



CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

OFFICE OF THE LEGISLATIVE SECRETARY  
ACKNOWLEDGMENT RECEIPT

Received By: [Signature]  
Time: 11:14  
Date: 5/6/96

OFFICE OF THE SPEAKER

Date: 5/6/96  
Time: 2:00 PM  
Received by: [Signature]  
Print Name: Harold Escobedo

MAY 01 1996

The Honorable Speaker  
Twenty-Third Guam Legislature  
Guam Legislature Temporary Building  
155 Hesler Street  
Agana, Guam 96910

REFER TO  
LEGISLATIVE SECRETARY

Dear Speaker:

Enclosed please find a copy of Substitute Bill No. 381 (LS), "AN ACT TO ESTABLISH THE UNIFORM DURABLE POWER OF ATTORNEY ACT OF GUAM, BY ADDING A NEW ARTICLE 5 TO CHAPTER 21 OF TITLE 18, GUAM CODE ANNOTATED", which I have signed into law today as **Public Law No. 23-91**.

This is a much needed addition to our present laws, as it allows a person to designate a person of his or her choice to act in his or her stead if or when the person becomes disabled or mentally incompetent. It allows a person to designate who they wish to take care of their affairs or their person in the case of disability or mental incompetency. It also allows others to rely on the this designated person as the attorney-in-fact under a durable power of attorney in cases when the principal has died without the knowledge of the attorney-in-fact. The attorney-in-fact still is accountable to guardians or other fiduciaries appointed by a court of law.

This allows persons to essentially appoint their own guardians before a disability or mental incompetency happens, so that actions can be taken on behalf of the person without the necessity of court action, or until appropriate court action can take place.

Very truly yours,

[Signature]  
Carl T. C. Gutierrez  
Governor of Guam

Attachment

231113

TWENTY-THIRD GUAM LEGISLATURE  
1996 (SECOND) Regular Session

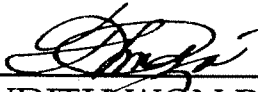
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 381 (LS), "AN ACT TO ESTABLISH THE UNIFORM DURABLE POWER OF ATTORNEY ACT OF GUAM, BY ADDING A NEW ARTICLE 5 TO CHAPTER 21 OF TITLE 18, GUAM CODE ANNOTATED," was on the 19th day of April, 1996, duly and regularly passed.



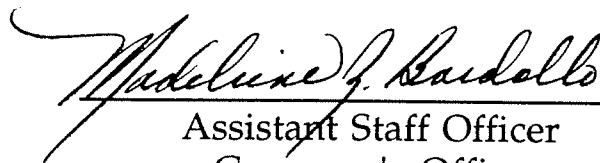
TED S. NELSON  
Acting Speaker

Attested:



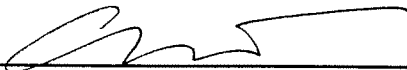
JUDITH WON PAT-BORJA  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 24 day of April,  
1996, at 10:00 o'clock P.M.



Assistant Staff Officer  
Governor's Office

APPROVED:



CARL T. C. GUTIERREZ  
Governor of Guam

Date: 5-1-96

Public Law No. 23-91

TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) Regular Session

Bill No. 381 (LS)

As amended by Committee on Judiciary,  
Criminal Justice and Environmental Affairs  
and further substituted and amended by the Author

Introduced by:

A. C. Blaz  
F. P. Camacho  
T. S. Nelson  
-----  
T. C. Ada  
J. P. Aguon  
E. Barrett-Anderson  
J. M. S. Brown  
M. C. Charfauros  
H. A. Cristobal  
M. Forbes  
A. C. Lamorena V  
C. Leon Guerrero  
L. Leon Guerrero  
S. L. Orsini  
V. C. Pangelinan  
D. Parkinson  
J. T. San Agustin  
A. L. G. Santos  
F. E. Santos  
A. R. Unpingco  
J. Won Pat-Borja

AN ACT TO ESTABLISH THE UNIFORM DURABLE  
POWER OF ATTORNEY ACT OF GUAM, BY ADDING A  
NEW ARTICLE 5 TO CHAPTER 21 OF TITLE 18, GUAM  
CODE ANNOTATED.

- 1        **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**  
2        **Section 1.** The legislature finds that Guam is in need of a uniform  
3 durable power of attorney act in order to assist persons interested in

1 establishing non-court regimes for the management of their affairs in the  
2 event that they later become incompetent or disabled. This act would alter  
3 the common law rule that a principal's death ends the authority of his agents  
4 and voids all acts occurring thereafter. A "durable power of attorney" would  
5 permit a principal to create an agency in another that continues in spite of the  
6 principal's later loss of capacity to contract. The only requirement would be  
7 that the instrument creating a durable power contain language showing that  
8 the principal intends the agency to remain effective in spite of his later  
9 incompetency.

10 **Section 2.** This Act shall be cited as "The Durable Power Of Attorney  
11 Act Of Guam."

12 **Section 3.** A new Article 5 is hereby created in Chapter 21 of Title 18,  
13 Guam Code Annotated, to read:

14 **"Article 5.**

15 **Durable Power of Attorney.**

16 **§21501. Definition**

17 **§21502. Durable Power of Attorney Not Affected By Disability**

18 **§21503. Relation Of Attorney-in-Fact to Court-Appointed Fiduciary**

19 **§21504. Power of Attorney Not Revoked Until Notice**

20 **§21505. Proof of Continuance of Durable and Other Powers**

21 **§21506. Uniformity of Application And Construction**

22 **§21507. Short Title**

23 **§21501. Definitions.** As used in this chapter.

24 a) Durable Power of Attorney -- A durable power of  
25 attorney is a power of attorney by which a principal designates  
26 another as the principal's attorney in fact in writing and the  
27 writing contains either the words: "This power of attorney shall

1 not be affected by the disability of the principal" OR "This power  
2 of attorney shall become effective upon the disability or incapacity  
3 of the principal" or similar words showing the intent of the  
4 principal that the authority conferred shall be exercisable  
5 notwithstanding the principal's subsequent disability or  
6 incapacity. A durable power of attorney may be either general,  
7 limited, or specific in nature as determined by the principal.

8 b) Disability or incapacity -- A person is deemed to be  
9 disabled or incapacitated, when by reason of age, disease,  
10 weakness of mind or other cause, he is unable to properly manage  
11 and take care of himself or his property, without assistance, and  
12 lacks the legal ability to act.

13 c) Competent -- A competent person is one having sufficient  
14 ability or authority, and possessing the requisite natural or legal  
15 qualifications to act.

16 **§21502. Durable power of attorney not affected by disability.** All  
17 acts done by an attorney-in-fact pursuant to a durable power of  
18 attorney during any period of disability or incapacity of the principal  
19 have the same effect and inure to the benefit of and bind the principal  
20 and principal's successors in interest as if the principal were competent  
21 and not disabled.

22 **§21503. Relation of attorney-in-fact to court appointed**  
23 **fiduciary.** (a) If, following execution of a durable power of attorney, a  
24 court of the principal's domicile appoints a guardian of the property, or  
25 other fiduciary charged with the management of all of the principal's  
26 property except specified exclusions, the attorney-in-fact is accountable  
27 to the fiduciary as well as to the principal. The fiduciary has the power

1 to revoke or amend the power of attorney that the principal would have  
2 had if the principal were not disabled or incapacitated.

3 (b) A principal may nominate, by a durable power of attorney, the  
4 guardian of the principal's property, or guardian of the principal's  
5 person for consideration by the court if protective proceedings for the  
6 principal's person or property are thereafter commenced. The court  
7 shall make its appointment in accordance with the principal's most  
8 recent nomination in a durable power of attorney except for good cause  
9 or disqualification .

10 **§21504. Power of attorney not revoked until notice.** The death of  
11 a principal who has executed a written durable power of attorney, does  
12 not revoke or terminate the agency as to the attorney-in-fact or other  
13 person, who, without actual knowledge of the death of the principal,  
14 acts in good faith under the power. Any action so taken, unless  
15 otherwise invalid or unenforceable, binds successors in interest of the  
16 principal.

