherwise specified, provides express mechanisms for ways in which an agent may resign and requires that if co-agents are named they will act jointly unless otherwise specified. This paper seeks to provide limited, but specific guidance regarding these topics.

B. CREATION OF POWERS OF ATTORNEY UNDER THE NEW STATUTE

1. NEW REQUIREMENTS FOR EXECUTION

Our previous power of attorney statute was contained at RCW chapter 11.94. The only reference to requirements for creation of a durable power of attorney were set forth at RCW 11.94.010. The only formal requirement for the creation of a durable power of attorney before January 1, 2017, was that it be in writing and signed. Further, for any power of attorney to be durable it had to contain the “magic words” suggested by the statute “or similar words showing the intent of the principal” to make the power of attorney durable.

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10 RCW 11.94.010 read in pertinent part:
“(1) Whenever a principal designates another as his or her attorney-in-fact or agent, by a power of attorney in writing, and the writing contains the words “This power of attorney shall not be affected by disability of the principal,” or “This power of attorney shall become effective upon the disability of the principal,” or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney-in-fact or agent is exercisable on behalf of the principal as provided notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive.” Emphasis added.
Many, if not most clients, expect and believe that all powers of attorney they sign will be “durable.” In other words, we expect that our powers of attorney will continue in effect, even if we become disabled, and despite any incapacitating conditions we may suffer. This misplaced expectation is natural. Clients understand that it is often more important to have an agent available in the event we become incompetent or compromised. However, as is often the case in legal matters, the clients are wrong in this expectation. The expectations of uninformed clients will become even more difficult when the new statute comes into effect.

In contrast to previous law, the new power of attorney statute requires:

“A power of attorney must be signed and dated by the principal, and the signature must be either acknowledged before a notary public or other individual authorized by law to take acknowledgments, or attested by two or more competent witnesses who are neither home care providers for the principal nor care providers at an adult family home or long-term care facility in which the principal resides, and who are unrelated to the principal or agent by blood, marriage, or state registered domestic partnership, by subscribing their names to the power of attorney, while in the presence of the principal and at the principal’s direction or request.” Emphasis added. See RCW 11.125.050 (1).

However, note that a power of attorney which is acknowledged before a notary or other person authorized to take acknowledgments, carries with it a presumption that the signature is valid. There is no such presumption regarding powers of attorney which are attested by two witnesses. As a result, practitioners should under all circumstances have powers of attorney notarized. Having powers of attorney both notarized and witnessed by two independent witnesses will add to its credibility and potential acceptability by third parties.

2. PREVIOUSLY VALID POWERS OF ATTORNEY REMAIN VALID

Although powers of attorney now have more stringent requirements for their creation, powers of attorney which were valid prior to January 1, 2017 will remain valid. In addition, powers of attorney which are valid under the laws of other states at the time of their creation will be valid in the state of Washington. However, and in spite of its validity, a previously valid power of attorney may be subject to interpretation or the application of additional rules set forth in the new statute. Practitioners should therefore carefully review any previous powers of attorney to determine whether the new statute imposes conditions which must be responded to in order to meet the needs and desires of the client.

3. DURABILITY

Specific language is still required to create a durable power of attorney. This is a significant departure from the original Uniform Act. The draft Uniform Power of Attorney Act adopted by the Uniform Laws Commission, and endorsed by the American Bar Association,

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11 See RCW 11.125.050 (3).
12 See RCW 11.125.060.
would make durability automatic unless excluded. However, Washington continues to utilize essentially the same language of our previous statute. Thus RCW 11.125.040 requires:

“The authority conferred under a power of attorney created prior to January 1, 2017, and also for a power of attorney created on or after January 1, 2017, terminates upon the incapacity of the principal unless the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's incapacity.” [Emphasis added]

Practitioners should carefully note that if a power of attorney does not contain the appropriate language of durability, the new statute will not revive durability, and in fact would prevent such a power of attorney from becoming durable. Thus, a power of attorney executed prior to January 1, 2017 without the necessary language, or one created in another state which presumes all powers of attorney to be durable unless otherwise specified, may nevertheless terminate upon the principal’s disability.

4. CO-AGENTS

Under RCW Ch.11.94, there was no regulation of methods by which a principal may appoint co-agents under a power of attorney. However, many practitioners have addressed the situation by stating either “principal appoints A and B meaning that they shall serve jointly as co-agents” or principal appoints A and B meaning that either one of them may serve and act independently of the other.” However, RCW 11.125.110 requires that “Unless the power of attorney otherwise provides, all coagents must exercise their authority jointly; provided, however, a coagent may delegate that coagent's authority to another coagent.” [Emphasis added] Under these circumstances, and to avoid any confusion, if a principal truly wants each co-agent to be able to act independently of any other co-agents it may be appropriate to state: “principal appoints A and B meaning that either one of them may serve and act independently of the other and they shall not be required to act jointly.”

5. “SPRINGING” POWERS OF ATTORNEY

Our previous statute gave little guidance regarding powers of attorney which are contingent on the happening of a future event. Such contingent or “springing” powers of

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13 Section 104 of the Uniform Act provides that any power of attorney “…is durable unless it expressly provides that it is terminated by the incapacity of the principal.” The opening comments to the Uniform Act explain the reason for this provision: “Another innovation is the default rule in Section 104 that a power of attorney is durable unless it contains express language indicating otherwise. This change from the Original Act reflects the view that most principals prefer their powers of attorney to be durable as a hedge against the need for guardianship.”


14 The only direct mention of conditional appointments in our previous statute was found at RCW 11.94.010(2) which stated: “Persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective.”
attorney are often conditioned on some form of medical evidence of incapacity, such as a letter from a physician identifying the incapacitating condition, and perhaps the effect of that condition on the principal.

The new statute provides specific references to the circumstances under which a “springing” power of attorney will become effective, the way such springing powers will be interpreted and the persons, including physicians, psychologists and judges, who may be involved in determining the terms of such a springing power of attorney.¹⁵

RCW 11.125.090 is adopted directly from the act as created by the Uniform Laws Commission. The comments to that act provide the reasoning and basis for the adoption of this statutory section. As those comments note, the statute provides a default rule, making a power of attorney effective immediately when it is executed unless the principal specifically identifies a contingency. Those comments can be very helpful in understanding the Uniform Laws Commission’s view of springing powers, and its view of the integration of “HIPPA with such provisions, some of which comments read as follows:

“If the principal chooses to create what is commonly known as a ‘springing’ or contingent power of attorney such that it becomes effective at a future date or upon a future event, the principal may authorize the agent or someone else to provide written verification that the event or contingency has occurred. The statute also provides that persons who are authorized to make capacity decisions will have further specific authority to access the principle’s health information. To carry out the need to make such capacity decisions, such persons, who are defined as the principal’s “personal representative” for purposes of the Health Insurance Portability and Accountability Act (HIPAA), will have access to the principal’s health information.”¹⁶

The philosophy behind this default rule is that “best practices” indicate that any agent who is trusted to act under a conditional or springing power of attorney should be just as

¹⁵ Those provisions are contained at RCW 11.125.090 which reads as follows:

(1) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.
(2) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing that the event or contingency has occurred.
(3) If a power of attorney becomes effective upon the principal’s incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing by:
   (a) A physician or licensed psychologist, unrelated to the principal or agent by blood or marriage, who has personally examined the principal, that the principal is incapacitated within the meaning of RCW 11.125.020(5)(a); or
   (b) A judge or an appropriate governmental official that the principal is incapacitated within the meaning of RCW 11.125.020(5)(b).
(4) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal’s personal representative pursuant to the health insurance portability and accountability act, sections 1171 through 1179 of the social security act, 42 U.S.C. Sec. 1320d, as amended, and applicable regulations, to obtain access to the principal’s health care information and communicate with the principal’s health care provider.

¹⁶ This identification is in accordance with 45 CFR §164.502 (G) (1) – (2) (2006). That part of the HIPAA act states that for purposes of disclosing an individual’s protected health care information a covered entity or provider must “treat a personal representative as the individual.”
trustworthy as an agent appointed under an immediate power of attorney. However, as the comments to the uniform rule point out, survey evidence indicates that a significant number of principals still prefer springing powers. The comments presume that those principals who desire springing powers are really seeking to maintain privacy in the hope that they will never need a surrogate decision maker.\(^\text{17}\)

This section also addresses the situation were a principal has not authorized any particular person to make a determination of incapacity as well as the potential that a person who is authorized to make such a determination has become unwilling to do so. The default mechanism for making such a determination is that incapacity may be verified by a physician or licensed psychologist. On the other hand, if the potential incapacity is based on the principal’s unavailability, i.e. the principal is missing or otherwise unable to return to the jurisdiction, a judge or “appropriate” governmental official\(^\text{18}\) can make such a determination.

However, it can often be difficult to find a physician or other appropriate health care provider who can make such a certification on short notice. Also, third parties may not understand when or under what circumstances a “springing” power of attorney will be effective and so may delay or even refuse to honor such a power of attorney. It is for that and other reasons that many Elder Law attorneys prefer to make a power of attorney come into effect immediately upon its execution.

The first admonition to a client should be never to give a power of attorney to someone the client cannot fully trust. Nevertheless, even with fully trustworthy agents, some clients are hesitant to make a power of attorney immediately effective. This is often because of a misunderstanding of the breadth and effectiveness of a power of attorney and the lack of understanding that clients themselves can always limit the actions of an agent or remove an agent so long as the principal is competent.

If the client is concerned about a power of attorney being used indiscriminately, the client has the choice to keep the power of attorney in the client’s own possession and in a place where it can be reached if necessary. Most Elder Law attorneys are comfortable discussing these issues with their clients and their clients’ families so long as all ethical obligations are complied with.

However sometimes the real concern is whether or not a client fully trusts the judgment of a proposed attorney-in-fact. Since a power of attorney should never be given to someone whom the principal does not trust, it is better not to have a power of attorney at all then to give a power of attorney to an untrustworthy agent. If these factors are fully discussed with the client, counsel can often help his client choose a more trustworthy, and more appropriate agent.

In some instances, a client does not feel that there is an appropriate place to store a power of attorney pending the necessity of its use. In certain instances, clients are more comfortable residing in their home or in the home of some caretaker where there is a lack of

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\(^{17}\) See Linda S. Whitton, National Durable Power of Attorney Survey Results and Analysis, National Conference of Commissioners on Uniform State Laws, 6-7 (2002), http://www.law.upenn.edu/bll/ulc/dpoaa/surveyoct2002.htm (reporting that 23% of lawyer respondents found their clients preferred springing powers, 61% reported a preference for immediate powers, and 16% saw no trend; however, 89% stated that a power of attorney statute should authorize springing powers).

\(^{18}\) The comments to the Uniform Laws Commission’s rule identify “appropriate governmental officials” as an officer acting under authority of the United States Department of State or uniformed services of the United States, or a sworn federal or state law enforcement officer.
privacy. In some of these instances a client may choose to leave a power of attorney in the hands of the lawyer who drew the document. That lawyer can hold the power of attorney according to instructions the client provides. In such cases it is best to reduce those instructions to writing so that there is no question as to the actions a lawyer may take in the future, especially in the case of some demonstrated incapacity by the client.

C. ACCEPTANCE AND ENFORCEMENT OF POWERS OF ATTORNEY

Although RCW 11.125.050 provides for two different methods for creation of powers of attorney, i.e. acknowledgment before a notary or signing before two or more competent witnesses, these two methods are not equal when it comes to acceptance of a power of attorney. This is primarily because of the presumption contained at RCW 11.125.050 (3) which reads as follows:

A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

This presumption becomes even more important when one begins to consider its effect on RCW 11.125.190 and RCW 11.125.200. RCW 11.125.190 begins with the admonition that

(1) For purposes of this section and RCW 11.125.200, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgments.

The remainder of RCW 11.125.190 deals directly, and only, with the acceptance of “acknowledged” or “verified” powers of attorney. The implication of the statute is that powers of attorney which are not “verified” will not necessarily be accepted by third parties and their acceptance may not necessarily be compelled if a third party chooses not to accept an “unverified” power of attorney.

RCW 11.125.190 (4) and (5) provide the basis for a certificate to prove the validity of an “acknowledged” power of attorney.19

19 Those sections state:
(4) A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:
   (a) An agent's certification given under penalty of perjury meeting the requirements of subsection (5) of this section; and
   (b) An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English.
(5) A certification presented pursuant to subsection (4) of this section or pursuant to RCW 11.125.200 shall state that:
   (a) The person presenting himself or herself as the agent and signing the affidavit or declaration is the person so named in the power of attorney;
   (b) If the agent is named in the power of attorney as a successor agent, the circumstances or conditions stated in the power of attorney that would cause that person to become the acting agent have occurred;
   (c) To the best of the agent's knowledge, the principal is still alive;
The reason for a "certificate of validity" for a power of attorney becomes clear at RCW 11.125.200 which begins

(1) Except as otherwise provided in subsection (2) of this section:
   (a) A person shall either accept an acknowledged power of attorney or request a certification or a translation no later than seven business days after presentation of the power of attorney for acceptance;

Especially noteworthy is the admonition that a third party’s decision not to accept the certification provided for at RCW 11.125.190 cannot be based on an internal requirement to use some other form of power of attorney, (except for some governmental agencies such as the Social Security Administration).

RCW 11.125.200 (b) requires that third party either accept a certificate produced in accordance with RCW 11.125.190 or face the potential for a statutory proceeding to enforce the terms of a power of attorney. That potential enforcement proceeding is identified at RCW 11.125.200 (3) as follows:

A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:
   (a) A court order mandating acceptance of the power of attorney; and
   (b) Liability for reasonable attorneys' fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

It should be noted that the liability for reasonable attorney fees is not conditional in contradistinction to the previous law. RCW 11.94.120 stated in pertinent part:

(d) To the best of the agent's knowledge, at the time the power of attorney was signed, the principal was competent to execute the document and was not under undue influence to sign the document;
   (e) All events necessary to making the power of attorney effective have occurred;
   (f) The agent does not have actual knowledge of the revocation, termination, limitation, or modification of the power of attorney or of the agent's authority;
   (g) The agent does not have actual knowledge of the existence of other circumstances that would limit, modify, revoke, or terminate the power of attorney or the agent's authority to take the proposed action;
   (h) If the agent was married to or in a state registered domestic partnership with the principal at the time of execution of the power of attorney, then at the time of signing the affidavit or declaration, the marriage or state registered domestic partnership of the principal and the agent has not been dissolved or declared invalid, and no action is pending for the dissolution of the marriage or domestic partnership or for legal separation; and
   (i) The agent is acting in good faith pursuant to the authority given under the power of attorney.

RCW 11.125.200 states:
   (c) A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.
In a proceeding to compel a third party to accept a power of attorney, the court may order costs, including reasonable attorneys’ fees, to be paid by the third party only if the court determines that the third party did not have a good faith concern that the attorney-in-fact’s exercise of authority would be improper. To the extent this section is inconsistent with RCW 11.96A.150, this section controls the award of costs and attorneys’ fees in proceedings brought under RCW 11.94.090.

In contrast RCW 11.125.200 is more broadly enforceable. Furthermore, the new statute does not prevent the court from considering other remedies such as those contained in the Estate Dispute Resolution Act and specifically RCW 11.96A.150.

