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Powers of Attorney: What Are They and Why Do They Matter?

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Powers of attorney (POAs) are an essential document in planning for a client's potential incapacity and/or long-term care needs.

Powers of attorney can be subdivided into two (2) categories: financial and health care. **This article discusses financial powers of attorney and their utility in connection with an elderly client's needs.**

POAs are important because elderly clients are often not able (or may in the future not be able) to act on their own behalf. The problem often arises because of a specific disability, which can be physical, mental, or emotional/psychological.

If an individual becomes mentally disabled to the point where they are considered "incompetent" or "incapacitated" and if the disabled individual does not already have a POA in place, then in many instances, the only alternative is for another person to pursue guardianship of the disabled individual. Guardianship is usually less favorable because it is more expensive, more time-consuming, and less certain to obtain the result that the client would have desired.

A POA addresses the perceived needs of an elderly client by authorizing a designated individual (the "Agent" or "Attorney-in-Fact") to act on behalf of the maker of the POA (the "Principal") in regard to various financial matters set forth in the POA. The POA typically goes into effect immediately upon signing. If it only goes into effect contingent upon the occurrence of a specified future event, it is called a "Springing" POA.

POAs are usually broadly written to include a wide array of powers (authority) given to the Agent. The Agent in effect "stands in the shoes" of the Principal and can therefore do most of the same things that the Principal can do with respect to his or her own assets.

Because of the extensive authority given to an Agent, often **the single most important decision that the Principal can make is whom to designate as his or her Agent under the POA.** The designated Agent should be someone whom the Principal can trust implicitly, because if the wrong type of person is selected as Agent, there is potential risk that the POA might be used improperly. An Agent under a POA has certain obligations, one of which is to always put the needs of the Principal ahead of his or her own. However, the

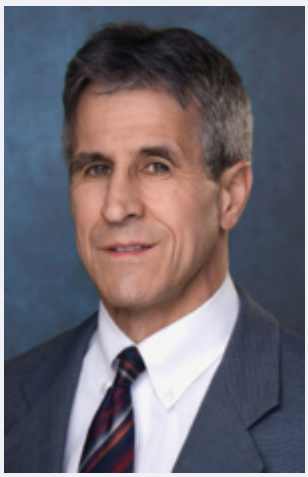
Agent's authority under the POA is only as good as the person to whom they are given.

POAs can (and most often do) designate more than one person to act as Agent. If multiple persons are designated to act as Agent, then the designated persons can be authorized to act contemporaneously (both at the same time) or in succession (one after the other). Establishing a line of succession for the Agents is often advisable because of the possibility that a designated Agent may become unable or unwilling to continue acting in that capacity.

If a POA authorizes Agents to serve contemporaneously, the POA document can (and should) delineate the scope of the Agents' collective authority. Specifically, the POA can require each of the Agents to act "jointly", meaning that all Agents must agree to any actions on behalf of the Principal, or the POA can authorize any of the Agents to act "separately" on behalf of the Principal. Authorizing separate action is usually more convenient for the Agents and for that reason often more practical, particularly if one of the Agents is not local. However, it works best if all of the Agents are able to work well together and with a common vision for the welfare of the Principal.

A more detailed discussion can be found here: Durable Powers of Attorney: What They Are and Why All Clients Need Them and here: Power of Attorney Litigation

If you have questions about your current power of attorney documents, or those of your parents, our Elder Law or Estate Planning attorneys can help you consider your options as part of your complete estate plan. Contact us via links or call 814-459-2800.



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