17 **§21505. Proof of continuance of durable and other powers.** As to  
18 acts undertaken in good faith reliance thereon, an affidavit executed by  
19 the attorney-in-fact under a durable power of attorney, stating that the  
20 attorney-in-fact did not have, at the time of exercise of the power,  
21 actual knowledge of the termination of the power by revocation or the  
22 principal's death, is conclusive proof of the continuation of the power at  
23 that time. If the exercise of the power of attorney requires execution  
24 and delivery of any instrument that is recordable, the affidavit when  
25 authenticated for record is likewise recordable. This section does not  
26 affect any provision in a power of attorney for its termination by

1 expiration of time or occurrence of an event other than express  
2 revocation or a change in the principal's capacity.

3           **§21506. Uniformity of Application and Construction.** This article  
4 shall be applied and construed to effectuate its general purpose to make  
5 uniform the law with respect to the subject of this article among states  
6 enacting it.

7           **§21507. Short Title.** This article may be cited as the "Uniform  
8 Durable Power of Attorney Act of Guam."

Date: 4/19/96

VOTING SHEET

Bill No. 381

Resolution No. \_\_\_\_\_

Question: \_\_\_\_\_

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
BARRETT-ANDERSON, Elizabeth	✓			
BLAZ, Anthony C.	✓			
BROWN, Joanne S.	✓			
CAMACHO, Felix P.	✓			
CHARFAUROS, Mark C	✓			
CRISTOBAL, Hope A.	✓			
FORBES, - MARK	✓			
LAMORENA, Alberto C., V	✓			
LEON GUERRERO, Carlotta	✓			
LEON GUERRERO, Lou	✓			
NELSON, Ted S.	✓			
ORSINI, Sonny L.	✓			
PANGELINAN, Vicente C	✓			
PARKINSON, Don	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Angel L. G.	✓			
SANTOS, Francis E.	✓			
UNPINGCO, Antonio R.	✓			
WONPAT-BORJA, Judith	✓			

TOTAL

21   0   0   0

CERTIFIED TRUE AND CORRECT:

\_\_\_\_\_  
Recording Secretary



23-91

**Senator Mark C. Charfauros**  
**Chairman**  
**Committee on Judiciary, Criminal Justice, and Environmental Affairs**  
**Twenty-Third Guam Legislature**

Ada's Commercial and Professional Center  
138 East Marine Drive, Suite 101C-Annex  
Agana, Guam 96910

Tel: (671) 472-3342/3/5  
Fax: (671) 472-3440  
E-Mail: markchar@uog9.uog.edu

February 12, 1996

SPEAKER DON PARKINSON  
Twenty-Third Guam Legislature  
155 Hesler St.  
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Judiciary, Criminal Justice and Environmental Affairs to which was referred **Bill No. 381**, wishes to report back to the Legislature with its recommendation to pass **Bill No. 381** as amended by the Committee on Judiciary, Criminal Justice and Environmental Affairs "AN ACT TO CREATE THE UNIFORM DURABLE POWER OF ATTORNEY ACT TO GUAM."

The voting record is as follows:

TO PASS	<u>9</u>
NOT TO PASS	<u>0</u>
ABSTAIN	<u>0</u>
TO PLACE IN INACTIVE FILE	<u>0</u>

Copies of the Committee Report and other pertinent documents are attached.

Your attention to this matter is greatly appreciated.

  
MARK C. CHARFAUROS

Attachments.

# Senator Mark C. Charfauros

Chairman

## Committee on Judiciary, Criminal Justice, and Environmental Affairs Twenty-Third Guam Legislature

Ada's Commercial and Professional Center  
138 East Marine Drive, Suite 101C-Annex  
Agana, Guam 96910

Tel: (671) 472-3342/3/5  
Fax: (671) 472-3440  
E-Mail: markchar@uog9.uog.edu

February 5, 1996

### MEMORANDUM

TO: Members

FROM: Chairman

SUBJECT: Committee Report - **Bill No. 381** "AN ACT TO CREATE THE UNIFORM DURABLE POWER OF ATTORNEY ACT TO GUAM."

Transmitted herewith for your information and action is the Committee on Judiciary, Criminal Justice and Environmental Affairs' Report on the subject Bill.

The narrative report is accompanied by the following:

1. Original Bill 381;
2. Bill 381, as amended by the Committee on Judiciary, Criminal Justice and Environmental Affairs;
3. Committee Voting Sheet;
4. Testimony and Sign-in Sheet
5. Public Hearing Notice.

Should you have any questions on the narrative report or the accompanying documents, I would be most happy to answer any of them.

Please take the appropriate action on the attached voting sheet and return the documents to my office for transmittal to the other members.

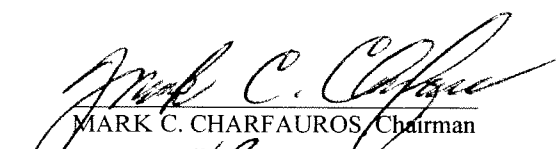
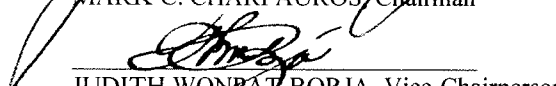
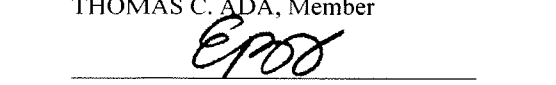

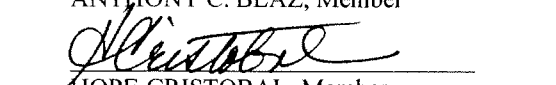
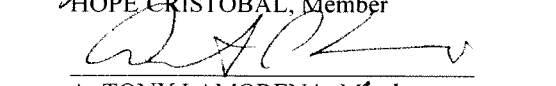

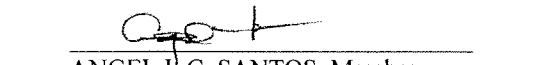
Your attention and cooperation in this matter is greatly appreciated.

Attachments.

  
MARK C. CHARFAUROS

**COMMITTEE ON JUDICIARY, CRIMINAL JUSTICE AND ENVIRONMENTAL AFFAIRS**  
**23rd Guam Legislature**  
**VOTING RECORD**

**Bill No. 381** as amended by the Committee on Judiciary, Criminal Justice and Environmental Affairs "AN ACT TO CREATE THE UNIFORM DURABLE POWER OF ATTORNEY ACT TO GUAM."

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>INACTIVE FILE</u>
 MARK C. CHARFAUROS, Chairman	✓	—	—	—
 JUDITH WONPAT-BORJA, Vice-Chairperson	✓	—	—	—
 THOMAS C. ADA, Member	✓	—	—	—
 ELIZABETH BARRETT-ANDERSON, Member	✓	—	—	—
 JOANNE BROWN, Member	✓	—	—	—
ANTHONY C. BLAZ, Member	—	—	—	—
 HOPE CRISTOBAL, Member	✓	—	—	—
 A. TONY LAMORENA, Member	✓	—	—	—
LOU LEON GUERRERO, Member	—	—	—	—
 TED S. NELSON, Member	✓	—	—	—
VICENTE C. PANGELINAN, Member	—	—	—	—
 ANGEL L.G. SANTOS, Member	✓	—	—	—
DON PARKINSON, Ex-Officio Member	—	—	—	—

COMMITTEE ON JUDICIARY, CRIMINAL  
JUSTICE AND ENVIRONMENTAL  
AFFAIRS

*Twenty-Third Guam Legislature*

COMMITTEE REPORT

on

Bill No. 381

as amended by the Committee on Judiciary, Criminal Justice and Environmental Affairs  
“AN ACT TO CREATE THE UNIFORM DURABLE POWER OF ATTORNEY ACT TO  
GUAM.”