Is it enough to simply have a written document which the client signs and is notarized? First, let us presume that counsel and counsel’s client desire that the power of attorney being drafted is accepted by the widest possible number of persons and entities. Further, let us presume that counsel and client desire that the power of attorney be accepted by persons and entities that may not be known at the time the document is drafted. That being the case every effort ought to be made. Because a power of attorney, and especially a durable power of attorney, is so important to the welfare of your client, it should be prepared in a way which lends it the greatest possible credibility. But how should we go about this?

There is no language limiting what can be done to strengthen the credibility of the document and nothing preventing both notarizing a power of attorney and having it attested by two independent witnesses. In this author’s office we have been using declarations that are somewhat similar to the declaration used to create a self-proving Will.21

D. TERMINATION OF POWERS OF ATTORNEY

It probably comes as little surprise that the new act notes that a power of attorney ends with the death of the principal, or, in the event that the power of attorney is not “durable” that it ends upon incapacity. See RCW 11.125.040.

However, the new statute, at RCW 11.125.100 provides more specific instruction regarding when powers of attorney terminate and perhaps as importantly, when a power of attorney may

21 Such declarations may take the following form:

DECLARATION OF WITNESSES:
The undersigned witnesses declare that the following statements are true, to the best of their knowledge and belief, under penalty of perjury pursuant to the law of the State of Washington: The foregoing instrument, was declared by CLIENT on [DATE], to be his/her Durable Power of Attorney in the presence of each of us who, at his/her request and in his/her presence and in the presence of each other, have subscribed our names as witnesses hereto; further that she/he executed it as his/her free and voluntary act and deed before us and in our presence, and at that time she/he was fully capable of making legal decisions, and fully understood the meaning and legal effect of signing this document, and was then over 18 years of age and of sound mind and acted freely without duress or undue influence of any kind.

WITNESSES:

Witness 1

Witness 2
be re-instituted. The effect of the act upon a potential dissolution of marriage or dismissal of such a petition does raise some concerns.

First, a power of attorney, pursuant to RCW 11.125.100 will terminate when the principal dies, when the principal becomes incapacitated if there is not a durability provision in the power of attorney, when the principal revokes the power of attorney, at the time the power of attorney terminates according to its own provisions, when the purpose of the power of attorney has been accomplished or when the principal revokes the agent’s authority. The power of attorney also terminates upon the incapacity or resignation of a sole or last remaining agent under a power of attorney, although this may be remedied by a court petition.

As noted at RCW 11.125.100 (2) (c) and (three)

(c) An action is filed for the dissolution or annulment of the agent’s marriage to the principal or for their legal separation, or an action is filed for dissolution or annulment of the agent’s state registered domestic partnership with the principal or for their legal separation, unless the power of attorney otherwise provides; or...

(3) An agent’s authority which has been terminated under subsection (2)(c) of this section shall be reinstated effective immediately in the event that such action is dismissed with the consent of both parties or the petition for dissolution, annulment, or legal separation is withdrawn.

The most problematic part of the statute is the automatic and immediate reinstatement of a power of attorney which has been terminated by the filing of a petition for dissolution or annulment or legal separation. This provision is apparently based on the belief that whenever such a petition is dismissed the parties have somehow automatically become fully trusting of each other. However, a number of family law practitioners take an opposite view. Generally, even though a petition for dissolution or annulment is dismissed, there is at least a. During which reconciliation is incomplete. Moreover, a number of practitioners note the not insubstantial number of reconciliations which later result in another filing and/or permanent termination of relationships between parties.

As a result, the above statute creates a potential trap for family law and other practitioners. Whenever a client may be involved in a domestic proceeding, the client should be advised of the potential that even though automatically terminated, dismissal of the family law petition may result in the automatic revival of a power of attorney. It seems probable that the best practice would be to send a formal revocation of any power of attorney as soon as possible the potential for the filing of a family law petition arises. Later, if there is a true reconciliation of the parties and the need for one of those parties to be granted a power of attorney, a new power of attorney can always be drafted.

E. DUTIES AND POWERS OF AGENTS UNDER POWERS OF ATTORNEY

It may come as some small surprise that the new statute enunciates specific duties which are imposed on most agents under a power of attorney. Although RCW 11.125.140 is rather lengthy, it is specific and instructive, and so is repeated verbatim for ease of reference below.22

22 (1) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

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(a) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;
(b) Act in good faith; and
(c) Act only within the scope of authority granted in the power of attorney.

(2) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:
(a) Act loyally for the principal's benefit;
(b) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;
(c) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;
(d) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
(e) Cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest; and
(f) Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:
   (i) The value and nature of the principal's property;
   (ii) The principal's foreseeable obligations and need for maintenance;
   (iii) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and
   (iv) Eligibility for a benefit, a program, or assistance under a statute or rule.

(3) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(4) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(5) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(6) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(7) An agent that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person, provided however that the agent shall not be relieved of liability for such person's discretionary acts, that, if done by the agent, would result in liability to the agent.

(8) Unless RCW 11.125.110(1) applies, an agent may only delegate authority to another person if expressly authorized to do so in the power of attorney and may delegate some, but not all, of the authority granted by the principal. An agent that exercises authority to delegate to another person the authority granted by the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person, provided however that the agent shall not be relieved of liability for such person's discretionary acts, that, if done by the agent, would result in liability to the agent.

(9) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested in writing by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. Such request by a guardian, conservator, or another fiduciary acting for the principal must be limited to information reasonably related to that guardian, conservator, or fiduciary's duties. If so requested, within thirty days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional thirty days.
Our previous power of attorney statute provided little guidance as to how a person named as agent “accepts appointment” as an agent such that any duties are imposed. RCW 11.125.130 provides direct instruction, when it states: “Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.”

Although RCW 11.125.140 speaks for itself, a few of the provisions may bear further consideration. The duties of good faith, loyalty, acting in a manner the principal would expect and following the principal’s estate plan, so far as possible, should come as no surprise at all. However, many agents under a power of attorney act in an informal manner, which can result in significant problems, both for the agent and the principal. More than an informal amount of attention is the subject of subsections (2) (c) and (d) of the foregoing statute. Those sections require the agent to exercise the “care, competence and diligence” that would be expected of an agent under similar circumstances.

Perhaps more importantly subsection (2) (d) makes record keeping mandatory. Many agents, unless instructed, may not understand the need and importance of record keeping. However, this statutory section requires record keeping of “…all receipts, disbursements, and transactions made on behalf of the principal.” On its face this would include all banking transactions, decisions regarding insurance, liquidation of retirement funds etc. etc. as a matter of practice, the practitioner may well feel obliged to bring duties to the attention of both the principal, and the agent who is to be appointed under a prospective power of attorney.

One other of the above duties may also require planning and discussion with both the principal and agent. Subsection (f)(iv) requires an agent, among other duties, to preserve a principal’s estate plan by establishing “eligibility for a benefit, a program or assistance under a statute or rule.” Seemingly, this provision would require that either the agent become familiar with such complex public benefit programs as Medicaid and other programs including Medicare, Senior assistance, Adult Protection actions and the like, or know enough about such complex programs to engage a lawyer skilled in those areas. This provision would also seem to require the bar in general to become more familiar with public and other benefit programs. The Elder Law bar probably has some further education to accomplish in this area.

There are also powers which it would not be in the best interest of the principal to allow his agent to exercise. While many different instances of such powers may arise, there is one which bears special attention. In the last several years it has become more and more likely that an admission agreement to a nursing home or other care facility will include an “arbitration clause.” Such a clause eliminates the power of the principal to sue the care provider and requires, instead, that the principal enter into arbitration, commonly with an arbitrator chosen by the care facility. This is almost never in the best interest of the principal. For that reason, it seems wise to eliminate the power of a principal to agree to binding pre-dispute arbitration, in both financial and medical powers of attorney. 23

23 This author has used the following language, or similar provisions, in many powers of attorney for the last several years.

“NO POWER TO AGREE TO BINDING PRE-DISPUTE ARBITRATION AGREEMENTS: Regardless of the other terms contained in this Durable Power of Attorney, I specifically withhold the power to agree to binding arbitration prior to the occurrence of an injury, damage or controversy, or to agree in advance to any process that would preclude my right have a jury decide an issue regarding any issue concerning my person or property, or to limit in advance any right to litigate potential claims for damages. This does not
This author continues to include the arbitration clause language in his power of attorney drafts. While it is true that the Center for Medicare and Medicaid Services (“CMS”) issued rules which banned such clauses, the Trump administration has reversed many of those rules, including the ban on pre-dispute arbitration and other rules, which may make enforcement of a ban on arbitration clauses very difficult.24

F. POWERS THAT MUST BE SPECIFICALLY SET FORTH IN A POWER OF ATTORNEY

1. POWERS REQUIRING EXPRESS AUTHORITY LISTED IN RCW 11.125.240

Our previous power of attorney statute had a list of powers that had to be specifically set forth in the document before they could be exercised.25 Our new statute sets forth a somewhat more comprehensive and more specific list of such powers which can be exercised only if expressly granted in the document, and so is worthy of significant consideration to any lawyer drafting a power of attorney.26 Many of the powers which must be specified are of critical importance to clients who are of even modest means

| limit or preclude my agent from agreeing to non-binding alternate dispute resolution processes, or the submission to binding arbitration following advice of counsel to my agent. |

The foregoing language is based in great part on the advice and very able exposition of Jeff Crollard, former long-time counsel to the Washington State Long Term Care Ombudsman. We all owe Mr. Crollard a debt of gratitude for his continuing efforts to preserve the rights of seniors and incapacitated persons.


26 RCW 11.125.240(1) as follows:

(1) An agent under a power of attorney may, subject to the requirements of RCW 11.125.140, and in particular RCW 11.125.140(2)(f), do the following on behalf of the principal or with the principal’s property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(a) Create, amend, revoke, or terminate an inter vivos trust;
(b) Make a gift;
(c) Create or change rights of survivorship;
(d) Create or change a beneficiary designation;
(e) Delegate some but not all of the authority granted under the power of attorney, except as otherwise provided in RCW 11.125.110(1);
(f) Waive the principal’s right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
(g) Exercise fiduciary powers that the principal has authority to delegate;
(h) Exercise any power of appointment in favor of anyone other than the principal;
(i) Create, amend, or revoke a community property agreement;
(j) Cause a trustee to make distributions of property held in trust under the same conditions that the principal could;
(k) Make any other provisions for nonprobate transfer at death contained in nontestamentary instruments described in RCW 11.02.091;
This list contains powers that a significant majority of clients would want their agents to have. Without the authority to exercise those powers the principal could easily be damaged.

2. TRANSFERS OF RESOURCES - “GIFTING”

One of the most important considerations in drafting a power of attorney is whether the principal may benefit from a transfer of resources, often called “gifting.” For clients of Elder Law attorneys, it is often critically important to make transfers to a spouse, disabled children, Special Needs trusts, or others in order to qualify for a number of public benefit programs such as Medicaid, COPES or other Apple Health programs. Unfortunately, the new durable power of attorney statute contains special restrictions on the power to gift which must be addressed in any power of attorney where gifting for public benefit programs may become useful to protect the principal.

a. RCW 11.125.240(2)-(6)

Our new statute pays careful attention to transfers of resources. At least two separate statutes, RCW 11.125.240 and 11.125.390 must be considered. RCW 11.125.240 contains several subsections which directly bear on transfer of resources.27

One should first note that on their face these provisions seem to enlarge and expand the authority of an agent to do certain acts and make certain transfers. Subsections (2), (3) and (4) all start with the word “Notwithstanding.” A reader might surmise that the provisions of RCW 11.125.240(1) can then be ignored. However, the entire statute is subject to the over-riding principal expressed at the beginning of the statute, that none of the mentioned powers can be exercised at all unless “… the power of attorney expressly grants the agent the

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27 RCW 11.125.240 subsections (2) through (6) read as follows:

(2) Notwithstanding the provisions of subsection (1)(a) of this section, an agent may, even in the absence of a specific grant of authority, make transfers of property to any trust that benefits the principal alone and does not have dispositive provisions that are different from those that would have governed the property had it not been transferred into such trust.

(3) Notwithstanding the provisions of subsection (1)(b) of this section, an agent may, even in the absence of a specific grant of authority, make any transfer of resources not prohibited under chapter 74.09 RCW when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy.

(4) Notwithstanding a grant of authority to do an act described in subsection (1) of this section, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, state registered domestic partner, or descendant of the principal, may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal’s property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(5) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to RCW 11.125.390.

(6) Subject to subsections (1) through (5) of this section, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.
authority.” This presupposes that there is at least some mention of general authority for one of the listed powers before an agent can engage in any of the listed transfer. Interpretation of possible conflicts within the statute, and the rules of statutory construction are beyond the scope of this paper. However, the wise practitioner would be well advised to carefully include and modify the identified powers as necessary to meet the needs and desires of each individual client.

b. POWER TO “GIFT” UNDER RCW 11.125.390

RCW 11.125.240(5) imposes additional considerations for any gifting when it specifies that “Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to RCW 11.125.390.” By the structure of the new statute, gifting powers granted in a power of attorney have become more difficult to structure. Further, drafting gifting powers under the new statute may have become more hazardous for lawyers.

The new power of attorney statute section RCW 11.125.390 states:

(1) In this section, a gift "for the benefit of" a person includes but is not limited to a gift to a trust, an account under the uniform transfers to minors act of any jurisdiction, and a tuition savings account or prepaid tuition plan as defined under internal revenue code section 529, 26 U.S.C. Sec. 529, as amended. Notwithstanding the terms of RCW 11.125.240(1)(a), the power to make a gift pursuant to RCW 11.125.240(1)(b) shall include the power to create a trust, an account under the uniform transfers to minors act, or a tuition savings account or prepaid tuition plan as defined under internal revenue code section 529, 26 U.S.C. Sec. 529, as amended, into which a gift is to be made.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:
   (a) Make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under internal revenue code section 2503(b), 26 U.S.C. Sec. 2503(b), as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to internal revenue code section 2513, 26 U.S.C. Sec. 2513, as amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and
   (b) Consent, pursuant to internal revenue code section 2513, 26 U.S.C. Sec. 2513, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(3) An agent may make a gift outright to, or for the benefit of, a person of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including but not limited to:
   (a) The value and nature of the principal's property;
   (b) The principal's foreseeable obligations and need for maintenance;
(c) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
(d) Eligibility for a benefit, a program, or assistance under a statute or rule; and
(e) The principal’s personal history of making or joining in making gifts.

Subsection (2)(a) of the foregoing statute can be disastrous if not eliminated in a power of attorney. That subsection limits gifting to the current gift tax exclusion amount (in 2018 only $15,000). To the contrary, when qualifying one spouse for Medicaid gifts of most or all of a couple’s resources must be made in order to avoid both spouses losing the greatest part of their resources for long term care or Medicaid liens.

While it may be argued that subsection (3) allows an agent to make a gift for the purpose establishing eligibility for a “benefit, a program, or assistance under a statute or rule” the effect of the specific language contained in subsection (2) seems to override the potential for actually qualifying either the principal or the principal’s spouse for a public benefit program.

The purpose of the prohibition on gifts seems to be to avoid federal gift and estate tax. However, considering that such tax would only occur if an individual’s taxable gifts and estate exceed $5.45 million or a couple’s taxable gifts and estate exceed $10.9 million in 2018, the needs of most Elder Law clients would seem to militate against the purpose of such a restriction. Under the circumstances it seems critical that specific language be employed, when appropriate, to allow gifting in “any amount” necessary for qualification.

