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The Durable Power of Attorney and its effect on your financial matters.

A power of Attorney (POA) is a document that, when executed properly, creates a relationship similar to that of an agency, in which one person appoints another person to transact business or perform other financial matters on behalf of the other. The person granting the power is known as the Principal and the person being given the power is called the Attorney-in-Fact.

A POA should be a part of every person's estate plan. The POA can prevent many problems associated with one's disability or incapacity and can prevent the need for costly conservatorships. At one time, the POA would become ineffective the moment the Principal became disabled or incapacitated. However, Connecticut, along with several other states, by statute, has created the "Durable" POA which permits the POA to survive the disability with full force and effect.

There are two types of POA's; General and Limited. The General POA allows the Attorney-In-Fact to perform virtually all functions including business and personal affairs. The Limited POA can restrict either the specific transactions the Attorney-in-Fact can perform or the time period that the transactions can be performed, or both.

A good example of the limited POA would be the situation commonly found in real estate transactions. In a typical real estate transaction a "closing" is scheduled where all of the banking and property transfer documents are signed and recorded. If a husband and wife are both purchasing the house, they both need to sign the documents. Often times, either the husband or wife are not available to attend the closing, often for work or travel related reasons.

In that situation, the real estate attorney, (with the pre-approval from the bank) will prepare a Limited POA allowing the attending spouse to sign the documents as the Attorney-in-Fact for the unavailable spouse. Once the closing is completed, the POA becomes null and void, as it was limited to the real estate transaction on that given day.

Of importance when considering a POA is when it will become effective. There are generally two methods; effective upon execution or upon disability. As you would think, effective upon execution means just that; once it's signed, it's valid and available for use. This method should only be used when the principal is completely comfortable and confident with the proposed Attorney-in-fact.

The "Effective Upon Disability" or "Springing" Power becomes effective upon the disability of the Principal. This method is not often used today because the standards require proof of the disability along with physician's affidavits, etc., which can cause significant delays in the process.

One of the most important questions to ask when preparing the POA is who should be your Attorney-In-Fact. Obviously, it should be someone you trust with great confidence; perhaps a loved one or your attorney. The POA should have more than one designated Attorney-In-Fact, acting either alternatively or in concurrently.

One final thought on POA's; they are not the key to the kingdom for all financial matters. Most third party financial institutions will most likely have their own internal requirements for access, for which a POA will often be challenged. I highly suggest that if you are going to execute a POA, you check with each of your financial institutions as to their requirements for access to your finances.

Anthony J. Medico, Esq., has practiced law for over 27 years. To ask a question regarding this article, send an e-mail to info@medicoandassociates.com or call us at (203) 661-8151. To read more highly informative Estate Planning articles, visit our website at www.medicoandassociates.com, where you can also download our free Estate Planning Survival Guide. Enjoy.

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