December 15, 1995

## I. OVERVIEW

The Committee on Judiciary, Criminal Justice and Environmental Affairs scheduled a public hearing on December 13, 1995 at 9:30 a.m. at the Legislative Public Hearing Room. Public notice was announced on the December 15, 1995 issue of the PDN. Members present were:

Senator Mark C. Charfauros, Chairman  
Senator Ben Pangelinan  
Senator Ted Nelson  
Senator Judith WonPat-Borja  
Senator Hope Cristobal  
Senator Angel L.G. Santos  
Senator Tom Ada  
Senator Lou Leon Guerrero  
Senator Alberto Lamorena  
Senator Joanne S. Brown

Appearing before the Committee to testify on the bill were:

Gus F. Diaz, Acting Attorney General, Department of Law, **written.**  
Sinforoso M. Tolentino, Attorney, Carlsmith Ball Wichman Case & Ichiki,  
**written.**

## **II. SUMMARY OF TESTIMONY**

Gus F. Diaz, Acting Attorney General, Department of Law, testified in support of Bill 381, **written, attached.**

Sinforoso M. Tolentino, Attorney, Carlsmith Ball Wichman Case & Ichiki, testified in support of Bill 381, **written, attached.**

### **III. FINDING AND RECOMMENDATION**

The Committee finds that Guam would benefit from a uniform durable power of attorney act. The Committee finds that people should have the ability to establish non-court regimes for the management of their affairs in the event that they later become incompetent or disabled. The Committee further finds that Guam is need of a durable health care power of attorney, which would address the important matters concerning medical care. The Committee finds that Bill 381 would provide for such necessities by creating "The Durable Power of Attorney Act of Guam."

Accordingly, the Committee on Judiciary, Criminal Justice and Environmental Affairs, to which was referred **Bill No. 381**, does hereby submit its findings and recommendation to the Twenty-Third Guam Legislature **TO DO PASS Bill No. 381** as amended by the Committee on Judiciary, Criminal Justice and Environmental Affairs "AN ACT TO CREATE THE UNIFORM DURABLE POWER OF ATTORNEY ACT TO GUAM."



# COMMITTEE ON RULES

Twenty-Third Guam Legislature  
155 Hesler St., Agana, Guam 96910

October 2, 1995

## MEMORANDUM

**TO:** Chairman, Committee on Judiciary, Criminal Justice  
and Environmental Affairs

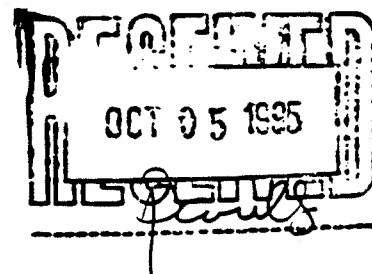
**FROM:** Chairman, Committee on Rules

**SUBJECT:** Referral - Bill No. 381

The above Bill is referred to your Committee as the principal committee. Please note that the referral is subject to ratification by the Committee on Rules at its next meeting. It is recommended you schedule a public hearing at your earliest convenience.

  
**SONNY LUJAN ORSINI**

Attachment:





**TWENTY-THIRD GUAM LEGISLATURE**  
**1995 (FIRST) Regular Session**

Bill No. 381  
Introduced by:

A.C. Blaz 

F.P. Camacho 

**AN ACT TO CREATE THE UNIFORM DURABLE POWER OF ATTORNEY  
ACT OF GUAM.**

1 BE IT ENACTED ON BY THE PEOPLE OF THE TERRITORY OF GUAM:

2  
3 **Section 1.** The legislature finds that Guam is in need of a uniform durable power of attorney act  
4 in order to assist persons interested in establishing non-court regimes for the management of their  
5 affairs in the event that they later become incompetent or disabled. This act would alter the  
6 common law rule that a principal's death ends the authority of his agents and voids all acts  
7 occurring thereafter. A "durable power of attorney" would permit a principal to create an agency  
8 in another that continues in spite of the principal's later loss of capacity to contract. The only  
9 requirement would be that the instrument creating a durable power contain language showing that  
10 the principal intends the agency to remain effective in spite of his later incompetency.

11 The legislature also finds that a durable health care power of attorney by which a principal  
12 can designate another as attorney-in-fact to make decisions on the principal's behalf in matters  
13 concerning the principal's medical or health treatment and care is needed here on Guam. Thus, an  
14 attorney-in-fact designated under a durable health care power of attorney may be authorized to  
15 give or withhold consents or approvals relating to any medical care of or to the principal by a  
16 licensed or professional certified person or institution engaged in the practice of, or providing, a

1 healing art, including life-sustaining treatment when the principal is in a terminal condition or a  
2 persistent vegetative state.

3  
4 **Section 2. This Act shall be cited as "The Durable Power Of Attorney Act Of Guam."**

5  
6 **Section 3. A new Article 5 is hereby created in Chapter 21 of Title 18 Guam Code**

7 **Annotated to read:**

8 **Article 5. Durable Power of Attorney**

9 **Section:**

10 **21501. Definition**

11 **21502. Durable Power of Attorney Not Affected By Disability**

12 **21503. Durable Power of Attorney For Health Care Decisions**

13 **21504. Durable Power of Attorney Sample Form**

14 **21505. Relation Of Attorney-in-Fact to Court-Appointed Fiduciary**

15 **21506. Power of Attorney Not Revoked Until Notice**

16 **21507. Proof of Continuance of Durable and Other Powers**

17 **21508. Uniformity of Application And Construction**

18 **21509. Short Title**

19  
20 **21501. Definition.** A durable power of attorney is a power of attorney by which a principal  
21 designates another as the principal's attorney in fact in writing and the writing contains the words  
22 "This power of attorney shall not be affected by the disability of the principal," "This power of

1 attorney shall become effective upon the disability or incapacity of the principal," or similar words  
2 showing the intent of the principal that the authority conferred shall be exercisable  
3 notwithstanding the principal's subsequent disability or incapacity.

4  
5  
6 **21502. Durable power of attorney not affected by disability.** All acts done by an attorney-in-  
7 fact pursuant to a durable power of attorney during any period of disability or incapacity of the  
8 principal have the same effect and inure to the benefit of and bind the principal and principal's  
9 successors in interest as if the principal were competent and not disabled.

10  
11 **21503. Durable power of attorney for health care decisions.**

12 (a) A competent person who has attained the age of majority may execute a durable power of  
13 attorney authorizing an agent to make any lawful health care decisions that could have been made  
14 by the principal at the time of election.

15 (b) The durable power of attorney made pursuant to this section:

16 (1) Shall be writing;

17 (2) Shall be signed by the principal, or by another person in the principal's presence;

18 (3) Shall be dated;

19 (4) Shall be signed in the presence of two or more witnesses who:

20 (A) Are at least eighteen years of age;

21 (B) Are not related to the principal by blood, marriage, or adoption; and

22 (C) Are not, at the time that the durable power of attorney is executed, attending

1 Physicians, employees, of an attending physician, or employees of a health care facility  
2 in which the principal is a patient; and

3 (c) a durable power of attorney for health care decisions shall be presumed not to grant  
4 authority to decide that the principal's life should not be prolonged through surgery, resuscitation,  
5 life sustaining medicine or procedures or the provision of nutrition or hydration, unless such  
6 authority is explicitly stated.

7 (d) A durable power of attorney for health care decisions shall only be effective during the  
8 period of incapacity of the principal as determined by a licensed physician.

9 (e) No person shall serve as both the treating physician <sup>and</sup> an attorney-in-fact for any principal  
10 for matters relating to health care decisions.

11  
12 **Section 21504. Durable Power of Attorney Sample Form.**

13 **DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS**

14 **A. Statement of Principal**

15 Declaration made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year). I \_\_\_\_\_, being  
16 of sound mind, and understanding that I have the right to request that my life be prolonged to the  
17 greatest extent possible, willfully and authorize as set forth below and do hereby declare:

18 My instructions shall prevail even if they conflict with the desires of my relatives, hospital  
19 policies, or the principals of those providing my care.

20  
21 **CHECKLIST**

22 I have considered the extent of the authority I want my agent to have with respect to health care

1 decisions if I should develop a terminal condition or permanent loss of the ability to communicate  
2 concerning medical treatment decision with no reasonable chance of regaining this ability. I want  
3 my agent to request care including medicine and procedures, for the purpose of providing comfort  
4 and pain relief. I have also considered whether my agent should have the authority to decide  
5 whether or not my life should be prolonged, and have selected one of the following provisions by  
6 putting a mark in the space provided:

7 ( ) My agent is authorized to decide whether my life should be prolonged through  
8 surgery, resuscitation, life sustaining medicine or procedures, and tube or other  
9 artificial feeding or provisions of fluids by a tube.

10 ( ) My agent is authorized to decide whether my life should be prolonged through tube  
11 or other artificial feeding or provisions of fluids by a tube.