G. Exclusion of Particular Persons

Too often, seniors become the victims of exploiters or other persons who are less than well-intentioned. Furthermore, many families have “black sheep” or other persons who were closely connected with them whom they would wish to prevent from ever acting on their behalf or interfering with the activities of the person they have selected as agent, if they were able to do so. Many lawyers, especially those who do not practice Elder Law, do not understand that there has been for years, within our previous statutes, a specific remedy for this situation. Unless a lawyer raises the question, a client may execute a power of attorney with no reference to excluding a particular person from the ability to act or to petition the court for relief, or otherwise interfere with the activities of a chosen agent.

Previously RCW 11.94.100(b) provided a method by which the principal could eliminate or exclude persons from participating in any petition for relief. RCW chapter 11.125 does not

28 Such language may take the form similar to the following: GIFTING: My agent may make gifts to third parties or to the agent as an individual, as the agent, in the sole discretion of the agent, deems appropriate, in any amount, whether more or less than the annual exclusion amount for gift tax returns, so long as the ultimate distribution of such gifts is consistent with distributions under my Last Will and Testament in existence at the time such gifts are made. My agent may make any gifts or transfers of my assets for the purpose of qualifying me for medical assistance, Washington State Medicaid benefits or any other public entitlement benefits of any kind, and may take any steps which in my agent’s sole discretion may be necessary in order to meet financial qualification requirements or avoid estate recovery for any aid, assistance, nursing home care or any other care or treatment of any kind.

29 That statute allowed such an exclusion if:
contain a completely similar provision. However, there is nothing contained in that chapter that would prevent including an exclusion of persons who are so untrustworthy, in the mind of the principal, that they ought to be identified and prevented from ever acting as an agent for the principal, and even be prevented from filing a petition to intervene pursuant to RCW 11.125.160. In addition, RCW 11.125.160 which governs who may file a petition regarding the terms of a power of attorney, starts with the admonition “Except as otherwise provided in the power of attorney…” [emphasis added] Therefore, a power of attorney containing an exclusion should be fully effective as “otherwise providing” in the power of attorney.

After January 1, 2017, not only should an exclusion of specific persons still be possible, but, moreover, there would be no requirement for a “certificate of attorney” or other special procedure to make the exclusion effective.30

H. Digital and Electronic Property

Undeniably, we have entered and perhaps surpassed the computer age. We carry important property interests and medical information in small thumb drives, cell phones (i.e. “smart phones”) as well as various slate, tablet and other computing devices. In fact, we seem to be moving from a desktop computing paradigm to a completely mobile computing paradigm in which our electronic resources are stored in the “cloud.” An increasing number of seniors are engaging in online banking and control IRA funds and accounts electronically.

Further, many health care records are being kept digitally. As a result of the American Recovery and Reinvestment Act, the medical profession is now being required to keep electronic medical records.31

“If at the time of signing the power of attorney the principal was represented by an attorney who advised the principal regarding the power of attorney and who signed a certificate at the time of execution of the power of attorney, stating that the attorney has advised the principal concerning his or her rights, the applicable law, and the effect and consequences of executing the power of attorney;”

30 Under the new statute an exclusion might look something like the following:

EXCLUSION OF NAMED PERSONS: In accordance with the provisions of RCW Chapter 11.125 and in particular RCW 11.125.160 I hereby direct that my [relationship] [name of one excluded person], and my [relationship] [name of another excluded person] shall have no authority under this power of attorney, nor shall [he, she, they, any of them] have the authority to bring any legal action or petition to challenge the authority of my agent appointed herein, or to oppose or challenge any of the acts of my designated agent(s) or to oppose or alter any of the terms of this Durable Power of Attorney.

31 As a part of the American Recovery and Reinvestment Act, all public and private healthcare providers and other eligible professionals (EP) were required to adopt and demonstrate "meaningful use" of electronic medical records (EMR) by January 1, 2014 in order to maintain their existing Medicaid and Medicare reimbursement levels. Since that date, the use of electronic medical and health records has spread worldwide and shown its many benefits to health organizations everywhere.

“Meaningful use” of electronic health records (EHR), as defined by HealthIT.gov, consists of using digital medical and health records to achieve the following:
Moreover, today’s seniors are becoming more and more computer savvy. Many seniors use email, Skype, electronic storage of photos and numerous programs. Of course, many seniors have avoided the complexities which attend being part of the computer revolution. But for those seniors who participate in online banking, or have I-Tune accounts and email accounts, or those who own proprietary rights to photographs or music which they have created, the ability to have an agent protect their interests in such electronic property can become significantly important. This means that attorneys must discuss the potential need for language giving an agent the authority to protect those interests.

In 2016 the Washington legislature passed, and the Governor signed, the Revised Access To Digital Assets Act. That act has now been codified at RCW chapter 11.120.32

I. Trusts

Elder Law attorneys frequently encounter important issues regarding both trusts that are currently in effect and the potential need to create trusts or interests in trusts. A specific concern is the potential need to create a “special needs trust” for the benefit of the client or a disabled child or other relatives or acquaintance of the client. Since transactions regarding trusts must be specifically set forth in a power of attorney before the agent can engage in

- Improve quality, safety, efficiency, and reduce health disparities
- Engage patients and family
- Improve care coordination, and population and public health
- Maintain privacy and security of patient health information

The American Recovery and Reinvestment Act also included financial incentives for healthcare providers who prove meaningful use of electronic health records (EHR). EHR is not only a more comprehensive patient history than electronic medical records (EMR), the latter of which contains a patient’s medical history from just one practice, but was also the end-goal of the federal mandate.

32 The following clause may have efficacy when a client has electronic resources or indicates the potential for future acquisition of such resources:

“DIGITAL INFORMATION, RESOURCES AND ASSETS: Pursuant to the provisions of RCW Chapter 11.120 and the provisions of RCW chapter 11.125 my agent shall have the power to access, use and control all of my digital assets, information and devices, including but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones and any similar digital device which currently exists or may exist as technology develops, or such comparable items as technology develops for the purpose of accessing, modifying, deleting, controlling or transferring my digital assets, and shall have complete and unfettered authority to access any digital or internet accounts and devices on behalf of the Principal. This includes, without limitation, financial institution accounts, my electronic medical records, credit card accounts, debit card accounts, internet stores, email accounts, social-network accounts, domain names, computers and other devices containing microprocessors (including without limitation smart phones, tablet computers, e-readers and all other electronic devices), web pages, blogs and anything else contained in or on the internet or in the “cloud” belonging to the Principal. My agent may, in his or her sole discretion, make or change logon scripts, user names, passwords, and security settings as well as create, merge, terminate and liquidate all digital accounts and services, and take any other action with respect to such accounts and devices in the sole discretion of the agent.”

Of course, the foregoing language is intentionally very broad and meant to illustrate an all-inclusive list to the best of this author’s ability. Some clients will not want to give all of these powers, or power over all of these sorts of electronic resources, to any particular agent.
those transactions, careful consideration must be given to drafting appropriate language which meets both the requirements of the statute, and the needs and desires client.

It is especially important to identify any current trusts in the power of attorney. Without giving a specific reference to such trusts many insurance companies, stock brokerage houses, and even some banks will not recognize the authority of the agent to deal with property of a trust which is not identified in the power of attorney.

Also, in planning for incapacity the ability to create a special needs trust for a disabled child or spouse can be of critical importance. In the right situation creation and funding of a special needs trust may allow a client’s agent to carry out the client’s own planning goals while also transferring assets to an exempt resource and further providing funds for a disabled beneficiary that will not disqualify that beneficiary from public benefit programs.

The new power of attorney statute contains specific authority for an agent under a power of attorney who may have to deal with trusts. **RCW 11.125.330** reads as follows:

1. In this section, "estates, trusts, and other beneficial interests" means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be, entitled to a share or payment.

2. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to:
   1. Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from the fund;
   2. Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of the fund, by litigation or otherwise;
   3. Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;
   4. Exercise for the benefit of the principal a presently exercisable limited power of appointment held by the principal;
   5. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;
   6. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary, and any other matter as defined under RCW 11.96A.030;
   7. Conserve, invest, disburse, or use anything received for an authorized purpose;
   8. Transfer an interest of the principal in real property, stocks, bonds, and financial instruments, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor, subject to the limitations in RCW 11.125.240(1); and
   9. Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from the fund.

It is also notable that RCW 11.125.240 gives an agent under a power of attorney broad authority to deal with all of the principal’s property, and unless otherwise prohibited to
J. Ethical Considerations – “Who is the Client? Revisited

Elder Law attorneys frequently encounter the problem Prof. Rebecca Morgan has identified as "who is the client?" in her article in the year 2000 Journal of The Academy of American Matrimonial Lawyers. The rules of professional conduct require us to be competent in the areas of our practice. Part of that required competence makes it especially important in Elder Law, and specifically the drafting of durable powers of attorney, that we identify the client or clients that we represent in a particular transaction.

Sometimes confusion arises as to whether a lawyer represents the principal in a power of attorney, the agent named in a power of attorney or some other party with an interest which is affected by the power of attorney. A very simplistic answer to the question “who is the client?” is that anyone who can reasonably believe that they are a client, will be held by the State Bar and our courts to be a client. Unfortunately, failure to identify clients and likewise identify other persons who are not clients will almost inevitably lead to an untenable conflict of interest.

For the reasons set forth above the lawyer who draws a power of attorney must, from the outset, make it clear to all who are involved, where that lawyer’s loyalty lies, and in particular the persons with whom an attorney-client relationship exists. As a general rule the person for whom a legal document, including a power of attorney, is drafted is a client. If there are discussions with other persons such as children or other people who may become agents under a power of attorney, those discussions must contain a clear identification of the client as well as an identification of persons who are not clients. For example, when a power of attorney is drafted on behalf of a father naming a son as the agent, it is critical that the lawyer inform the son that his father is the client, that in this transaction the son is not the client, and that the lawyer's loyalty and services are all directed toward, and on behalf of the father. Further the lawyer must inform the son that the lawyer does not owe any duty to the son although that son might well request services on behalf of his father which services the lawyer may perform at

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33 Some language to consider might include the following:

"TRANSFER OF ASSETS INCLUDING TO TRUST: In accordance with RCW chapter 11.125 in general, and specifically the provisions of RCW 11.125.330 and RCW 11.125.240, my agent may transfer from time to time some or all of my assets to the trustee or trustees of any revocable, irrevocable or special needs trust that I or any other person may have established or may establish in the future for my benefit, [or the benefit of (name of person to benefit from SNT)] regardless of the extent or limitations on my beneficial interests in that trust, to be administered in accordance with the terms thereof, and may manage the assets of said trust as if they were my solely owned assets. My agent is also further empowered to create a special needs trust for the benefit of any child of mine who may be or become incapacitated prior to my death or within 180 days of my death. My agent may also add, remove or change beneficiaries or provide that any asset is payable or transferable on death to any person or entity my agent may name. My agent may also name or remove any person or entity as a tenant in common, or as a joint tenant with right of survivorship in any asset in which I own an interest.

[ If appropriate: In addition, I am the grantor, sole trustor and sole lifetime beneficiary of the (for example only: XYZ Revocable Living Trust which was executed under date of January 31, 2000.) I direct that my agent shall have all of the powers which are granted to me within that trust document.]"

34 Prof. Morgan’s excellent article is currently available at: http://aaml.org/sites/default/files/who%20is%20the%20client%20ethical%20issues-16-2.pdf

35 See RPC 1.1.

36 See RPC 1.6, 1.7 and 1.8.
the request of the son, but that in performing such services the son is only acting as an agent of his father who is the client.

K. A Durable Power of Attorney Should Not be a “Form”

There is a strong temptation to create a draft power of attorney document and to use that same document, without change, constantly, and in all or at least numerous situations. This author believes such a practice falls below the ethical obligations which all attorneys have toward their clients. Furthermore, the passage of the new power of attorney act at RCW chapter 11.125 requires all of us who draft these important documents to reconsider the “how” and “why fore” for all the new powers of attorney we will draft in the future.

Every situation is different. Every client has a unique set of needs and desires which must be discovered. It is the lawyer’s duty to discover these needs and desires and then develop a plan to meet them. In doing so a number of questions must be answered, for example:

-Who is the client? Who are the clients?
-What is the client’s current medical situation?
-What is the client’s financial situation?
-What is the client’s level of capacity to execute legal documents?
-Who are the client’s family? What are their medical/financial/legal situations?
-Who does the client and the family trust?
-Who is “trustworthy” and who is not?
-Has anyone harmed or attempted to harm the client/clients?
-Should someone be excluded per current RCW11.94.100(b) or under RCW 11.125?
-If a couple, are both represented?

The point here is that more is required than simply filling in a “form.” Rather a thorough and searching examination of each client’s situation must be performed. It can be useful to utilize legal assistance in obtaining client information. Many offices, this author’s included, utilize client information forms which the legal assistant sends to clients in advance as we begin the sometimes long process of gathering together all the facts which may be pertinent to any client’s particular situation.

After the initial information is gathered it is critical that the lawyer review that information and then have a conference with the client to confirm facts, generate new information, confirm or reject the client’s desires and assess the client’s capacity. While this process can sometimes be accelerated by phone conferences between the lawyer and the client, gathering for the information from family and friends and taking other steps, still no durable power of attorney should be drafted until significant work has been done to determine who the agents may be, what financial powers may be needed, what medical powers may be needed, whether there are persons who should be excluded as agents and to determine what other issues may exist regarding the power of attorney.

It is submitted, with the deepest respect, that the ethical obligations of a lawyer to that lawyer’s clients cannot fulfilled by simply using boilerplate form. Lawyers may well have draft forms and draft clauses or templates, but it takes professional judgment, and sometimes years
of experience, to determine which clauses may be adequate, which clauses may need to be amended, what new language may be needed and whether there are outstanding issues which must be addressed by the power of attorney.

L. Capacity – A Sliding Scale

It is generally held that the capacity to execute a power of attorney is higher than that required to execute a Last Will and Testament. Rather, the capacity for execution of a power of attorney requires that the principal be able to understand the contents of the document and to comprehend the effect of signing the document. However most Elder Law attorneys have a “sliding scale” of capacity. A lower capacity may be sufficient if the power of attorney is being given to a very trusted and trustworthy person under the circumstances. For example, it may be important for a client who has been affected by the early stages of Alzheimer’s disease, that such a client be able to give a durable power of attorney to his spouse of 20 years. On the other hand, an attorney may decide not to draft a power of attorney for an elderly man whose wife of 50 years recently died and which names as agent the 20-year-old daughter of a neighbor who has begun providing “in home” care for the octogenarian.

The calculus of making decisions regarding capacity can be complex and may be influenced by numerous factors that are far beyond the scope of this paper. Sometimes it is necessary to involve a physician, often a neurologist, who is familiar with the patient.