12 If neither provision is selected, it shall be presumed that my agent shall have only the  
13 power to request care, including medicine and procedures, for the purpose of providing comfort  
14 and pain relief.

15 This durable power of attorney shall control in all circumstances. I understand that my  
16 physician may not act as my agent under this durable power of attorney.

17 I understand the full meaning of this durable power of attorney and I am emotionally  
18 and mentally competent to make this declaration.

19 Signed \_\_\_\_\_

20 Address \_\_\_\_\_

21 \_\_\_\_\_  
22 \_\_\_\_\_

1 **B. Statement of Witnesses**

2 I am at least eighteen years of age and  
3 not related to the principal by blood, marriage, or  
4 adoption; and

5 not currently the attending physician, an employee of the attending physician, or an employee  
6 of the health care facility in which the principal is a patient. The principal is personally known to  
7 me and I believe the principal to be of sound mind.

8 Witness \_\_\_\_\_

9 Address \_\_\_\_\_

10 Witness \_\_\_\_\_

11 Address \_\_\_\_\_

12  
13 **C. Statement of Agent**

14 I am at least eighteen years of age, I accept the appointment under this durable power of  
15 attorney as the attorney-in fact ("agent") of the principal, and I am not the physician of the  
16 principal. The principal is personally known to me and I believe the principal to be of sound mind.

17  
18 Witness \_\_\_\_\_

19 Address \_\_\_\_\_

20 Witness \_\_\_\_\_

21 Address \_\_\_\_\_

1 D. Notarization

2 Subscribed, sworn to and acknowledged before me by \_\_\_\_\_, the  
3 principal and subscribed and sworn to before me by \_\_\_\_\_ and  
4 \_\_\_\_\_, witnessed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

5 (SEAL)

Signed \_\_\_\_\_

6 (Official capacity of officer)  
7

8 **21505. Relation of attorney -in-fact to court appointed fiduciary.**

9 (a) If, following execution of a durable power of attorney, a court of the principal's  
10 domicile appoints a guardian of the property, or other fiduciary charged with the management of  
11 all of the principal's property except specified exclusions, the attorney-in-fact is accountable to  
12 the fiduciary as well as to the principal. The fiduciary has the power to revoke or amend the  
13 power of attorney that the principal would have had if the principal were not disabled or  
14 incapacitated.

15 (b) A principal may nominate, by a durable power of attorney, the guardian of the  
16 principal's property, or guardian of the principal's person for consideration by the court if  
17 protective proceedings for the principal's person or property are thereafter commenced. The  
18 court shall make its appointment in accordance with the principal's most recent nomination in a  
19 durable power of attorney except for good cause or disqualification .  
20

21 **21506. Power of attorney not revoked until notice.**

22 (a) The death of a principal who has executed a written power of attorney, durable or

1 otherwise, does not revoke or terminate the agency as to the attorney-in-fact or other person,  
2 who, without actual knowledge of the death of the principal, acts in good faith under the power.  
3 Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the  
4 principal.

5 (b) The disability or incapacity of a principal who has previously executed a written power  
6 of attorney that is not a durable power does not revoke or terminate the agency as to the attorney  
7 in fact or other person, who, without actual knowledge of the action so taken, unless otherwise  
8 invalid or unenforceable, binds the principal and the principal's successors in interest.

9  
10 **21507. Proof of continuance of durable and other powers.** As to acts undertaken in good  
11 faith reliance thereon, an affidavit executed by the attorney-in-fact under a power of attorney,  
12 durable or otherwise, stating that the attorney-in-fact did not have at the time of exercise of the  
13 power actual knowledge of the termination of the power by revocation or the principal's death,  
14 disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power  
15 at that time. If the exercise of the power of attorney requires execution and delivery of any  
16 instrument that is recordable, the affidavit when authenticated for record is likewise recordable.  
17 This section does not affect any provision in a power of attorney for its termination by expiration  
18 of time or occurrence of an event other than express revocation or a change in the principal's  
19 capacity.

20  
21 **Section 21508. Uniformity of Application and Construction.** This article shall be applied  
22 and construed to effectuate its general purpose to make uniform the law with respect to the



1 subject of this article among states enacting it.

2

3 **Section 21509. Short Title.** This article may be cited as the "Uniform Durable Power of  
4 Attorney Act of Guam."

5

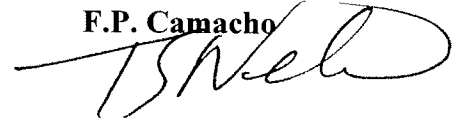
**TWENTY-THIRD GUAM LEGISLATURE**  
**1995 (FIRST) Regular Session**

**Bill No. 381**  
as amended by the Committee on  
Judiciary, Criminal Justice and  
Environmental Affairs

**Introduced by:**

**A.C. Blaz**

**F.P. Camacho**



**AN ACT TO CREATE THE UNIFORM DURABLE POWER OF ATTORNEY  
ACT OF GUAM.**

1 BE IT ENACTED ON BY THE PEOPLE OF THE TERRITORY OF GUAM:  
2

3 **Section 1.** The legislature finds that Guam is in need of a uniform durable power of attorney act  
4 in order to assist persons interested in establishing non-court regimes for the management of their  
5 affairs in the event that they later become incompetent or disabled. This act would alter the  
6 common law rule that a principal's death ends the authority of his agents and voids all acts  
7 occurring thereafter. A "durable power of attorney" would permit a principal to create an agency  
8 in another that continues in spite of the principal's later loss of capacity to contract. The only  
9 requirement would be that the instrument creating a durable power contain language showing  
10 that the principal intends the agency to remain effective in spite of his later incompetency.

11 The legislature also finds that a durable health care power of attorney by which a  
12 principal can designate another as attorney-in-fact to make decisions on the principal's behalf in  
13 matters concerning the principal's medical or health treatment and care is needed here on Guam.  
14 Thus, an attorney-in-fact designated under a durable health care power of attorney may be  
15 authorized to give or withhold consents or approvals relating to any medical care of or to the

1 principal by a licensed or professional certified person or institution engaged in the practice of, or  
2 providing, a healing art, including life-sustaining treatment when the principal is in a terminal  
3 condition or a persistent vegetative state.

4 **Section 2.** This Act shall be cited as “The Durable Power Of Attorney Act Of Guam.”

5 **Section 3. A new Article 5 is hereby created in Chapter 21 of Title 18 Guam Code**

6 **Annotated to read:**

7 Article 5. Durable Power of Attorney

8 Section:

9 21501. Definition

10 21502. Durable Power of Attorney Not Affected By Disability

11 21503. Durable Power of Attorney For Health Care Decisions

12 21504. Durable Power of Attorney Sample Form

13 21505. Relation Of Attorney-in-Fact to Court-Appointed Fiduciary

14 21506. Power of Attorney Not Revoked Until Notice

15 21507. Proof of Continuance of Durable and Other Powers

16 21508. Uniformity of Application And Construction

17 21509. Short Title

18 **Section 21501. Definition.** As used in this chapter:

19 A “**durable power of attorney**” is a power of attorney by which a principal designates another  
20 as the principal’s attorney in fact in writing and the writing contains the words “This power of  
21 attorney shall not be affected by the disability of the principal,” “This power of attorney shall  
22 become effective upon the disability or incapacity of the principal,” or similar words showing the

1 intent of the principal that the authority conferred shall be exercisable notwithstanding the  
2 principal's subsequent disability or incapacity.

3 “Incompetent” means any person, whether insane or not, who by reason of old age, disease, weakness of  
4 mind or other cause, is unable, unassisted, properly to manage and take care of himself or his property, and  
5 by reason thereof is likely to be deceived or imposed upon by artful or designing persons.

6 **Section 21502. Durable power of attorney not affected by disability.** All acts done by an  
7 attorney-in-fact pursuant to a durable power of attorney during any period of disability or  
8 incapacity of the principal have the same effect and inure to the benefit of and bind the principal  
9 and principal's successors in interest as if the principal were competent and not disabled.

10 **Section 21503. Durable power of attorney for health care decisions.**

11 (a) A competent person who has attained the age of majority may execute a durable power of  
12 attorney authorizing an agent to make any lawful health care decisions that could have been made  
13 by the principal at the time of election.