M. Medical and Health Care Provisions

RCW 11.125.400 specifically authorizes the creation of powers of attorney which allow for informed consent and medical decisions to be made by an agent under a power of attorney but with certain restrictions on the identity of the agent.37

Unfortunately, little other guidance is given for the creation of “medical” or “health care” durable powers of attorney. However, in addition to the many clauses that are readily available, an Elder Law attorney should consider specific directions the client may have regarding the client’s medical needs and desires. Sometimes these are best discussed with the client’s physician, but ultimately it is the responsibility of the lawyer to draft a medical power of attorney which will address additional cares or concerns a client may have. For example, some religious sects have concerns about specific treatment; Christian Scientist church members will want to include language regarding their preferred modes of treatment; Jehovah’s Witnesses will want to have restrictions on administration of blood or blood parts; cancer patients may want to end any chemotherapy; diabetes patients may direct that there be

37 Those provisions are as follows: (3) Unless he or she is the spouse, state registered domestic partner, father or mother, or adult child or brother or sister of the principal, none of the following persons may act as the agent for the principal: Any of the principal’s physicians, the physicians’ employees, or the owners, administrators, or employees of the health care facility or long-term care facility as defined in RCW 43.190.020 where the principal resides or receives care. Except when the principal has consented in a mental health advance directive executed under chapter 71.32 RCW to inpatient admission or electroconvulsive therapy, this authorization is subject to the same limitations as those that apply to a guardian under RCW 11.92.043(5) (a) through (c) and 11.92.190.
no further amputations etc. etc. Once again it is up to counsel to obtain the information necessary to draft an appropriate document which reflects the client’s specific concerns regarding medical treatment.

A question may arise as to whether to draft separate financial and medical powers of attorney. Some lawyers draft separate documents as their default. Others, including this author, often draft a single document which includes financial and medical powers of attorney in a single document unless the client desires to have different persons acting as agent or successor agent in the financial and medical powers of attorney.

In addition, clients experiencing symptoms Alzheimer’s disease may benefit from the use of an “Advance Mental Health Directive” as provided at RCW Ch. 71.32. Too few practitioners are familiar with the benefits of such an advance directive. Though such directives are beyond the scope of this paper, the practitioner would be well-advised to read and carefully consider Prof. Lisa Brodoff’s article: Planning for Alzheimer’s Disease with Mental Health Advance Directives. That article provides both academic commentary and drafting guidance for this important area of Elder Law.

Another question is how many original powers of attorney should be executed. Especially with medical powers of attorney, in many cases this author feels has the client execute three original powers of attorney, two of which are given to the client and one original is retained at our office. In any event we will always have a scanned copy of the power of attorney in our digital files; if it has been recorded, we keep a digital copy showing the recording information. We often get calls from regional hospitals in the event of a medical emergency. Clients and their families do not often have their powers of attorney with them during such an emergency. However, the hospital can call our office and with proper authorization we can send a copy of the original we have via email or facsimile.

N. The Future

Nothing is as constant as change. On the other hand, change comes more slowly in the law than for society generally. The pace of societal change, spurred on by increasing technological advancements, is out of the control of any ordinary human being, and certainly any Elder Law attorney.

Durable powers of attorney are creatures of statute. Statutes change. As of 2018, twenty-six states have enacted some form of the Uniform Power of Attorney Act and at least two other jurisdictions have it under consideration. More states are likely to follow. However, it remains to be seen how effective the new power of attorney statute will be in forwarding the interests of Washington’s citizens and our clients. The Elder Law bar has an important role to play in the effort to make the new statute effective for our senior clients.

Finally, Elder Law attorneys have a special set of gifts they can give to their clients: the gift of truly listening to their concerns; the gift of being physically and mentally present while helping seniors; and the gift of being a true friend. Hopefully proper exercise of these gifts, sprinkled with knowledge of Elder Law, will result in a higher quality of life for our clients. Of course, in exercising these gifts we receive much more in return than we ever give. What a truly wonderful profession!

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38 Prof. Brodoff’s excellent article, published in volume 17 of The Elder Law Journal, beginning at page 39 can currently be found at: [http://publish.illinois.edu/elderlawjournal/files/2015/02/Brodoff.pdf](http://publish.illinois.edu/elderlawjournal/files/2015/02/Brodoff.pdf)
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

CINDY L. LONN and WILLIS D. LONN,
JR., Wife and Husband,
Petitioners,

vs.

EDWARD D. JONES & CO., L.P.
A Missouri Business Entity, licensed to do
business in the State of Washington,
Respondent.

No. 17-2-00601-14

SUMMONS

TO THE DEFENDANT/RESPONDENT: A lawsuit in the form of a Petition has been
started against you in the above entitled court by CINDY L. LONN, Petitioner. Petitioner’s claims
are stated in the written petition, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the petition by stating your
defense in writing, and by serving a copy upon the person signing this summons within 20 days
after the service of this summons, excluding the day of service, or a default judgment may be
entered against you without notice. A default judgment is one where Petitioner is entitled to what
they ask for because you have not responded. If you serve a notice of appearance on the
undersigned person, you are entitled to notice before a default judgment may be entered.

You may demand that the Petitioner file this lawsuit with the court. If you do so, the
demand must be in writing and must be served upon the person signing this summons. Within 14
days after you serve the demand, the Petitioner must file this lawsuit with the court, or the service
on you of this summons and petition will be void.

SUMMONS
If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

However, this Summons and the Petition are being filed. In addition, a separate Order to Show Cause has been obtained which is also being served with this summons and must be responded to according to the time limits set forth therein and in compliance with the state and local rules of court.

This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of State of Washington.

DATED: August 9, 2017

PHILLIPS, KRAUSE, & BROWN

By: JAMES M. BROWN, WSBA #11634
Attorney for Petitioner
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

CINDY L. LONN and WILLIS D. LONN,
JR., Wife and Husband,
Petitioners,

vs.

EDWARD D. JONES & CO., L.P.
A Missouri Business Entity, licensed to do
business in the State of Washington,
Respondent.

No. 17-2-00601-14

PETITION TO COMPEL THIRD PARTY TO
ACCEPT POWER OF ATTORNEY AND
MOTION FOR ORDER TO SHOW CAUSE
RCW 11.125.160, RCW 11.125.200

COMES NOW CINDY L. LONN, by and through her counsel, James M. Brown of the
firm Phillips, Krause & Brown, and as agent for her husband under his Durable Power of
Attorney, and further pursuant to RCW Chapter 11.125, including without limitation sections
160, 190, 200 and 430, and respectfully petitions the Court as follows:

I. IDENTIFICATION OF PARTIES

CINDY L. LONN is a current resident of Aberdeen, Grays Harbor County, State of
Washington. CINDY L. LONN is married to WILLIS D. LONN, JR. who executed that certain
Durable Power of Attorney With Health Care Provisions and “HIPAA” Release, dated December
2, 2004, a copy of which has been marked “Exhibit 1” is attached hereto and incorporated herein
by this reference.
EDWARD D. JONES & CO., L.P. (hereinafter “EDWARD JONES”), is a Missouri business entity licensed to do business in the State of Washington under UBI Number 600351790 and is doing business in Grays F County. EDWARD JONES has designated Corporation Service Company as its registered agent. 

EDWARD JONES is in addition a broker and financial services provider for CINDY L. LON. Mrs. Lonn has a substantial part of her financial holdings in a retirement account. That account contained $191,020.90 as of July 1, 2017.

II. STY OF PETITION

In July of 2017 Petitioner CINDY L. LON sought to change the beneficiary on her own retirement account invested with respondent EDWARD JONES through its Aberdeen office. Such change is especially necessary because Petitioner’s husband is incarcerated in southern Oregon and collection actions are being taken against him and all of his resources. Respondent denied request to change beneficiary, insisting that her husband sign a “spousal consent” form.

Petitioner brought to Respondent’s attention the duly acknowledged and witnessed comprehensive Durable Power of Attorney her husband had given her (“Exhibit 1” hereto) and sought permission to use that legal document to sign any necessary documents on her husband’s behalf. However Respondent continued to deny her request.

Petitioner then contacted her undersigned counsel who prepared a Certification of the Power of Attorney and of her authority pursuant to RCW 11.125.200, which Petitioner acknowledged under oath. A letter of explanation, together with the Certification and a copy of RCW 11.125.200 (“Exhibit 2” hereto) was hand-delivered to Respondent’s Aberdeen office on July 20, 2017. However Respondent persisted in its denial, despite an additional letter and email correspondence with its attorney.

Finally, on August 2, 2017 undersigned counsel sent an email to Respondent’s attorney again voicing disagreement with respondent’s failure to honor the power of attorney and the Certification and requesting that Respondent’s attorney provide any legal authority it had for its position. All relevant emails between counsel are attached as “Exhibit 4” hereto. There has been no further response from anyone on Respondent’s behalf.
III. RCW 11.125.200 IS THE PRIMARY GOVERNING LAW OF THE CASE

Last year the Washington state legislature adopted a new power of attorney statute, primarily based on the Uniform Power of Attorney statute created by the Uniform Law Commission of the American Bar Association. The new statute replaces RCW chapter 11.94, was engrossed as RCW chapter 11.125 and became effective on January 1, 2017.

RCW 11.125.200 provides the statutory procedure to be followed in the acceptance and rejection of Powers of Attorney and reads as follows:

(1) Except as otherwise provided in subsection (2) of this section:
   (a) A person shall either accept an acknowledged power of attorney or request a certification or a translation no later than seven business days after presentation of the power of attorney for acceptance;
   (b) If a person requests a certification or a translation, the person shall accept the power of attorney no later than five business days after receipt of the certification or translation; and
   (c) A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(2) A person is not required to accept an acknowledged power of attorney if:
   (a) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;
   (b) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;
   (c) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;
   (d) A request for a certification or a translation is refused;
   (e) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification or a translation has been requested or provided; or
   (f) The person makes, or has actual knowledge that another person has made, a report to the department of social and health services stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(3) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:
   (a) A court order mandating acceptance of the power of attorney; and
   (b) Liability for reasonable attorneys' fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.
IV. REQUESTS TO CHANGE BENEFICIARIES ON ACCOUNT USING VALID POWER OF ATTORNEY DENIED

For some months, WILLIS D. LONN, JR. has been incarcerated in a prison in Southern Oregon. With Mr. Lonn's full knowledge and support CINDY L. LONN decided to remove her husband as a beneficiary on her retirement account. She made this decision in order to avoid the potential that the funds would be lost or otherwise effected by collection activity or in case of her incapacity or death. EDWARD JONES' Aberdeen office told Mrs. Lonn that her husband would have to sign a "spousal consent" form. When Mrs. Lonn produced the aforementioned Power of Attorney from her husband (i.e. Exhibit 1) she was told that her husband would have to sign any such consent form in person, and that she could not use the power of attorney for that purpose. However, no one from Edward Jones actually provided Mrs. Lonn with a spousal consent form.

V. CERTIFICATION SENT TO EDWARD JONES ON JULY 20, 2017

After Mrs. Lonn's personal attempts to have EDWARD JONES allow her to sign any forms using the power of attorney failed, the office of Phillips, Krause & Brown prepared a Certification of the power of attorney pursuant to RCW 11.125.200 and 11.125.430. Undersigned counsel then also prepared a letter dated July 20, 2017, which was hand-delivered to the local EDWARD JONES office on that date specifically referring to the pertinent provisions of RCW 11.125.200 including without limitation the 5 day statutory period allowed for an entity to accept a power of attorney after a Certificate has been provided. The letter included the Certificate, the power of attorney and a copy of RCW 11.125.200. A full copy of that letter and the documents enclosed has been marked "Exhibit 2" hereto and is incorporated herein by this reference.

VI. FAILURE OF EDWARD JONES TO HONOR FURTHER REQUESTS

After the letter and documents of July 20 had been hand-delivered to Edward Jones in Aberdeen, a staff person from that office called the undersigned’s office to state that rather than the power of attorney, Edward Jones would need a "spousal consent form." The undersigned counsel prepared a letter on July 26 which was hand-delivered to Edward Jones on that date, pointing out that an entity cannot require an additional form of power of attorney to exercise powers granted in a valid power of attorney. That letter also urged the local office to bring this...
matter to the attention of the Edward Jones legal department. A copy of the letter dated July 26 has been marked “Exhibit 3” hereto and is incorporated herein by this reference.

On July 27 Jennifer Bortnick, a lawyer for Edward Jones in St. Louis MO left a message for undersigned counsel asking to set a phone conference to discuss the case before we would take any court action. Undersigned counsel returned that call, got a recording and left a detailed message for Ms. Bortnick offering to discuss the matter at any time that would be convenient and leaving both the telephone number and email address for further contact. There was no further communication from Ms. Bortnick.

On Monday July 31 the undersigned counsel received a message that a Seattle attorney, Mr. McDougald, had called on behalf of Edward Jones and he is representing Edward Jones in this matter. However, despite ensuing phone calls and emails with Mr. McDougald, Edward Jones continues to deny Mrs. Lonn her legal right to utilize the Power of Attorney to change the beneficiaries on her own retirement account, or to sign any “spousal consent” form on her husband’s behalf.

On August 2, 2017 undersigned counsel sent the following email to Mr. McDougald:

"Thank you for your message and willingness to accept service. Of course, and with respect, we entirely disagree with your position that Edward Jones can fail to accept the power of attorney presented and we treat this as a further and continuing rejection of the Certificate that was provided. **Can you provide any legal authority that supports your position? I will await your response for another 24 hours.**" [emphasis added]

As of this date neither Mr. McDougald nor anyone else on behalf of Edward Jones has provided any legal authority for their prostitution that Mrs. Lonn cannot use the Power of Attorney given by her husband to change beneficiaries on her own retirement account.

VII. **PETITIONER HAS COMPLIED WITH RCW 11.125.200(1)**

RCW 11.125.200 provides the statutory method for certifying a Power of Attorney that has been rejected. Petitioner has strictly followed that method by completing a comprehensive Certification of the Power of Attorney and her authority thereunder. Respondent is in receipt of a complete copy of the Certification. The five day period to comply with Mrs. Lonn’s request has long expired and Petitioner is entitled to injunctive relief and attorney fees

PETITION TO COMPEL THIRD PARTY TO ACCEPT POWER OF ATTORNEY AND MOTION FOR ORDER TO SHOW CAUSE

PHILLIPS, KRAUSE & BROWN
ATTORNEYS AT LAW
1017 S. BOONE STREET, SUITE 336
P.O. BOX 2110
ABERDEEN, WASHINGTON 98520
(360) 532-8380 FAX (360) 533-2760
NO GOOD FAITH BASIS FOR REFUSAL-ATTORNEY FEES SHOULD BE AWARDED

RCW 11.125.200(3) states:

“(3) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:
(a) A court order mandating acceptance of the power of attorney; and
(b) Liability for reasonable attorneys’ fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.”

The only reasons that statute authorizes for non-acceptance of a power of attorney are contained at RCW 11.125.200(2) which are:

“(2) A person is not required to accept an acknowledged power of attorney if:
(a) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;
(b) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;
(c) The person has actual knowledge of the termination of the agent’s authority or of the power of attorney before exercise of the power;
(d) A request for a certification or a translation is refused;
(e) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification or a translation has been requested or provided; or
(f) The person makes, or has actual knowledge that another person has made, a report to the department of social and health services stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.”

As mentioned in the foregoing statutes and as used throughout RCW chapter 11.125 the term “person” includes Respondent, since it is defined thus:

“"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.” [RCW 11.125.010(6)]

None of the factors set forth in RCW 11.125.200(2) exist here. In addition, despite being asked, Edward Jones has not provided, and cannot provide any legal authority for its position. Thus Edward Jones has no good faith basis for its refusal to accept the power of attorney. At no time whatever has Edward Jones indicated in any way that it has any concern of any kind or nature that the exercise of authority under the power of attorney is in any way
improper under the law; apparently Edward Jones simply has some internal policy regarding retirement accounts which conflicts with Washington’s power of attorney statute.