14 (b) The durable power of attorney made pursuant to this section:

15 (1) Shall be writing;

16 (2) Shall be signed by the principal, or by another person in the principal's presence;

17 (3) Shall be dated;

18 (4) Shall be signed in the presence of two or more witnesses who:

19 (A) Are at least eighteen years of age;

20 (B) Are not related to the principal by blood, marriage, or adoption; and

21 (C) Are not, at the time that the durable power of attorney is executed, attending

22 Physicians, employees, of an attending physician, or employees of a health care

1 facility in which the principal is a patient; and

2 (c) a durable power of attorney for health care decisions shall be presumed not to grant  
3 authority to decide that the principal's life should not be prolonged through surgery,  
4 resuscitation, life sustaining medicine or procedures or the provision of nutrition or hydration,  
5 unless such authority is explicitly stated.

6 (d) A durable power of attorney for health care decisions shall only be effective during  
7 the period of incapacity of the principal as determined by a licensed physician.

8 (e) No person shall serve as both the treating physician and attorney-in-fact for any  
9 principal for matters relating to health care decisions.

10 (f) A durable power of attorney may be signed in the presence of and authenticated by a  
11 notary public.

12 **Section 21504. Durable Power of Attorney Sample Form.**

13 DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

14 A. Statement of Principal

15 Declaration made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year). I \_\_\_\_\_, being  
16 of sound mind, and understanding that I have the right to request that my life be prolonged to the  
17 greatest extent possible, willfully and authorize as set forth below and do hereby declare:

18 My instructions shall prevail even if they conflict with the desires of my relatives, hospital  
19 policies, or the principals of those providing my care.

20  
21 CHECKLIST

22 I have considered the extent of the authority I want my agent to have with respect to health care



1 B. Statement of Witnesses

2 I am at least eighteen years of age and  
3 not related to the principal by blood, marriage, or  
4 adoption; and  
5 not currently the attending physician, an employee of the attending physician, or an employee  
6 of the health care facility in which the principal is a patient. The principal is personally known to  
7 me and I believe the principal to be of sound mind.

8 Witness \_\_\_\_\_

9 Address \_\_\_\_\_

10 Witness \_\_\_\_\_

11 Address \_\_\_\_\_

12  
13 C. Statement of Agent

14 I am at least eighteen years of age, I accept the appointment under this durable power of  
15 attorney as the attorney-in fact (“agent”) of the principal, and I am not the physician of the  
16 principal. The principal is personally known to me and I believe the principal to be of sound  
17 mind.

18  
19 Witness \_\_\_\_\_

20 Address \_\_\_\_\_

21 Witness \_\_\_\_\_

22 Address \_\_\_\_\_

1 D. Notarization

2 Subscribed, sworn to and acknowledged before me by \_\_\_\_\_, the  
3 principal and subscribed and sworn to before me by \_\_\_\_\_ and  
4 \_\_\_\_\_, witnessed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

5 (SEAL) Signed \_\_\_\_\_

6 (Official capacity of officer)

7 **Section 21505. Relation of attorney -in-fact to court appointed fiduciary.**

8 (a) If, following execution of a durable power of attorney, a court of the principal's  
9 domicile appoints a guardian of the property, or other fiduciary charged with the management of  
10 all of the principal's property except specified exclusions, the attorney-in-fact is accountable to  
11 the fiduciary as well as to the principal. The fiduciary has the power to revoke or amend the  
12 power of attorney that the principal would have had if the principal were not disabled or  
13 incapacitated.

14 (b) A principal may nominate, by a durable power of attorney, the guardian of the  
15 principal's property, or guardian of the principal's person for consideration by the court if  
16 protective proceedings for the principal's person or property are thereafter commenced. The  
17 court shall make its appointment in accordance with the principal's most recent nomination in a  
18 durable power of attorney except for good cause or disqualification .

19 **Section 21506. Power of attorney not revoked until notice.**

20 (a) The death of a principal who has executed a written power of attorney, durable or  
21 otherwise, does not revoke or terminate the agency as to the attorney-in-fact or other person,  
22 who, without actual knowledge of the death of the principal, acts in good faith under the power.



1 Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the  
2 principal.

3 (b) The disability or incapacity of a principal who has previously executed a written power  
4 of attorney that is not a durable power does not revoke or terminate the agency as to the attorney  
5 in fact or other person, who, without actual knowledge of the action so taken, unless otherwise  
6 invalid or unenforceable, binds the principal and the principal's successors in interest.

7 **Section 21507. Proof of continuance of durable and other powers.** As to acts undertaken in  
8 good faith reliance thereon, an affidavit executed by the attorney-in-fact under a power of  
9 attorney, durable or otherwise, stating that the attorney-in-fact did not have at the time of exercise  
10 of the power actual knowledge of the termination of the power by revocation or the principal's  
11 death, disability, or incapacity is conclusive proof of the non-revocation or non-termination of  
12 the power at that time. If the exercise of the power of attorney requires execution and delivery of  
13 any instrument that is recordable, the affidavit when authenticated for record is likewise  
14 recordable. This section does not affect any provision in a power of attorney for its termination  
15 by expiration of time or occurrence of an event other than express revocation or a change in the  
16 principal's capacity.

17 **Section 21508. Uniformity of Application and Construction.** This article shall be applied  
18 and construed to effectuate its general purpose to make uniform the law with respect to the  
19 subject of this article among states enacting it.

20 **Section 21509. Short Title.** This article may be cited as the "Uniform Durable Power of  
21 Attorney Act of Guam."



Calvin E. Holloway, Sr.  
*Attorney General*

Gus F. Diaz  
*Chief Deputy Attorney General*

Office of the Attorney General  
Territory of Guam

Phone: (671) 475-3324  
Telefax: (671) 472-2493

December 15, 1995

**HAND DELIVER**

The Honorable Mark C. Charfauros  
Chairman, Committee on Judiciary & Criminal Justice  
and Environmental Affairs  
Twenty-Third Guam Legislature  
Ada's Commercial & Professional Center  
138 East Marine Drive, Suite 101C-Annex  
Agana, Guam 96910

Re: Bill Nos. 274, 302, 310, 381, 394, 398, 420,  
and Resolution No. 340

Dear Senator Charfauros:

Hafa Adai!

In response to your letter dated December 7, 1995, which was received by our office on December 11, 1995, I hope the following written testimony will be helpful to your committee in connection with the bills and resolution cited above.

**COMMENT: BILL NO. 274**

This bill would create a second Guam Police Department Reserve composed of former regular officers who have retired or left the department and hold other jobs. It would also pay the volunteers at the same rate as regular active duty officers. This could cause those employees who are currently drawing retirement to run afoul of the requirement in 4 G.C.A. 8121 which requires suspension of their retirement payments if they return to work as an employee for the government.

**COMMENT: BILL NO. 302**



Commonwealth Now!

Letter to the Honorable Mark C. Charfauros  
Senator, Twenty-Third Guam Legislature  
December 15, 1995  
Page 2

This bill is apparently a reaction to the controversy over the operation of the Pago Bay Marine Club. The issue is now moot as the Club is no longer in operation, and no other group will be able to get a permit to operate in Pago Bay since the Water Recreational Use Management Plan (WRUMP) has been drafted for that area and prohibits the use of motorized watercraft in that area as well as all along the east side of the island.

### **COMMENT: BILL NO. 310**

This bill would restore an earlier requirement for a regular re-registration of firearms. Basically it will restore prior legislation. However, there is a sentence on page 3 at lines 6-7 that should be removed. The requirement for the ID card should be placed in another section entirely. At lines 6-7, the bill removes the word "permanent" preceding "firearms identification card" and would leave 10 G.C.A. §60107 as being the only place in the code which indicates the length of time for which a firearms identification card is valid--3 years. It would be preferable to delete the entire sentence from this section. It does not need to be placed in another section as §60106 already requires firearms identification cards if one possesses, etc., a firearm.

The second section creates an amnesty period for those who have unregistered firearms to register them. This is a good idea that may result in the registration of illegal firearms..

### **COMMENT: BILL NO. 381**

We are of the opinion that the bill is a good idea for Guam because it would provide a relatively easy and inexpensive way to invest someone with the power to act on another person's behalf in making important, even crucial, decisions should that other person later become unable to act on his or her own behalf because of physical disability or mental incapacity.

To lessen the chances for overreaching by relatives or other putative agents or any kind of hanky panky as to when a principal is "disabled" or "incompetent", the bill perhaps should contain definitions for those terms. Chapter 38 of Guam's Probate Code, 15 GCA, defines "incompetent person", "incompetent" and "mentally incompetent" to mean "any person, whether insane or not, who by reason of old age, disease, weakness of mind or other cause, is unable, unassisted, properly to manage and take care of himself or his property, and by reason thereof is likely to be deceived or imposed upon by artful or designing persons". At page 5 of the bill, Section 21504, which sets out the sample form for a durable power of attorney for health care decisions, uses the test of "if I should develop a terminal condition or permanent loss of the ability to communicate concerning medical treatment decision with no reasonable chance of

Letter to the Honorable Mark C. Charfauros  
Senator, Twenty-Third Guam Legislature  
December 15, 1995  
Page 3

regaining this ability." Presumably, a treating physician would make that determination, but the bill doesn't spell that out. The bill impliedly contemplates the objective opinion of a qualified medical authority as to the physical condition or capacity of the principal in question.

Although Section 1 of the bill covers both medical and non-medical situations, the later focus of the measure is mostly upon the health care kinds of decisions. The sample form, for example, is for only those kinds of decisions. A sample form for the contractual or non-medical setting might be advisable.

On page 3 of the bill, at line 17, the sentence is incomplete. The missing last word probably is "presence".

Section 21503, detailing the requirements for a durable power of attorney, requires that it be signed in the presence of two or more witnesses. The bill should provide, in the alternative, that the power of attorney may be signed in the presence of and authenticated by a notary public. (Guam has an ample supply of notaries. These notaries would appreciate the recognition of their authority and ability to perform this kind of transaction under our notary laws!)

At page 4 of the bill, on line 9, after "physician" the word "an" should be corrected to read "and".

A further note on the terms "disability" and "incapacity": A footnote to Am Jur Section 58 discussing the Uniform Durable Power of Attorney Act S.2, cites the Commissioners' Comment that those terms "embrace legal incompetence as well as less grievous disadvantages". Evidently the drafters of the uniform act eschewed any statutory definition of the terms in favor of a liberal interpretation of their meaning. We believe the term "disability" suggests more of a lack of physical capability to perform an act, whereas "incapacity" refers to incompetence or a lack of legal ability to act. Actually, as a matter of legal interpretation, the two terms are practically interchangeable, depending upon the context in which they are used.

### **COMMENT: Bill 394**

Bill No. 394 could jeopardize federal funding of our Family Division's child support and paternity program inasmuch as it would mandate the Department of Law to perform a function (the temporary restraining orders) which is not part of the child support program. Guam's program is, in most respects, 66% federally funded and, in some respects (including paternity establishment), 90% federally funded.

When our department enters an ongoing marriage dissolution case, we are strictly limited to

Letter to the Honorable Mark C. Charfauros  
Senator, Twenty-Third Guam Legislature  
December 15, 1995  
Page 4

handling only the child support aspect. Many of our cases involve couples not married to each other; thus, there is no legal relationship by which the Bill's provisions concerning transferring assets should be applied to them. The custodian of the children is often a relative other than a parent, and such a provision would be even less fair. Other provisions of the Bill would involve us in custody issues. We have many cases where we are simply seeking to recover past welfare paid to a parent who now resides with the other parent and the children - this Bill forces them to separate. Other cases involve unmarried couples who get along fine, without rancor, and we properly file a case for child support because the custodial parent receives welfare; this bill could create conflicts where none otherwise existed and may disturb the parental relationship with their children.

Last, under Public Law 22-99, section 3, the Department of Law does not represent either parent in a child support (or paternity) action. We represent the Territory (e.g., welfare reimbursement) and/or the best interests of the children as to meeting Guam's Child Support Guidelines. The Bill would make us act as an attorney for one parent or party, so in many of our cases where the Department of Public Health and Social Services is the plaintiff, that department would be under the restraining order.

We urge you to remove references to paternity and child support cases and feel it is inappropriate to comment on the Bill otherwise since marital dissolutions are not the province of the Department of Law. Certainly, this department is in full support of legislation to deal with all forms of domestic violence.

#### **COMMENT: Bill 398**

Bill No. 398 includes language from a family violence statute which has already encountered problems with at least one Judge of the Guam Superior Court for being unconstitutionally vague. As an example of such vagueness, the phrase, "physically abuses," should be defined. To my knowledge, our department was not asked for input on this statute, and we would be happy to assist in drafting such an important statute.

#### **COMMENT: Bill 420**

Earlier this month, Public Law 23-64 was enacted. As the following analysis indicates, this bill is, in most respects, already contained within P.L. 23-64.

Section 51103 (b) of P.L. 23-64 states that public sanitary landfills, hardfills, etc., as currently exist or may be established will be operated and maintained by the Department of Public Works (DPW). It also provides that "The Director of Public Works, with the approval of the

Letter to the Honorable Mark C. Charfauros  
Senator, Twenty-Third Guam Legislature  
December 15, 1995  
Page 5

Governor, may execute a contract after public bid with a private party or firm for the collection and disposal of any solid or bulky waste . . . including the operation of any sanitary landfill, hardfill, transfer stations. . . which is publicly owned . . ." This seems to match the intent and vision of Bill 420.

P.L. 23-64 also authorizes DPW to negotiate for and approve contracts for recycling and composting at the Ordot Landfill or at any other site approved by GEPA, as does Bill 420.

Page 2 of Bill 420, line 4, states that the Governor is authorized to negotiate the regulations by which the landfill will be operated. Regulations are, of course, promulgated through the Administrative Adjudication Law process and would require public hearings as well as legislative action.

DPW has been working very hard to pass its Guam Users Fee Ordinance. These are the service fees DPW will be charging residential users for curbside trash collection and commercial haulers that dump at the landfill. These fees are to be used towards closure of the Ordot Landfill, operation of a recovery facility and the new landfill. DPW, in this ordinance, reserved its authority to contract out for collection and disposal of solid wastes and that these contracts would be awarded in accordance with the Guam Procurement Law. This seems to satisfy page 2 of Bill 420, lines 9-11.

On page 2, lines 5 and 6, of Bill 420, it states that when negotiations are completed satisfactorily, the Governor shall submit a report to the legislature. Then in Section 3 of Bill 420, lines 12-14, it states that the complete report of the bid, negotiations, and recommendations shall be submitted to the legislature within 180 days of the date of enactment of this Act with a request for approval. The practicality of this timeframe is discussed below.

It is not clear whether the legislation requires legislative approval on the lowest responsible bidder and the resulting purchase order. The terminology that defines invitation for Bids and Request for Proposals are separate and distinct. Bids do not have negotiations, the award goes to the lowest responsible bidder. Request for Proposals (RFP) have negotiations for a fair and reasonable fee. The result of a bid is a purchase order, which, although a contract, is not usually approved by the Attorney General or signed by the Governor. The result of an RFP is a formal contract. Bill 420 confuses these two processes. The bill should reflect the procurement process desired and maintain consistent terminology appropriate to that process.

Assuming it is the RFP process that is desired, there is a separation of powers violation in Bill 420 with the Legislature approving the contract, prior to the Governor. The Governor is the leader of the executive branch and he approves all contracts that will bind the territory.

Letter to the Honorable Mark C. Charfauros  
Senator, Twenty-Third Guam Legislature  
December 15, 1995  
Page 6


Whether the RFP process or the bid process is utilized, the 180-day time frame required, as a practical matter, will be difficult to meet. Writing the scope of work can easily take 2-3 months, then the notice requirements and selection can take another 2 months, and finally BBMR approval is required. We suggest that a more practical requirement would be to require a status report rather than a complete report in 180 days.

The intent of Bill 420 is an excellent concept; however, it has some flaws in its execution and its apparent purpose seems to have been already addressed in P.L. 23-64.

My only comment to Resolution No. 340 is that, to the extent a resolution could adversely impact Guam's inspection service charges in the view of the FAA, I believe the resolution is ill-advised.

The above comments and recommendations are submitted for your consideration. Thank you for the opportunity to do so.

Dångkolo Na Agradesimento - Thank You Very Much!