In fact, the requested action was fully proper under the power of attorney. No reasonable person could have a good faith concern, or any concern, that exercise of the attorney-in-fact’s power was in any way improper.

First, the power of attorney became immediately effective when it was signed on December 2, 2004, which is stated at the end of the first paragraph of the document.

Second, the power of attorney was both acknowledged before a notary and witnessed by two independent witnesses.

Third, the power of attorney grants Mr. Lonn’s wife, Cindy L. Lonn full power over all of Mr. Lonn’s property when it states:

“My agent may perform for me and in my name and on my behalf any act in the management, supervision, and care of my estate and affairs that I personally have authority to perform. My agent may exercise for me and in my name and on my behalf the powers enumerated below, which are intended to illustrate, and not to limit, the scope of this power.”

Fourth, the power of attorney goes on to specifically grant powers over all financial and investment accounts including the right to change beneficiaries on investment accounts, such as the EDWARD JONES retirement account, when it states on page 1 in paragraph A through page 2 in paragraph B and paragraph C:

“A. Securities: My agent may buy, sell, pledge, exchange, assign, option, or otherwise transfer any securities of any kind; deal with any broker, banker, or other agent; receive all dividends and interest payments now or hereafter due or payable to me from any security or other indebtedness or investment; vote stock and otherwise represent me at all meetings of shareholders or companies or corporations in which I have an interest; sign proxies or other instruments; tender my resignation as director or officer; subscribe to shares of stock, and execute request for payment of United States Savings Bonds, and surrender paid securities and receive the proceeds thereof. My agent may also add, remove or change a beneficiary, register any securities I may own in beneficiary form or with provisions that the security is payable on death or transferable on death to a person or entity my agent may name. My agent may also name or remove other persons or entities as tenants in common or as joint tenants with right of survivorship in any securities in which I have an interest.
B. ACCOUNTS: My agent may open, continue, maintain, change, or close any account, including without limitation any checking or savings account, certificate of deposit, share account, and other like arrangement with any bank, trust company, savings bank, building and loan association, savings and loan association, credit union, or other financial institution; make deposits and withdrawals by check, draft, or otherwise; and endorse checks, notes, and drafts for deposit, collection, or otherwise.

C. BENEFITS: My agent may apply for and receive any government, insurance and retirement benefits to which I may be entitled. My agent may also exercise any right to elect benefits or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow or receive cash value in return for the surrender of any or all rights under any of the following: Life insurance policies or benefits; annuity policies, plans or benefits; mutual fund or other dividend investment plans; and retirement, profit sharing and employee plans and benefits.”

Apparently Respondent has adopted a policy, regarding community property states, whereby residents of such states must sign a spousal consent form. While no such form has been provided to Petitioner, her counsel has located such a form on the internet which is attached as “Exhibit 5” hereto and incorporated herein by this reference. However, the Power of Attorney also contains a letter “T” which states:

“T. RIGHTS UNDER COMMUNITY PROPERTY LAW, INCLUDING RIGHT OF MANAGEMENT AND CONTROL: My agent may exercise any management and control over community property or other property, as well as any other right I retain under the community property law. Further, my agent may enter into, revoke or amend existing agreements with my spouse or the personal representative of the estate of my spouse as to classification of property under community property law.”

If it is indeed Respondent’s policy to require a separate document to do what the Power of Attorney already does, it would amount to requiring an additional Power of Attorney in violation of RCW 11.125.200(1)(c) quoted above.

In view of the foregoing facts, there is simply no reason whatever for EDWARD JONES to have any concern of any kind about the request to change beneficiaries on Mrs. Lonn’s own account, and certainly no good faith basis to prevent the exercise of authority by Mrs. Lonn as her husband’s duly appointed and acting attorneys-in-fact. Therefore all of the Lonn’s attorney fees should be awarded. Those fees will be no less than $6,000.00 by the time of hearing and are expected to be more.
VIII. NEED FOR IMMEDIATE RELIEF

WILLIS D. LONN, JR. was convicted of federal crimes and began serving a federal prison sentence in southern Oregon earlier this year. CINDY L. LONN has, for months, been concerned that if she dies or becomes incapacitated, her retirement account naming her husband as beneficiary would be subject to collection and would be lost. A copy of the July statement for that account has been attached as “Exhibit 6” to this Petition. Further, while she still loves her husband, the federal government has initiated collection activities against all accounts in which her husband has an interest. Mrs. Lonn has been in contact with both his wife and his attorney and is in full agreement that his wife take protective action and change beneficiaries on all of her accounts. Since EDWARD JONES refuses to comply with the request to change beneficiary, an Order to Show Cause should be entered so that Mrs. Lonn is not further damaged or exposed to risk of loss.

IX. REQUEST FOR RELIEF

For the reasons set forth above, the undersigned requests the following relief:

1. Entry of an Order to Show Cause:

   A. Shortening time if necessary;

   B. Requiring the Respondent to appear on Monday August 21, 2017, at the hour of 3:30 PM Pacific Daylight Time, to show cause, if any it has, why it should not immediately allow CINDY L. LONN to change the beneficiary on any of her accounts with Respondent, and why, if it deems it necessary for her husband’s consent to be given to any transaction, that it allow her to utilize the power of attorney from her husband in order to sign her husband’s name in her capacity as his attorney-in-fact, and why it should not also immediately pay full costs of suit and reasonable attorney fees incurred in connection with this Petition in the amount of no less than $6,000 or such additional amount the court orders if the matter is not contested, or such further amount if the matter is contested;

   C. Requiring Respondent to show cause why it should not comply with all other reasonable requests of Cindy L. Lonn in her individual capacity and as attorney-in-fact for her husband;

   D. Requiring Respondent to file and serve any responsive pleadings at least three (3) court days prior to the hearing;
2. For Judgment against Respondent in such amount as the court shall order.

3. For such other and further relief as the court shall deem just and proper under the circumstances.

DATED: August 14, 2017

Respectfully,

JAMES M. BROWN, WSBA#11634
Attorney for Petitioner

I declare under penalty of perjury pursuant to the law of the State of Washington that the statements contained in the foregoing Petition is true and correct to the best of my knowledge and belief.

CINDY L. LONN, Petitioner
2. For Judgment against Respondent in such amount as the court shall order.

3. For such other and further relief as the court shall deem just and proper under the circumstances.

DATED: August 14, 2017

Respectfully,

[Signature]

JAMES M. BROWN, WSBA#11634
Attorney for Petitioner

I declare under penalty of perjury pursuant to the law of the State of Washington that the statements contained in the foregoing Petition is true and correct to the best of my knowledge and belief.

[Signature]
CINDY L. Lonn, Petitioner
ATTACHMENTS:

Exhibit 1 – Durable Power of Attorney with Health Care Provisions and “HIPAA”
   Release of Willis D. (Bill) Lonn, Jr., dated December 2, 2004;
Exhibit 2 – James M. Brown’s letter to Edward Jones, Attention: Michael J. Bozich,
   dated July 20, 2017 with Certification of Power of Attorney and copy of RCW
   11.125.200;
Exhibit 3 – James M. Brown’s letter to Edward Jones, Attention: Michael J. Bozich and
   Amy Brandley, dated July 26, 2017;
Exhibit 4 – Electronic mail correspondence between James M. Brown and Shannon L.
   McDougald from July 31, 2017 through August 2, 2017;
Exhibit 5 – Spousal Consent Form; and
EXHIBIT 1
DURABLE POWER OF ATTORNEY
WITH HEALTH CARE PROVISIONS
AND “HIPAA” RELEASE

I, WILLIS D. LONN, JR., also known as “BILL LONN”, now residing at 111 West 11th
Street, Aberdeen, Grays Harbor County, Washington 98520, have made, constituted and
do by these presents make, constitute and appoint my wife, CINDY L. LONN, or in the
event she is unable or unwilling to serve, I appoint my son, BRYAN H. LONN, as my
attorney-in-fact, (hereinafter referred to as “agent”), for me and in my name, to do any
and all acts which I could do if personally present. This durable power of attorney
becomes effective immediately when I sign it.

My agent may perform for me and in my name and on my behalf any act in the
management, supervision, and care of my estate and affairs that I personally have
authority to perform. My agent may exercise for me and in my name and on my behalf
the powers enumerated below, which are intended to illustrate, and not to limit, the scope
of this power. This power of attorney shall apply to all property owned by me, whether
title is held as sole owner, as a joint tenant, as a tenant in common, as trustee of a
revocable living trust, or otherwise.

A. SEcurities: My agent may buy, sell, pledge, exchange, assign, option, or
otherwise transfer any securities of any kind; deal with any broker, banker, or
other agent; receive all dividends and interest payments now or hereafter due or
payable to me from any security or other indebtedness or investment; vote stock
and otherwise represent me at all meetings of shareholders or companies or

WITNESSES

FOR IDENTIFICATION:
corporations in which I have an interest; sign proxies or other instruments; tender my resignation as director or officer; subscribe to shares of stock, and execute request for payment of United States Savings Bonds, and surrender paid securities and receive the proceeds thereof. My agent may also add, remove or change a beneficiary, register any securities I may own in beneficiary form or with provisions that the security is payable on death or transferable on death to a person or entity my agent may name. My agent may also name or remove other persons or entities as tenants in common or as joint tenants with right of survivorship in any securities in which I have an interest.

B. ACCOUNTS: My agent may open, continue, maintain, change, or close any account, including without limitation any checking or savings account, certificate of deposit, share account, and other like arrangement with any bank, trust company, savings bank, building and loan association, savings and loan association, credit union, or other financial institution; make deposits and withdrawals by check, draft, or otherwise; and endorse checks, notes, and drafts for deposit, collection, or otherwise.

C. BENEFITS: My agent may apply for and receive any government, insurance and retirement benefits to which I may be entitled. My agent may also exercise any right to elect benefits or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow or receive cash value in return for the surrender of any or all rights under any of the following: Life insurance policies or benefits; annuity policies, plans or benefits; mutual fund or other dividend investment plans; and retirement, profit sharing and employee plans and benefits.

D. DEEDS: My agent may sign, execute, deliver and acknowledge such deeds, deeds of trust, covenants, indentures, agreements, mortgages, pledge agreements, notes, receipts, checks, bills of exchange, evidence of debts, releases and satisfactions of mortgage debts, judgment debts and other debts.

E. OTHER PROPERTY, INCLUDING REAL ESTATE: My agent may sell, exchange, option, and convey my real and personal property, wherever located; execute and deliver deeds of general warranty, with the customary covenants for such property; manage and control my real and personal property, wherever
located; negotiate, execute, and deliver any leases of my property; demand and collect rents; buy every kind of property, real or personal; arrange for appropriate disposition, use, insurance, and safekeeping of all my property; settle, compromise, and adjust insurance claims; borrow money in my name, and to receive such loans by real estate mortgage or by other collateral. My agent may also purchase medical insurance for any dependent of mine.

F. **TRANSFER OF ASSETS INCLUDING TO TRUST:** My agent may transfer from time to time some or all of my assets to the trustee or trustees of any revocable trust that I may have established or may establish in the future, regardless of the extent or limitations on my beneficial interests in that trust, to be administered in accordance with the terms thereof, and may manage the assets of said trust as if they were my solely owned assets. My agent may also add, remove or change beneficiaries or provide that any asset is payable or transferable on death to any person or entity my agent may name. My agent may also name or remove any person or entity as a tenant in common, or as a joint tenant with right of survivorship in any asset in which I own an interest.

G. **OPERATION OF BUSINESS:** My agent may continue the operation of any business belonging to me or in which I have a substantial interest for such time and in such manner as my agent may deem advisable or to sell or liquidate any business or interest herein, at such time and on such terms as my agent may deem advisable and in my best interests.

H. **COLLECTION AND LITIGATION:** My agent may demand and collect all property, real or personal, now or hereafter due, payable, or belonging to me; contest, compromise, settle, or abandon claims in my favor or against me; give receipts, releases, and discharges; commence, pursue, or oppose any action, suit, or legal proceeding relating to any matter in which I am or may hereafter be interested; and compromise, settle, or submit to judgment any such action or proceeding.

I. **TAXES:** My agent may represent me before any office of the Internal Revenue Service or the Treasury Department of the United States and before the tax department of any state, county, or municipality with regard to any tax with which
I am concerned. In particular without limitation, my agent may represent me in connection with any federal income tax return, Form 1040, for all tax years between 1950 and 2050, inclusive; any federal gift tax returns, Form 709, for all tax years between 1950 and 2050, inclusive; any Washington income tax return, for all tax years between 1950 and 2050, inclusive; and any Washington gift tax return, for all tax years between 1950 and 2050, inclusive. My agent may perform all acts that I can perform with respect to any tax matters without limitation. My agent may prepare, sign, and file any tax return; receive originals of all notices and other written communications; negotiate and make compromises; file claims; receive, endorse, and collect checks; receive and examine confidential information; and take appeals, file protests, and execute waivers and closing agreements. My agent may consent on my behalf to have any gift made by my spouse considered as made by each of us under section 2513 of the Internal Revenue Code.

J. **SAFE DEPOSIT BOX:** My agent shall have access to any safe deposit box of mine (whether the box is held in my name alone, in my revocable trust, or jointly with another or others) wherever located, and may remove the contents and surrender the box on my behalf. Any institution in which a safe deposit box of mine is located is not liable to me or my heirs or estate for permitting my agent to exercise this power.

K. **POST OFFICE:** My agent shall be able to request and authorize the post office to forward my mail to whatever address my agent may deem advisable.

L. **SOCIAL SECURITY:** My agent may represent and act for me before the Social Security Administration of the United States, and any similar agency of a state or local government; collect all Social Security benefits due me; and make such arrangements in connection with Social Security benefits including without limitation Medicaid and Medicare as will facilitate their application to my care and support.

M. **EMPLOYMENT OF AGENTS:** My agent may employ and dismiss agents, attorneys, investment advisors, accountants, housekeepers, health care providers, and other persons, and terminate any agency that I may have created at any time.

WITNESSES: 

[Signatures]

FOR IDENTIFICATION:
N. **FIDUCIARY POSITIONS:** My agent may renounce any fiduciary positions to which I have been or may be appointed, including, but not limited to personal representative, trustee, guardian, conservator, attorney-in-fact and officer or director of a corporation; to resign such positions in which capacity I am presently serving, and to file an accounting with a court of competent jurisdiction, or settle on a receipt or release or other informal method as my agent deems advisable.

O. **NOMINATION OF GUARDIAN:** In accordance with Washington Statutes, as they may be amended from time to time, I nominate my agent to serve as my guardian, conservator, or in any similar capacity to serve without bond or security.

P. **SEVERABILITY:** The invalidity of any portion of any provision of this power of attorney shall not affect the validity of any other provision or portion thereof.

Q. **POWER OF APPOINTMENT:** My agent may exercise any power of appointment given to me, whether by will or by trust agreement.