**GUS F. DIAZ**  
Attorney General, Acting

cc: Bill Review File

CARLSMITH BALL WICHMAN CASE & ICHIKI

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING LAW CORPORATIONS

134 WEST SOLEDAD AVENUE

BANK OF HAWAII BUILDING, SUITE 401

POST OFFICE BOX BF

AGANA, GUAM 96910

TELEPHONE (671) 472-6813

FAX (671) 477-4375

December 15, 1995

Senator Mark C. Charfauros  
Chairman, Committee on Judiciary,  
Criminal Justice and Environmental Affairs  
Twenty-Third Guam Legislature  
Ada's Commercial and Professional Center  
138 East Marine Drive, Suite 101C-Annex  
Agana, Guam 96910

Re: Letter in Support of Bill 381

Dear Senator Charfauros:

I am associated with the law firm of Carlsmith Ball Wichman Case & Ichiki and wish to provide written testimony in support of Bill 381, relative to the enactment of the Uniform Durable Power of Attorney Act for the territory of Guam.

Our firm has a long-established practice in the area of estate planning. That is, we assist our clients in developing strategies to facilitate the transfer of property upon death. Estate planning can involve more than just the preparation of a will. Estate planning may also involve transferring property during a person's lifetime (also known as inter vivos transfers), and the creation of various forms of trusts. The objective in all cases, is however the orderly disposition of a person's property upon that person's death and in accordance with that person's wishes.

In order to appreciate the benefits of durable powers of attorney, it may be helpful to provide some basic information about why people use powers of attorney. A power of attorney authorizes a person (the agent) to act in the place of the person creating the power of attorney (the principal) regarding the principal's personal and business affairs. The power of attorney can be general in nature and authorize the holder of the power to do anything the principal could do. The power of attorney can also be limited to a specific duty such as signing documents necessary to sell real property.



Senator Mark C. Charfauros  
December 15, 1995  
Page 2

Presently under Guam law, a power of attorney terminates if the principal becomes incapacitated and is unable to revoke it. Thus, although intended to protect an incapacitated principal from abuse by an agent, a power of attorney is of no use to persons who seek to plan for possible future incapacity by selecting someone to act on their behalf.

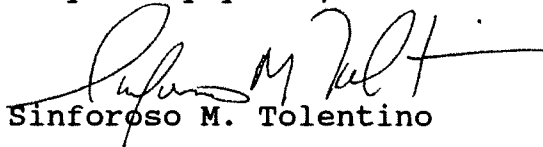
A durable power of attorney allows a power of attorney to remain valid even after the principal loses the capacity to revoke the power. Durable powers of attorney are thus a useful planning tool for persons concerned about later incapacity. The durable power of attorney can authorize the agent to transfer property to a revocable living trust the principal has previously established. In addition, naming an agent through a durable power of attorney may avoid or delay appointment of a guardian if the principal becomes unable to make decisions.

Durable powers of attorney statutes have been enacted in all states and the District of Columbia. Like all jurisdictions that have durable power of attorney statutes, Bill 381 requires that the principal be a competent adult when the durable power of attorney is executed. Like 45 jurisdictions that recognize durable powers of attorney, Bill 381 provides language for springing durable powers of attorney (durable powers of attorney which only become effective upon the disability or incapacity of the principal). Like 14 jurisdictions recognizing durable powers of attorney, Bill 381 would authorize the principal to grant health care decision-making powers to the agent.

Accompanying this letter are materials we have collected in connection with durable powers of attorney. We hope that you find them helpful while you consider Bill 381.

If we can be of further assistance, please do not hesitate to contact me.

Very truly yours,

  
Sinforsoso M. Tolentino

SMT:kkp:csk  
G9512002



Notice of Public Hearing



Senator  
Mark C. Charfauros

Chairman, Committee on Judiciary,  
Criminal Justice and Environmental Affairs  
Twenty-Third Guam Legislature

9:30 a.m.

Agenda

**Resolution No. 340**, RELATIVE TO REQUESTING THE FEDERAL GOVERNMENT TO GRANT THE COMMONWEALTH OF THE NORTHERN MARIANAS EXEMPTION FROM THE CUSTOMS, AGRICULTURE, AND QUARANTINE INSPECTION SERVICES CHARGE.

**Bill No. 274**, AN ACT TO CREATE A POLICE READY RESERVE AND FIREFIGHTER READY RESERVE BY ADDING A NEW CHAPTER 66-B AND A NEW CHAPTER 72-A TO TITLE 10 OF THE GOVERNMENT CODE OF GUAM.

**Bill No. 302**, AN ACT TO AMEND 9 GCA 70.25 RELATIVE TO JET SKI OPERATION.

**Bill No. 310**, AN ACT TO AMEND SECTION 60110 OF TITLE 10 OF THE GCA TO REQUIRE THAT FIREARMS BE REGISTERED TRIENNIALLY, RATHER THAN PERMANENTLY, AND IN AN EFFORT TO ENCOURAGE THE REGISTRATION OF ALL FIREARMS, TO GRANT AN AMNESTY TO PERSONS WHO HAVE FAILED TO REGISTER THEIR FIREARMS, AND TO CREATE A GUAM POLICE ACADEMY CYCLE TRAINING REVOLVING FUND WITHIN THE GUAM POLICE DEPARTMENT.

**Bill No. 371**, AN ACT TO REPEAL GUAM'S EXISTING UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT AND REPLACE IT WITH THE UNIFORM INTERSTATE FAMILY SUPPORT ACT TO BE CHAPTER THIRTY-SIX OF TITLE FIVE OF GCA.

**Bill No. 381**, AN ACT TO CREATE THE UNIFORM DURABLE POWER OF ATTORNEY ACT TO GUAM.

**Bill No. 394**, AN ACT TO HELP DECREASE VIOLENCE IN MARITAL DISSOLUTION PROCEEDINGS BY AMENDING TITLE 19 OF THE GCA AND OTHER RELATED MATTERS.

**Bill No. 398**, AN ACT TO AMEND TITLE 9 GCA §31.60 (c) TO INCREASE THE PENALTY FOR CRIMINAL SPOUSE ABUSE.

**Bill No. 420**, AN ACT TO AUTHORIZE THE GOVERNOR TO SOLICIT BIDS FOR THE PRIVATE OPERATION OF THE NEW LAND FILL AND TO SUBMIT A REPORT TO THE LEGISLATURE FOR APPROVAL TO IMPLEMENT SUCH PRIVATIZATION.

**Date:** Friday, December 15, 1995

**Time:** 9:30 a.m.

**Place:** Public Hearing Room, Guam Legislature  
155 Hesler St., Agana

**The Public is invited to attend**

*copy*

Run date 12/13/95

*Resub 12/11/95  
Kasjalle*



**BUREAU OF BUDGET & MANAGEMENT RESEARCH**

OFFICE OF THE GOVERNOR, Post Office Box 2950, Agaña, Guam 96910

**CARL T.C. GUTIERREZ**  
GOVERNOR

**MADELEINE Z. BORDALLO**  
I.T. GOVERNOR


OCT 23 1995

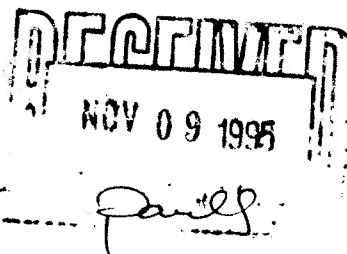
**JOSEPH E. RIVERA**  
DIRECTOR

**FRANCES J. BALAJADIA**  
DEPUTY DIRECTOR

The Bureau requests that Bill No(s). 381 be granted a waiver pursuant to Public Law 12-229 for the following reasons:

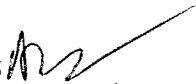

Bill No. 381 is administrative in nature and therefore poses no fiscal impact on the General Fund.