R. **GIFTING:** My agent may make any gifts, so long as such gifts are consistent with the terms of any Will in effect at the time the gifts are made, or transfers of my assets for the purposes of either reducing estate taxes, or of qualifying me for medical assistance, Washington State Medicaid benefits or any other public entitlement benefits of any kind, and may take any steps which in my agent's sole discretion may be necessary in order to meet financial qualification requirements for any aide, assistance, nursing home care or any other care or treatment of any kind.

S. **COMPENSATION:** My agent may be reimbursed for all reasonable costs and expenses actually incurred and paid under this power of attorney. My agent may, in the discretion of the agent, charge and receive reasonable compensation for services performed on my behalf.

---

WITNESSES:

\[Signature\]

FOR IDENTIFICATION:

\[Signature\]
T. RIGHTS UNDER COMMUNITY PROPERTY LAW, INCLUDING RIGHT OF MANAGEMENT AND CONTROL: My agent may exercise any management and control over community property or other property, as well as any other right I retain under the community property law. Further, my agent may enter into, revoke or amend existing agreements with my spouse or the personal representative of the estate of my spouse as to classification of property under community property law.

U. NON-PROBATE TRANSFERS: My agent may make any provision and sign documents for me and on my behalf which provide for non testamentary transfer of property at death, including without limitation, all instruments now described or which may later be described in section 11.02.091 of the Revised Code of The State of Washington, or in any amendments or revisions thereto.

V. PROVISION FOR HEALTH CARE POWERS OF AGENT: I hereby give to my agent and attorney-in-fact the power to give informed consent for health care decisions, as provided in RCW Chapter 7.70 and any other provision of the law of Washington State, the United States or the law of any other jurisdiction which allows or provides for health care decision making by an attorney-in-fact, agent or other representative. Specifically, I grant my attorney-in-fact the power to act in my behalf and in my name and to consult with physicians and other health care providers, obtain medical records, review reports of my condition and make any inquiries about my health care condition which my agent deems appropriate. I also specifically grant my agent the power to make any necessary health care decisions for me and in my behalf in the event that I am unable or unwilling to do so. In addition to these powers, and not by way of any limitation to the other health care powers granted to my agent, I also specifically authorize release of any information governed by the Health Insurance Portability and Accountably Act of 1996 (HIPAA) as set forth immediately below.

ADDITIONAL HIPAA RELEASE AUTHORITY: I intend for my agent to be treated as I would be with respect to my rights regarding use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountably Act of 1996 (HIPAA), 24 USC 1320(d) and 45 CFR 160-164, including any amendments thereto.
The authority given my agent herein shall supersede any prior agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only if I revoke the authority in writing and deliver it to my health care provider, or upon court order.

THIS POWER OF ATTORNEY SHALL NOT BE AFFECTED BY MY SUBSEQUENT DISABILITY, INCAPACITY, OR INCOMPETENCY.

I hereby revoke all previous powers of attorney I have made.

I hereby declare that any act or thing lawfully done hereunder by my said agent(s) shall be binding upon me, my heirs, legal and personal representatives and assigns.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 2nd day of December 2004, at the City of Aberdeen, County of Grays Harbor, Washington.

[Signature]
WILLIS D. LONN, JR.

WITNESSES:  

FOR IDENTIFICATION:
WITNESSES:

ELAINE H. WERB

SHARON J. PLEUS

STATE OF WASHINGTON

COUNTY OF GRAYS HARBOR

Personally came before me this 2nd day of December 2004, the above named WILLIS D. (BILL) LONN, JR., to me known to be the person who executed the foregoing instrument and acknowledged the same as his free and voluntary act.

James M. Brown, Notary Public
Grays Harbor County, Washington
My Commission expires 11/15/08

This instrument was drafted by
PHILLIPS, KRAUSE & BROWN, Attorneys at Law
101 E. Market Street, Suite 525, Aberdeen, Washington 98520
July 20, 2017

Edward Jones
Attn: Michael J. Bozich
601 Boone Street, Suite 1
Aberdeen, WA 98520

VIA HAND DELIVERY

RE: Certification of Power of Attorney from Willis Lonn to Cindy Lonn

Dear Mr. Bozich:

My client, Cindy Lonn, reports that for some reason you will not accept the power of attorney given to by her husband dated December 2, 2004. I drafted that power of attorney and am certain that there is no reason why it should not be accepted. However we are treating any concerns expressed to Mrs. Lonn as a request for certification pursuant to RCW 11.125.200. For that reason please find enclosed Mrs. Lonn’s statutory certification of the power of attorney.

Please note that pursuant to RCW 11.125.200 (1) (b), you have 5 business days from the date you receive this certification to accept the power of attorney. Your failure to accept the power of attorney within that time will subject Edward Jones to court action to compel acceptance and reasonable attorney fees. I enclose a copy of RCW 11.125.200 for your reference.

As you will note from the certification, Mrs. Lonn directs that you communicate directly with us about this matter. Therefore please provide a written acceptance of the above-referenced Durable Power of Attorney on your letterhead to this office at your earliest convenience.

We appreciate your anticipated kind cooperation in resolving this matter. Thank you in advance for your written acceptance of the power of attorney.

Very truly yours,

Phillips, Krause & Brown
By:

JAMES M. BROWN

CC: Cindy Lonn

Enc: 1: Certification of Power of Attorney 2: Copy of RCW 11.125.200
AGENT’S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT’S AUTHORITY THEREUNDER

State of Washington
County of Grays Harbor

I, CINDY L. LONN, certify under penalty of perjury pursuant to the Law of the State of Washington that WILLIS D. “BILL” LONN, my husband, granted me full authority as his agent and attorney-in-fact in a Durable Power of Attorney dated December 2, 2004 a copy of which has been marked “Exhibit A” and is attached hereto.

I further declare and certify that to my knowledge and belief:

(1) I am acting in good faith pursuant to the authority given under the power of attorney;

(2) The principal is alive and has not terminated, revoked, limited, or modified the power of attorney or my authority to act under the power of attorney; nor has the power of attorney or my authority to act under the power of attorney been terminated, revoked, limited, or modified by any other circumstances;

(3) When the power of attorney was signed, the principal was competent to execute it and was not under undue influence to sign;

(4) All events necessary to making the power of attorney effective have occurred;

(5) I was married to the principal when the power of attorney was executed, and there has been no subsequent dissolution, annulment, or legal separation, and no action is pending for the dissolution of the marriage or domestic partnership or for legal separation;

(6) The Durable Power of Attorney was drafted to become, and did in fact become, effective immediately and it remains fully effective and in force;

(7) I remain fully competent and capable to serve as agent and attorney-in-fact for my husband, WILLIS D. “BILL” LONN

(8) This Certification is made pursuant to Sections 11.125.200 and 11.125.430 of the Revised Code of the State of Washington (RCW).

(9) I direct that all communication regarding this matter be direct to my attorney, James M. Brown of Phillips, Krause & Brown whose address and telephone number appear below.

CINDY L. LONN

Address: Care of Phillips, Krause & Brown,
1017 S. Boone Street, P.O. Box 2110
Aberdeen, WA 98520
Telephone Number: Care of Phillips, Krause & Brown 360-532-8380

DATED: July 20, 2017
STATE OF WASHINGTON               
COUNTY OF GRAYS HARBOR

Personally came before me this 20th day of July 2017, the above named CINDY L. LONN, to me known to be the person who executed the foregoing Agent’s Certification of that certain Durable Power of Attorney executed by her husband and dated December 2, 2004 and she further acknowledged the same as her free and voluntary act.

JAMES M. BROWN
NOTARY PUBLIC
STATE OF WASHINGTON
My Commission Expires Nov. 15, 2020

JAMES M. BROWN, Notary Public
In and for the State of Washington
Residing at Aberdeen
My Commission expires: Nov. 15, 2020
DURABLE POWER OF ATTORNEY
WITH HEALTH CARE PROVISIONS
AND “HIPAA” RELEASE

I, WILLIS D. LONN, JR., also known as “BILL LONN”, now residing at 111 West 11th Street, Aberdeen, Grays Harbor County, Washington 98520, have made, constituted and do by these presents make, constitute and appoint my wife, CINDY L. LONN, or in the event she is unable or unwilling to serve, I appoint my son, BRYAN H. LONN, as my attorney-in-fact, (hereinafter referred to as “agent”), for me and in my name, to do any and all acts which I could do if personally present. This durable power of attorney becomes effective immediately when I sign it.

My agent may perform for me and in my name and on my behalf any act in the management, supervision, and care of my estate and affairs that I personally have authority to perform. My agent may exercise for me and in my name and on my behalf the powers enumerated below, which are intended to illustrate, and not to limit, the scope of this power. This power of attorney shall apply to all property owned by me, whether title is held as sole owner, as a joint tenant, as a tenant in common, as trustee of a revocable living trust, or otherwise.

A. SECURITIES: My agent may buy, sell, pledge, exchange, assign, option, or otherwise transfer any securities of any kind; deal with any broker, banker, or other agent; receive all dividends and interest payments now or hereafter due or payable to me from any security or other indebtedness or investment; vote stock and otherwise represent me at all meetings of shareholders or companies or

WITNESSES:

FOR IDENTIFICATION:

EXHIBIT A

PAGE 1 OF 5
corporations in which I have an interest; sign proxies or other instruments; tender my resignation as director or officer; subscribe to shares of stock, and execute request for payment of United States Savings Bonds, and surrender paid securities and receive the proceeds thereof. My agent may also add, remove or change a beneficiary, register any securities I may own in beneficiary form or with provisions that the security is payable on death or transferable on death to a person or entity my agent may name. My agent may also name or remove other persons or entities as tenants in common or as joint tenants with right of survivorship in any securities in which I have an interest.

B. **ACCOUNTS:** My agent may open, continue, maintain, change, or close any account, including without limitation any checking or savings account, certificate of deposit, share account, and other like arrangement with any bank, trust company, savings bank, building and loan association, savings and loan association, credit union, or other financial institution; make deposits and withdrawals by check, draft, or otherwise; and endorse checks, notes, and drafts for deposit, collection, or otherwise.

C. **BENEFITS:** My agent may apply for and receive any government, insurance and retirement benefits to which I may be entitled. My agent may also exercise any right to elect benefits or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow or receive cash value in return for the surrender of any or all rights under any of the following: Life insurance policies or benefits; annuity policies, plans or benefits; mutual fund or other dividend investment plans; and retirement, profit sharing and employee plans and benefits.

D. **DEEDS:** My agent may sign, execute, deliver and acknowledge such deeds, deeds of trust, covenants, indentures, agreements, mortgages, pledge agreements, notes, receipts, checks, bills of exchange, evidence of debts, releases and satisfactions of mortgage debts, judgment debts and other debts.

E. **OTHER PROPERTY, INCLUDING REAL ESTATE:** My agent may sell, exchange, option, and convey my real and personal property, wherever located; execute and deliver deeds of general warranty, with the customary covenants for such property; manage and control my real and personal property, wherever
located; negotiate, execute, and deliver any leases of my property; demand and collect rents; buy every kind of property, real or personal; arrange for appropriate disposition, use, insurance, and safekeeping of all my property; settle, compromise, and adjust insurance claims; borrow money in my name, and to receive such loans by real estate mortgage or by other collateral. My agent may also purchase medical insurance for any dependent of mine.

F. **TRANSFER OF ASSETS INCLUDING TO TRUST:** My agent may transfer from time to time some or all of my assets to the trustee or trustees of any revocable trust that I may have established or may establish in the future, regardless of the extent or limitations on my beneficial interests in that trust, to be administered in accordance with the terms thereof, and may manage the assets of said trust as if they were my solely owned assets. My agent may also add, remove or change beneficiaries or provide that any asset is payable or transferable on death to any person or entity **my agent may name.** My agent may also name or remove any person or entity as a tenant in common, or as a joint tenant with right of survivorship in any asset in which I own an interest.

G. **OPERATION OF BUSINESS:** My agent may continue the operation of any business belonging to me or in which I have a substantial interest for such time and in such manner as my agent may deem advisable or to sell or liquidate any business or interest herein, at such time and on such terms as my agent may deem advisable and in my best interests.

H. **COLLECTION AND LITIGATION:** My agent may demand and collect all property, real or personal, now or hereafter due, payable, or belonging to me; contest, compromise, settle, or abandon claims in my favor or against me; give receipts, releases, and discharges; commence, pursue, or oppose any action, suit, or legal proceeding relating to any matter in which I am or may hereafter be interested; and compromise, settle, or submit to judgment any such action or proceeding.

I. **TAXES:** My agent may represent me before any office of the Internal Revenue Service or the Treasury Department of the United States and before the tax department of any state, county, or municipality with regard to any tax with which
I am concerned. In particular without limitation, my agent may represent me in connection with any federal income tax return, Form 1040, for all tax years between 1950 and 2050, inclusive; any federal gift tax returns, Form 709, for all tax years between 1950 and 2050, inclusive; any Washington income tax return, for all tax years between 1950 and 2050, inclusive; and any Washington gift tax return, for all tax years between 1950 and 2050, inclusive. My agent may perform all acts that I can perform with respect to any tax matters without limitation. My agent may prepare, sign, and file any tax return; receive originals of all notices and other written communications; negotiate and make compromises; file claims; receive, endorse, and collect checks; receive and examine confidential information; and take appeals, file protests, and execute waivers and closing agreements. My agent may consent on my behalf to have any gift made by my spouse considered as made by each of us under section 2513 of the Internal Revenue Code.

J. **SAFE DEPOSIT BOX**: My agent shall have access to any safe deposit box of mine (whether the box is held in my name alone, in my revocable trust, or jointly with another or others) wherever located, and may remove the contents and surrender the box on my behalf. Any institution in which a safe deposit box of mine is located is not liable to me or my heirs or estate for permitting my agent to exercise this power.

K. **POST OFFICE**: My agent shall be able to request and authorize the post office to forward my mail to whatever address my agent may deem advisable.

L. **SOCIAL SECURITY**: My agent may represent and act for me before the Social Security Administration of the United States, and any similar agency of a state or local government; collect all Social Security benefits due me; and make such arrangements in connection with Social Security benefits including without limitation Medicaid and Medicare as will facilitate their application to my care and support.

M. **EMPLOYMENT OF AGENTS**: My agent may employ and dismiss agents, attorneys, investment advisors, accountants, housekeepers, health care providers, and other persons, and terminate any agency that I may have created at any time.

WITNESSES: 

FOR IDENTIFICATION: 

EXHIBIT A 

PAGE 4 OF 5
N. **FIDUCIARY POSITIONS:** My agent may renounce any fiduciary positions to which I have been or may be appointed, including, but not limited to personal representative, trustee, guardian, conservator, attorney-in-fact and officer or director of a corporation; to resign such positions in which capacity I am presently serving, and to file an accounting with a court of competent jurisdiction, or settle on a receipt or release or other informal method as my agent deems advisable.

O. **NOMINATION OF GUARDIAN:** In accordance with Washington Statutes, as they may be amended from time to time, I nominate my agent to serve as my guardian, conservator, or in any similar capacity to serve without bond or security.

P. **SEVERABILITY:** The invalidity of any portion of any provision of this power of attorney shall not affect the validity of any other provision or portion thereof.

Q. **POWER OF APPOINTMENT:** My agent may exercise any power of appointment given to me, whether by will or by trust agreement.

R. **GIFTING:** My agent may make any gifts, so long as such gifts are consistent with the terms of any Will in effect at the time the gifts are made, or transfers of my assets for the purposes of either reducing estate taxes, or of qualifying me for medical assistance, Washington State Medicaid benefits or any other public entitlement benefits of any kind, and may take any steps which in my agent's sole discretion may be necessary in order to meet financial qualification requirements for any aide, assistance, nursing home care or any other care or treatment of any kind.

S. **COMPENSATION:** My agent may be reimbursed for all reasonable costs and expenses actually incurred and paid under this power of attorney. My agent may, in the discretion of the agent, charge and receive reasonable compensation for services performed on my behalf.

**FOR IDENTIFICATION:**

**EXHIBIT A**

**PAGE 5 OF 8**
T. RIGHTS UNDER COMMUNITY PROPERTY LAW, INCLUDING RIGHT
OF MANAGEMENT AND CONTROL: My agent may exercise any
management and control over community property or other property, as well as
any other right I retain under the community property law. Further, my agent may
enter into, revoke or amend existing agreements with my spouse or the personal
representative of the estate of my spouse as to classification of property under
community property law.

U. NON-PROBATE TRANSFERS: My agent may make any provision and sign
documents for me and on my behalf which provide for nontestamentary transfer
of property at death, including without limitation, all instruments now described
or which may later be described in section 11.02.091 of the Revised Code of The
State of Washington, or in any amendments or revisions thereto.

V. PROVISION FOR HEALTH CARE POWERS OF AGENT: I hereby give to
my agent and attorney-in-fact the power to give informed consent for health
care decisions, as provided in RCW Chapter 7.70 and any other provision of
the law of Washington State, the United States or the law of any other
jurisdiction which allows or provides for health care decision making by an
attorney-in-fact, agent or other representative. Specifically, I grant my
attorney-in-fact the power to act in my behalf and in my name and to consult
with physicians and other health-care providers, obtain medical records, review
reports of my condition and make any inquiries about my health care condition
which my agent deems appropriate. I also specifically grant my agent the
power to make any necessary health care decisions for me and in my behalf in
the event that I am unable or unwilling to do so. In addition to these powers,
and not by way of any limitation to the other health care powers granted to my
agent, I also specifically authorize release of any information governed by the
Health Insurance Portability and Accountably Act of 1996 (HIPAA) as set
forth immediately below.

ADDITIONAL HIPAA RELEASE AUTHORITY: I intend for my agent to be
treated as I would be with respect to my rights regarding use and disclosure of
my individually identifiable health information or other medical records. This
release authority applies to any information governed by the Health Insurance
Portability and Accountably Act of 1996 (HIPAA), 24 USC 1320(d) and 45
CFR 160-164, including any amendments thereto.

WITNESSES:

FOR IDENTIFICATION:

EXHIBIT A

PAGE 6 OF 8
The authority given my agent herein shall supersede any prior agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only if I revoke the authority in writing and deliver it to my health care provider, or upon court order.

THIS POWER OF ATTORNEY SHALL NOT BE AFFECTED BY MY SUBSEQUENT DISABILITY, INCAPACITY, OR INCOMPETENCY.

I hereby revoke all previous powers of attorney I have made.

I hereby declare that any act or thing lawfully done hereunder by my said agent(s) shall be binding upon me, my heirs, legal and personal representatives and assigns.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 2nd day of December 2004, at the City of Aberdeen, County of Grays Harbor, Washington.

[Signature]
WILLIS D. LONN, JR.

WITNESSES:

FOR IDENTIFICATION:

EXHIBIT A
PAGE 7 OF 8
WITNESSES:

ELAINE H. WERB

SHARON J. PLEUS

STATE OF WASHINGTON  
COUNTY OF GRAYS HARBOR  

Personally came before me this 2nd day of December 2004, the above named WILLIS D. (BILL) LONN, JR., to me known to be the person who executed the foregoing instrument and acknowledged the same as his free and voluntary act.

JAMES M. BROWN  
Notary Public  
State of Washington  
My Commission Expires Nov. 15, 2006

James M. Brown, Notary Public  
Grays Harbor County, Washington  
My Commission expires 11/15/08

This instrument was drafted by  
PHILLIPS, KRAUSE & BROWN, Attorneys at Law  
101 E. Market Street, Suite 525, Aberdeen, Washington 98520

WITNESSES:

FOR IDENTIFICATION:

EXHIBIT A

PAGE 8 OF 8
RCW 11.125.200

Acknowledged power of attorney—Acceptance—Refusal to accept. (Effective January 1, 2017.)

(1) Except as otherwise provided in subsection (2) of this section:
   (a) A person shall either accept an acknowledged power of attorney or request a certification or a translation no later than seven business days after presentation of the power of attorney for acceptance;
   (b) If a person requests a certification or a translation, the person shall accept the power of attorney no later than five business days after receipt of the certification or translation; and
   (c) A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(2) A person is not required to accept an acknowledged power of attorney if:
   (a) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;
   (b) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;
   (c) The person has actual knowledge of the termination of the agent’s authority or of the power of attorney before exercise of the power;
   (d) A request for a certification or a translation is refused;
   (e) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification or a translation has been requested or provided; or
   (f) The person makes, or has actual knowledge that another person has made, a report to the department of social and health services stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(3) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:
   (a) A court order mandating acceptance of the power of attorney; and
   (b) Liability for reasonable attorneys’ fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

[ 2016 c 209 § 120.]
July 26, 2017

Edward Jones
Attn: Michael J. Bozich and Amy Brandley
601 Boone Street, Suite 1
Aberdeen, WA 98520

VIA HAND-DELIVERY

RE: My Client CINDY L. LONN
Durable Power of Attorney from Willis D. Lonn Jr. to Cindy L. Lonn

Dear Mr. Bozich and Ms. Brandley:

I understand that last Thursday after my staff delivered my letter and enclosures of that date, Amy Brandley who is an assistant in your office called our office. Ms. Brandley stated that the durable power of attorney was not what you needed but that you need “something that says that Cindy has ‘spousal consent’” to sign for her husband because "this is a community property state." She also stated she does not know why Edward Jones requires this.

While I do appreciate your promptness in responding and your attention to this matter, I fear either you or, more importantly, Edward Jones may not understand its peril in this situation. In fairness I must explain that there is no legal requirement for "spousal consent" language or magic words like that in our power of attorney statute. As RCW 11.125.200(1)(c) clearly states, “A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.” I provided a copy of that statute with the certification that was hand-delivered to your office last week. The power of attorney which Mr. Lonn signed, and which was notarized and provided to you, already gives Mrs. Lonn full authority over all his financial accounts.

I urge you to bring this important matter to the attention of the Edward Jones company and its legal department. I assume that your continuing refusal to honor the power of attorney is the result of some specific company regulation which is contrary to Washington law. However, Mrs. Lonn needs immediate access to her funds. Therefore I am now drafting the documents to start a law suit so that you and Edward Jones will be required to accept the power of attorney, and for our costs and attorney fees. If Edward Jones wants to mitigate the damage already done, then please provide a written acceptance of the above-referenced Durable Power of Attorney on your letterhead to this office prior to 5 pm on July 28, 2017.

Very truly yours,

PHILLIPS, KRAUSE & BROWN

By:

James, M. Brown

cc: Cindy L. Lonn
EXHIBIT 4
Thank you for your message and willingness to accept service. Of course, and with respect, we entirely disagree with your position that Edward Jones can fail to accept the power of attorney presented and we treat this as a further and continuing rejection of the Certificate that was provided. Can you provide any legal authority that supports your position? I will await your response for another 24 hours.

Cordially,

James M. Brown
Phillips, Krause & Brown
Attorneys at Law
P.O. Box 2110
Aberdeen WA 98520

Adjunct Professor Of Elder Law
Seattle University School of Law

Phone: (360)532-8380 - Fax (360)533-2760
jbrown@pkblaw.com

----- Original Message -----
client, Cindy Lonn, has presented our client, Edward Jones, with a December 2, 2004 Power of Attorney, which she claims authorizes her to act on behalf of her husband, Willis Lonn, who is incarcerated in federal prison. Specifically, Ms. Lonn is attempting to remove Mr. Lonn has the beneficiary of an IRA account held jointly by her and her husband.

It is Edward Jones’ position that the power of attorney presented by your client does not specifically authorize her to remove her husband as the beneficiary of their jointly held IRA account. Given the retirement nature of the account and the special protections afforded retirement accounts, Edward Jones has requested that Ms. Lonn have her husband execute a spousal consent form. So far, Edward Jones has not received an explanation as to why that request cannot be satisfied.

During our call, we inquired regarding efforts made by Ms. Lonn and your office to obtain Mr. Lonn’s consent to the beneficiary change Ms. Lonn seeks. You responded by stating that the federal institution in which Mr. Lonn is currently incarcerated has not been cooperative in your attempts. You were unable, however, to provide any specific details about your efforts and, as confirmed in your email, you were unable during our call to identify the institution in which Mr. Lonn is currently held.

Using the Federal Bureau of Prison’s online inmate locator, we were able to identify Mr. Lonn’s specific location. It appears he is currently detained in a medium security prison in Sheridan, Oregon. Also, according to the Sheridan institution’s website, mail can easily be delivered to inmates: the prison instructs, “use the addresses below to send correspondence and parcels to inmates,” and provides the following address information:

INMATE NAME & REGISTER NUMBER
FCI SHERIDAN
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 5000
SHERIDAN, OR 97378

We ask again that you please send us a copy of any correspondence sent to Mr. Lonn about this matter. Understanding Mr. Lonn’s position in this regard, given the nature of Ms. Lonn’s requested beneficiary change, we believe, is a critical piece of information.

Hopefully, with Mr. and Mrs. Lonn’s cooperation we can have this matter resolved within a few days. Alternatively, if your client would prefer litigation, our office can accept service on Edward Jones’ behalf. In the meantime, please let us know if your client’s position changes in any way.

Shannon

Shannon L McDougald
McDougald Law Group P.S.
400 108th Avenue NE, Suite 510
Bellevue, WA 98004
Phone (425) 455-2060
Fax (425) 455-2070
www.mcdougaldlaw.com

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying it or disclosing its contents to others.

8/9/2017
From: James M. Brown [mailto:jbrown@pkblaw.com]
Sent: Monday, July 31, 2017 1:26 PM
To: Shannon McDougald <smcdougald@mcdougaldlaw.com>
Cc: Taylor Wallace <TWallace@pkblaw.com>; Coleen Brown <officead@pkblaw.com>
Subject: Lonn v. Edward Jones

Dear Mr. McDougald:

Thank you for speaking with me this afternoon.

As noted in our conversation time is of the essence. As you know, our position is that the power of attorney is valid and contains specific authority authorizing Mrs. Lonn to change beneficiaries and sign any consent form your client feels it needs. We understand you feel the issue is somehow “unclear” but we, respectfully, completely disagree. For your ease of reference a copy of my letter of July 20 is attached together with the copies of the certification and power of attorney which were enclosed with that letter. While many sections of the power of attorney may be relevant here, sections A, B and C have special application to the current issue.

Of course we hope Edward Jones can relent and allow Mrs. Lonn to sign any consent form as agent and attorney-in-fact for her husband. However, time is very much of the essence, and it is important to have this matter resolved as expeditiously as possible. We will begin drafting a petition and motion for order to show cause tomorrow. At that point attorney fees, which are rising, will become an even more significant additional issue which will have to be resolved.

As requested when we talked, please let me know whether you are able to accept service for your client.

When I know the institution where Mr. Lonn is incarcerated I will let you know; however we are already well past any acceptable time for dealing with that institution, and the impact of that institution is simply not relevant to the duty our power of attorney statutes impose on Edward Jones.

Thank you in advance for the swift professional attention I know you will give this matter.

Very truly yours,

James M. Brown JD, CPG
Phillips, Krause & Brown
Attorneys at Law
P.O. Box 2110
Aberdeen WA 98520

Adjunct Professor Of Elder Law
Seattle University School of Law

Phone: (360)532-8380 - Fax (360)533-2760
jbrown@pkblaw.com

8/9/2017
EXHIBIT 5
Spousal Consent Form

Account Number (10-digits):

Date:

BRANCH USE ONLY

Branch #:
Financial Advisor #:
Destination: Estates
Scan Title: Spousal Consent

SPOUSAL CONSENT: The Spousal Consent must be completed, if a married Account Holder currently lives or previously lived in a community property state at any time during the marriage and does not name his or her spouse as 100% primary beneficiary.

I represent that I (a) am the spouse of the Account Holder ("the Account Holder’s Spouse"); (b) am familiar with the assets contained in the Account; (c) consent to and join in the Account Holder’s designation of the Beneficiary or Beneficiaries of the Account; (d) convey, upon death of the Account Holder, my interest in the community or marital property to the designated beneficiary(ies); and (e) agree not to make any claim against the Beneficiary or Beneficiaries or against Edward Jones or Edward Jones Trust Company as applicable, as a result of the distribution of any assets in the Account pursuant to the terms of the Account Holder’s beneficiary designation.

Signature(s) of Authorized Person(s)

Signature of Spouse       Print Name       Date

Signature of Witness      Print Name       Date

Please return the completed form to your Edward Jones branch office.

www.edwardjones.com
Member SIPC
EXHIBIT 6
A Long-term Partnership

Life's priorities may change, but your relationship with your financial advisor and his or her commitment to helping you achieve your goals won't. Your financial advisor focuses on helping you achieve what's most important to you, using an established process to build your personalized strategies and helping you stay on track by partnering together over the long term.

Don't Wait to Determine Your Retirement

Even if it feels like retirement is down the road, the time to lay the groundwork for living in retirement is now. Your financial advisor can help you refine your retirement strategy to help ensure you'll have the income you need. By looking at the big picture now, you can help make sure you'll live retirement on your terms. Call today for an appointment.

<table>
<thead>
<tr>
<th>Portfolio Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Portfolio Value</td>
</tr>
<tr>
<td>$191,020.90</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Period</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Month Ago</td>
<td>$190,222.03</td>
</tr>
<tr>
<td>1 Year Ago</td>
<td>$0.00</td>
</tr>
<tr>
<td>3 Years Ago</td>
<td>$0.00</td>
</tr>
<tr>
<td>5 Years Ago</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Overview of Accounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts</td>
</tr>
<tr>
<td>----------</td>
</tr>
<tr>
<td>Individual Retirement Account</td>
</tr>
<tr>
<td>Guided Solutions Flex Account</td>
</tr>
</tbody>
</table>

Total Accounts: $0.00 $191,020.90

Although account information is provided on this page, it does not guarantee an actual statement was produced. Refer to your account statement for the exact registration and more specific details regarding each account.

Important disclosures: such as Statement of Financial Condition, Conditions that Govern Your Account, Account Safety, Errors, Complaints, Withholding, Fee Credit Balance, Fair Market Value or Terminology, relating to your account(s) are available on the last page of this package or at www.edwardjones.com/statementsdisclosures.

www.edwardjones.com
Edward Jones Trust Company for your Traditional IRA
Edward Jones Trust Co As Cust
FBO Cindy L. Lonn IRA

Trades Soon to Settle in Two Business Days
Starting Sept. 5, 2017, the settlement cycle for most trades that currently settle in three business days will shorten to two business days. This means when you sell securities, you can expect to be paid sooner, and when you purchase securities, you'll be required to provide payment earlier. This change affects the entire financial industry. Please contact your financial advisor if you have questions.