  
\_\_\_\_\_  
Joseph E. Rivera  
Acting Director



**TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) Regular Session**

Bill No. 381(LS)  
Introduced by:

A.C. Blaz   
F.P. Camacho 

**AN ACT TO CREATE THE UNIFORM DURABLE POWER OF ATTORNEY  
ACT OF GUAM.**

1 BE IT ENACTED ON BY THE PEOPLE OF THE TERRITORY OF GUAM:

2  
3 **Section 1.** The legislature finds that Guam is in need of a uniform durable power of attorney act  
4 in order to assist persons interested in establishing non-court regimes for the management of their  
5 affairs in the event that they later become incompetent or disabled. This act would alter the  
6 common law rule that a principal's death ends the authority of his agents and voids all acts  
7 occurring thereafter. A "durable power of attorney" would permit a principal to create an agency  
8 in another that continues in spite of the principal's later loss of capacity to contract. The only  
9 requirement would be that the instrument creating a durable power contain language showing that  
10 the principal intends the agency to remain effective in spite of his later incompetency.

11 The legislature also finds that a durable health care power of attorney by which a principal  
12 can designate another as attorney-in-fact to make decisions on the principal's behalf in matters  
13 concerning the principal's medical or health treatment and care is needed here on Guam. Thus, an  
14 attorney-in-fact designated under a durable health care power of attorney may be authorized to  
15 give or withhold consents or approvals relating to any medical care of or to the principal by a  
16 licensed or professional certified person or institution engaged in the practice of, or providing, a

1 healing art, including life-sustaining treatment when the principal is in a terminal condition or a  
2 persistent vegetative state.

3

4 **Section 2.** This Act shall be cited as “The Durable Power Of Attorney Act Of Guam.”

5

6 **Section 3. A new Article 5 is hereby created in Chapter 21 of Title 18 Guam Code**

7 **Annotated to read:**

8 Article 5. Durable Power of Attorney

9 Section:

10 21501. Definition

11 21502. Durable Power of Attorney Not Affected By Disability

12 21503. Durable Power of Attorney For Health Care Decisions

13 21504. Durable Power of Attorney Sample Form

14 21505. Relation Of Attorney-in-Fact to Court-Appointed Fiduciary

15 21506. Power of Attorney Not Revoked Until Notice

16 21507. Proof of Continuance of Durable and Other Powers

17 21508. Uniformity of Application And Construction

18 21509. Short Title

19

20 **21501. Definition.** A durable power of attorney is a power of attorney by which a principal  
21 designates another as the principal’s attorney in fact in writing and the writing contains the words  
22 “This power of attorney shall not be affected by the disability of the principal,” “This power of

1 attorney shall become effective upon the disability or incapacity of the principal,” or similar words  
2 showing the intent of the principal that the authority conferred shall be exercisable  
3 notwithstanding the principal’s subsequent disability or incapacity.

4  
5  
6 **21502. Durable power of attorney not affected by disability.** All acts done by an attorney-in-  
7 fact pursuant to a durable power of attorney during any period of disability or incapacity of the  
8 principal have the same effect and inure to the benefit of and bind the principal and principal’s  
9 successors in interest as if the principal were competent and not disabled.

10  
11 **21503. Durable power of attorney for health care decisions.**

12 (a) A competent person who has attained the age of majority may execute a durable power of  
13 attorney authorizing an agent to make any lawful health care decisions that could have been made  
14 by the principal at the time of election.

15 (b) The durable power of attorney made pursuant to this section:

16 (1) Shall be writing;

17 (2) Shall be signed by the principal, or by another person in the principal’s

18 (3) Shall be dated;

19 (4) Shall be signed in the presence of two or more witnesses who:

20 (A) Are at least eighteen years of age;

21 (B) Are not related to the principal by blood, marriage, or adoption; and

22 (C) Are not, at the time that the durable power of attorney is executed, attending

1 Physicians, employees, of an attending physician, or employees of a health care facility  
2 in which the principal is a patient; and

3 (c) a durable power of attorney for health care decisions shall be presumed not to grant  
4 authority to decide that the principal's life should not be prolonged through surgery, resuscitation,  
5 life sustaining medicine or procedures or the provision of nutrition or hydration, unless such  
6 authority is explicitly stated.

7 (d) A durable power of attorney for health care decisions shall only be effective during the  
8 period of incapacity of the principal as determined by a licensed physician.

9 (e) No person shall serve as both the treating physician an attorney-in-fact for any principal  
10 for matters relating to health care decisions.

11  
12 **Section 21504. Durable Power of Attorney Sample Form.**

13 **DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS**

14 **A. Statement of Principal**

15 Declaration made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year). I \_\_\_\_\_, being  
16 of sound mind, and understanding that I have the right to request that my life be prolonged to the  
17 greatest extent possible, willfully and authorize as set forth below and do hereby declare:

18 My instructions shall prevail even if they conflict with the desires of my relatives, hospital  
19 policies, or the principals of those providing my care.

20  
21 **CHECKLIST**

22 I have considered the extent of the authority I want my agent to have with respect to health care





1 B. Statement of Witnesses

2 I am at least eighteen years of age and

3 not related to the principal by blood, marriage, or

4 adoption; and

5 not currently the attending physician, an employee of the attending physician, or an employee

6 of the health care facility in which the principal is a patient. The principal is personally known to

7 me and I believe the principal to be of sound mind.

8 Witness \_\_\_\_\_

9 Address \_\_\_\_\_

10 Witness \_\_\_\_\_

11 Address \_\_\_\_\_

12

13 C. Statement of Agent

14 I am at least eighteen years of age, I accept the appointment under this durable power of

15 attorney as the attorney-in fact (“agent”) of the principal, and I am not the physician of the

16 principal. The principal is personally known to me and I believe the principal to be of sound mind.

17

18 Witness \_\_\_\_\_

19 Address \_\_\_\_\_

20 Witness \_\_\_\_\_

21 Address \_\_\_\_\_

22

1 D. Notarization  
2 Subscribed, sworn to and acknowledged before me by \_\_\_\_\_, the  
3 principal and subscribed and sworn to before me by \_\_\_\_\_ and  
4 \_\_\_\_\_, witnessed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

5 (SEAL) Signed \_\_\_\_\_

6 (Official capacity of officer)

7

8 **21505. Relation of attorney -in-fact to court appointed fiduciary.**

9 (a) If, following execution of a durable power of attorney, a court of the principal's  
10 domicile appoints a guardian of the property, or other fiduciary charged with the management of  
11 all of the principal's property except specified exclusions, the attorney-in-fact is accountable to  
12 the fiduciary as well as to the principal. The fiduciary has the power to revoke or amend the  
13 power of attorney that the principal would have had if the principal were not disabled or  
14 incapacitated.

15 (b) A principal may nominate, by a durable power of attorney, the guardian of the  
16 principal's property, or guardian of the principal's person for consideration by the court if  
17 protective proceedings for the principal's person or property are thereafter commenced. The  
18 court shall make its appointment in accordance with the principal's most recent nomination in a  
19 durable power of attorney except for good cause or disqualification .

20

21 **21506. Power of attorney not revoked until notice.**

22 (a) The death of a principal who has executed a written power of attorney, durable or

1 otherwise, does not revoke or terminate the agency as to the attorney-in-fact or other person,  
2 who, without actual knowledge of the death of the principal, acts in good faith under the power.  
3 Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the  
4 principal.

5 (b) The disability or incapacity of a principal who has previously executed a written power  
6 of attorney that is not a durable power does not revoke or terminate the agency as to the attorney  
7 in fact or other person, who, without actual knowledge of the action so taken, unless otherwise  
8 invalid or unenforceable, binds the principal and the principal's successors in interest.

9  
10 **21507. Proof of continuance of durable and other powers.** As to acts undertaken in good  
11 faith reliance thereon, an affidavit executed by the attorney-in-fact under a power of attorney,  
12 durable or otherwise, stating that the attorney-in-fact did not have at the time of exercise of the  
13 power actual knowledge of the termination of the power by revocation or the principal's death,  
14 disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power  
15 at that time. If the exercise of the power of attorney requires execution and delivery of any  
16 instrument that is recordable, the affidavit when authenticated for record is likewise recordable.  
17 This section does not affect any provision in a power of attorney for its termination by expiration  
18 of time or occurrence of an event other than express revocation or a change in the principal's  
19 capacity.

20  
21 **Section 21508. Uniformity of Application and Construction.** This article shall be applied  
22 and construed to effectuate its general purpose to make uniform the law with respect to the

1 subject of this article among states enacting it.

2

3 **Section 21509. Short Title.** This article may be cited as the “Uniform Durable Power of  
4 Attorney Act of Guam.”

5