---

**Traditional Individual Retirement Account - Guided Solutions Flex Account**

**Portfolio Objective - Account: Balanced Growth and Income**

For more information about the Guided Solutions program go to [www.edwardjones.com/advisorybrochures](http://www.edwardjones.com/advisorybrochures).

<table>
<thead>
<tr>
<th>Account Value</th>
<th>Value of Your Account</th>
</tr>
</thead>
<tbody>
<tr>
<td>$191,020.90</td>
<td>$240,000</td>
</tr>
<tr>
<td></td>
<td>$225,000</td>
</tr>
<tr>
<td></td>
<td>$190,000</td>
</tr>
<tr>
<td></td>
<td>$185,000</td>
</tr>
<tr>
<td></td>
<td>$140,000</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Value Summary**

<table>
<thead>
<tr>
<th></th>
<th>This Period</th>
<th>This Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beginning Value</td>
<td>$190,222.03</td>
<td>$0.00</td>
</tr>
<tr>
<td>Assets Added to Account</td>
<td>0.00</td>
<td>189,525.37</td>
</tr>
<tr>
<td>Assets Withdrawn from Account</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Fees and Charges</td>
<td>-178.29</td>
<td>-178.29</td>
</tr>
<tr>
<td>Change In Value</td>
<td>977.16</td>
<td>1,673.82</td>
</tr>
</tbody>
</table>

| Ending Value            | $191,020.90 |

For more information regarding the Value Summary section, please visit [www.edwardjones.com/mystatementguide](http://www.edwardjones.com/mystatementguide).

This account entered the Guided Solutions program on May 05, 2017 and the Account Value and Value Summary sections of this statement combine activity from before and after that date.
# Rate of Return

<table>
<thead>
<tr>
<th>Your Personal Rate of Return for Assets Held at Edward Jones</th>
<th>This Quarter</th>
<th>Year to Date</th>
<th>Last 32 Months</th>
<th>3 Years Annualized</th>
<th>5 Years Annualized</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0.79%</td>
<td>0.79%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Performance Benchmarks**

<table>
<thead>
<tr>
<th>Large US Cap Equities (S &amp; P 500)</th>
<th>3.09%</th>
<th>9.34%</th>
<th>17.90%</th>
<th>9.61%</th>
<th>14.62%</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Equities (S &amp; P 700)</td>
<td>5.98%</td>
<td>14.26%</td>
<td>21.62%</td>
<td>1.55%</td>
<td>8.60%</td>
</tr>
<tr>
<td>Taxable Fixed income (BarCap Aggregate)</td>
<td>1.45%</td>
<td>2.27%</td>
<td>-0.32%</td>
<td>2.48%</td>
<td>2.21%</td>
</tr>
</tbody>
</table>

**Your Personal Rate of Return:** Your Personal Rate of Return measures the investment performance of your account. It incorporates the timing of your additions and withdrawals and reflects commissions and fees paid. Reviewing your Personal Rate of Return is important to help ensure you’re on track to achieving your financial goals.

**Performance Benchmarks:** Your Personal Rate of Return should be compared to the return necessary to achieve your financial goals. However, while many investors would like to compare their Personal Rate of Return to market indexes, keep in mind this may not be an accurate comparison, as your Personal Rate of Return incorporates the timing of your specific additions and withdrawals and your specific investment mix, while published returns of market indexes do not.

These market indexes are used as a general measure of market performance for several major asset classes. Market indexes assume reinvestment of all distributions and do not take into account brokerage fees, taxes or investment management fees.

For the most current information, contact your financial advisor or visit [www.edwardjones.com/ratedreturn](http://www.edwardjones.com/ratedreturn).

---

# Rate of Return Indexes Disclosure

**S&P 500 Index:** A broad-based measurement of changes in stock market conditions based on the average performance of 500 widely held common stocks. While many of the stocks are among the largest, this index also includes many relatively small companies. It is a float-adjusted capitalization-weighted index (stock price times number of publicly available shares outstanding), calculated on a total return basis with dividends reinvested.

**S&P 700 Index:** The S&P 700 Index measures the non-United States component of global equity markets. The index covers all regions included in the S&P Global 1200 (Europe, Japan, Canada, Australia, Asia, and Latin America) except for the United States which is represented by the S&P 500. The index is market-cap weighted and based in U.S. dollars.

**BarCap Aggregate Bond Index:** Measures the performance of government, mortgage-backed, asset-backed and corporate securities with at least one year to maturity.

For the most current information, contact your financial advisor or visit [www.edwardjones.com/ratedreturn](http://www.edwardjones.com/ratedreturn).
Edward Jones Guided Solutions™

Portfolio Objective: Balanced Growth and Income

Comparing Your Diversification to Your Portfolio Objective

<table>
<thead>
<tr>
<th>Income</th>
<th>Equity</th>
<th>International</th>
</tr>
</thead>
<tbody>
<tr>
<td>45%</td>
<td>43%</td>
<td>10%</td>
</tr>
<tr>
<td>45%</td>
<td>12%</td>
<td>7%</td>
</tr>
<tr>
<td>50%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>1%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

- Actual Percentage
- Suggested Range
- Acceptable Range
- Aggressive Income

Asset Details (as of Jun 30, 2017)

Assets Held At Edward Jones

<table>
<thead>
<tr>
<th>Current Yield/Rate</th>
<th>Beginning Balance</th>
<th>Deposits</th>
<th>Withdrawals</th>
<th>Ending Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retirement Money Market</td>
<td>0.31%*</td>
<td>$1,203.48</td>
<td>$10.99</td>
<td>-$189.14</td>
</tr>
</tbody>
</table>

* The average yield on the money market fund for the past seven days.

<table>
<thead>
<tr>
<th>Exchange Traded &amp; Closed End Funds</th>
<th>Price</th>
<th>Quantity</th>
<th>Cost Basis</th>
<th>Unrealized Gain/Loss</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Powershares Exchange-Traded Fd Tr II S&amp;P 500 Low Volatility Symbol: SPLV Asset Category: Growth &amp; Income Estimated Yield: 2.21%</td>
<td>44.73</td>
<td>389,428,999</td>
<td>17,130.26</td>
<td>288.90</td>
<td>17,419,16</td>
</tr>
<tr>
<td>Vanguard Index Tr Vanguard Value ETF Symbol: VTV Asset Category: Growth &amp; Income Estimated Yield: 2.31%</td>
<td>96.56</td>
<td>179,023,96</td>
<td>17,110.25</td>
<td>176.30</td>
<td>17,286,55</td>
</tr>
<tr>
<td>Vanguard Index Tr Mid Cap Value Index Viper Shs Symbol: VOE Asset Category: Growth Estimated Yield: 1.80%</td>
<td>102.87</td>
<td>112,503,48</td>
<td>11,494.79</td>
<td>78.44</td>
<td>11,573.23</td>
</tr>
</tbody>
</table>

Additional details at www.edwardjones.com/access.
### Asset Details (continued)

<table>
<thead>
<tr>
<th>Exchange Traded &amp; Closed End Funds</th>
<th>Price</th>
<th>Quantity</th>
<th>Cost Basis</th>
<th>Unrealized Gain/Loss</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vanguard Short Term BO ETF</td>
<td>79.85</td>
<td>355.48417</td>
<td>28,323.50</td>
<td>61.91</td>
<td>28,385.41</td>
</tr>
</tbody>
</table>

**Estimated Yield**

The Estimated Yield (EY) in the preceding section(s) compares the anticipated earnings on your investments in the coming year to the current price of the investments. It is based on past interest and dividend payments made by the securities held in your account. Changes in the price of a security over time or in the amount of the investment held in your account will cause the EY to vary. The EY is only an estimate and cannot be guaranteed by Edward Jones or the issuers of the securities. Your actual yield may be higher or lower than the estimated amounts. Estimates for any securities that have a return of principal or capital gain may be overstated. Income cannot be estimated for any securities that do not have an annual payment amount or frequency available at the time of estimation. Yield to Maturity is typically reported for Zero Coupon Bonds as these securities do not have an annual payment.

<table>
<thead>
<tr>
<th>Mutual Funds</th>
<th>Price</th>
<th>Quantity</th>
<th>Cost Basis</th>
<th>Unrealized Gain/Loss</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Franklin Rising Dividends Fund</td>
<td>56.40</td>
<td>270.635</td>
<td>15,098.72</td>
<td>165.09</td>
<td>15,263.81</td>
</tr>
<tr>
<td>Advisor Cl</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Symbol: FRDAX</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asset Category: Growth &amp; Income</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hartford Mid Cap Value Fund</td>
<td>14.86</td>
<td>705.201</td>
<td>10,380.37</td>
<td>96.92</td>
<td>10,479.29</td>
</tr>
<tr>
<td>Cl F</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Symbol: HMVFX</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asset Category: Growth</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lord Abbott Affiliated Fund Inc Cl F</td>
<td>16.10</td>
<td>944.26</td>
<td>15,098.72</td>
<td>103.87</td>
<td>15,202.59</td>
</tr>
<tr>
<td>Symbol: LAAFX</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asset Category: Growth &amp; Income</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lord Abbott Total Return Fund Cl F</td>
<td>10.39</td>
<td>2,744.668</td>
<td>28,352.75</td>
<td>164.35</td>
<td>28,517.10</td>
</tr>
<tr>
<td>Symbol: LTRFX</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asset Category: Income</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MFS Value Fund Cl I</td>
<td>39.25</td>
<td>445.606</td>
<td>17,056.25</td>
<td>434.79</td>
<td>17,490.04</td>
</tr>
<tr>
<td>Symbol: MFSIX</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asset Category: Growth &amp; Income</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Asset Details (continued)

<table>
<thead>
<tr>
<th>Mutual Funds</th>
<th>Price</th>
<th>Quantity</th>
<th>Cost Basis</th>
<th>Unrealized Gain/Loss</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prudential Short-Term Corp Bond Fund CI Q</td>
<td>11.09</td>
<td>2,558.917</td>
<td>28,352.96</td>
<td>25.43</td>
<td>28,378.39</td>
</tr>
<tr>
<td>Asset Category: Income</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Account Value: $191,020.90

Ratings—Ratings from Standard & Poor's (S&P), Moody's and Fitch may be shown for certain securities. S&P requires we inform you: (1) Ratings are NOT recommendations to buy, hold, sell or make any investment decisions and DO NOT address suitability or future performance; (2) S&P DOES NOT guarantee the accuracy, completeness, or availability of any ratings and is NOT responsible for results obtained from the use of any ratings. Certain disclaimers related to its ratings as are more specifically stated at http://www.standardandpoors.com/disclaimers.

The bond ratings shown are the highest of several possible credit ratings assigned by S&P, Moody’s or Fitch for a particular bond and may reflect factors in addition to the credit quality of the issuer, such as bond insurance or participation in a credit enhancement program. For more details contact your financial advisor.

Cost Basis is the amount of your investment for tax purposes and is used to calculate gain or loss incurred on the sale or other disposition of a security. Cost basis is not a measure of performance. The cost basis amounts in your statement should not be relied upon for tax preparation purposes. Please refer to your official tax documents for more information about reporting cost basis to the IRS. You should consult your attorney or qualified tax advisor regarding your situation. If you believe any of this cost basis information is inaccurate, please call our Client Relations department.

Retirement Summary

<table>
<thead>
<tr>
<th></th>
<th>This Period</th>
<th>Cumulative</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017 Contributions</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>2016 Contributions</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Transfers Received</td>
<td>0.00</td>
<td>189,526.36</td>
</tr>
</tbody>
</table>

Investment and Other Activity by Date

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Quantity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/31</td>
<td>Dividend on PS ETF Tr II S&amp;P Low Volty on 388 Shares @ 0.0225</td>
<td>$32.01</td>
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<td>5/31</td>
<td>Reinvestment into PS ETF Tr II S&amp;P Low Volty @ 44.5399 Reinvestment Fee $0.00</td>
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<td>6/01</td>
<td>Dividend on Lord Abbett Total Return on 2,740.57 Shares at Daily Accrual Rate</td>
<td>42.66</td>
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<tr>
<td>6/01</td>
<td>Reinvestment into Lord Abbett Total Return @ 10.41</td>
<td>-42.66</td>
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<td>Dividend on Prudnt Short Term Corp Bond Q on 2,555.062 Shares at Daily Accrual Rate</td>
<td>42.87</td>
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<td>6/01</td>
<td>Reinvestment into Prudnt Short Term Corp Bond Q @ 11.12</td>
<td>-42.87</td>
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<td>6/07</td>
<td>Dividend on Vanguard Short-Term Bond ETF on 355 Shares @ 0.109093</td>
<td>38.73</td>
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<td>6/07</td>
<td>Reinvestment into Vanguard Short-Term Bond ETF @ 79.9921 Reinvestment Fee $0.00</td>
<td>0.48417</td>
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<td>6/09</td>
<td>Program Fee</td>
<td>-189.14</td>
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<td>6/13</td>
<td>Share Class Conversion from Hartford Midcap Value Fund I</td>
<td>-706.148</td>
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

CINDY L. LONN and WILLIS D. LONN,
JR., Wife and Husband,
Petitioners,

vs.

EDWARD D. JONES & CO., L.P.
A Missouri Business Entity, licensed to do
business in the State of Washington,
Respondent.

No. 17-2-00601-14

ORDER TO SHOW CAUSE AND
SHORTENING TIME

THIS MATTER having come on for hearing before the undersigned judge of the above
entitled court on the Petition to Compel Acceptance of a Power of Attorney, and Motion for
Order to Show Cause,

Now, therefore it is hereby ORDERED THAT:

Respondent EDWARD D. JONES & CO., L.P. shall appear at the Grays Harbor Superior
Court at 102 West Broadway in the City of Montesano, Washington on Monday, August 21 at
the hour of 3:30 pm then and there to show cause, if any it has, why the relief requested in the
Petition should not be granted, and more specifically why it should not:

1. Immediately recognize and accept the authority of CINDY L. LONN, to act for and on
behalf of her husband, WILLIS D. LONN JR. pursuant to that power of attorney signed by him
acknowledged on December 2, 2004 for all purposes, including without limitation the signing of

ORDER TO SHOW CAUSE
any documents to change the beneficiary on her retirement account held invested at Respondent’s Aberdeen office.

2. Comply fully with all directions or instructions from CINDY L. LONN regarding all accounts or financial interests which it holds or manages regarding either CINDY L. LONN or WILLIS D. LONN JR.;

3. Have judgment entered against it for costs and attorney fees of such amount as is listed in the Petition or such additional amount which petitioner’s counsel shall submit by affidavit;

4. Comply with any and all other orders which the court may enter at the time of hearing.

In the event that service is not accepted via email by Respondent’s counsel as of the day it is sent to him via email, or is refused, time for hearing is hereby shortened to the above date and time. so long as copies of all documents sought to be served are sent to Respondent’s counsel via email by close of business on August 11, 2017, and service on Respondent’s resident agent is accomplished by the close of business on August 15, 2017.

HEREIN FAIL NOT AT YOUR PERIL. Failure to appear may result in an Order being entered by the court granting the relief requested in the petition without further notice.

DATED:_________________________  

F. MARK McCauley  

J U D G E

Presented by:  
PHILLIPS, KRAUSE & BROWN  
Attorneys for Petitioner

By:  
JAMES M. BROWN, WSBA #11634

ORDER TO SHOW CAUSE