



Designating Powers of Attorney

*Selection, Documentation, and
Communication Best Practices*

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Most of our clients put Powers of Attorney or “POAs” in place as they age. POAs are legal documents that allow you to name an “agent” (also sometimes referred to as an “Attorney-in-fact”) to act on your behalf for financial or health care decisions, and are key components of any estate plan. We believe POAs are increasingly important beyond your estate plan too. Consider the following examples:

- Parents of college-aged adult children need healthcare POAs to interact with doctors and be involved with their children’s health care decisions.
- A business associate needs a non-durable POA to sign a document on your behalf for an important business deal while you are out of the country.
- A family member needs a durable POA to manage your personal affairs should you become temporarily or permanently incapacitated due to an accident or health condition.

POAs are not just for those who are aging. In fact, accidents happen or circumstances arise where having a POA in place is simply good financial management. In this article we will explore types of POAs, the different variations therein, who should have them, and what they are used for.

Different Types of POAs

When naming a POA agent, it is important to choose a person who you would trust to manage your affairs or make decisions on your behalf. There are two basic types of POAs: A Financial POA and a Healthcare POA. In actuality, a POA is simply a piece of paper - a legal document which states “I trust this named person to make good decisions on my behalf.” Without this piece of paper, no decisions may be made on your behalf until a court proceeding is held to appoint a person or persons in this capacity, which may waste valuable time and money.

FINANCIAL POWER OF ATTORNEY

A Financial POA agent may take care of specific and/or all financial matters on your behalf. This may include paying bills, writing checks, opening and closing accounts, filing tax returns, buying and selling property (both financial property such as stocks and bonds as well as physical property), or reallocating a portfolio. The document may specify whether this person is also allowed to change beneficiary designations on an account, but typically this power is left out to avoid the possibility of that person naming someone other than whom the account owner desires.

HEALTHCARE POWER OF ATTORNEY

A Healthcare POA may make health care decisions on your behalf. This may include whether or not to use a feeding tube or to take other life sustaining measures if needed, or whether or not to admit you to a hospital or care facility. Another legal document to consider here is the Living Will, also known as a Medical Directive or Declaration to Physicians. This document exists for the sole purpose of indicating whether or not a feeding tube or other life sustaining measures should be taken if needed. A Healthcare POA agent is required to follow the instructions in a Living Will, unless the two contradict each other. In that case, it is likely that a court would rule in favor of the document which was signed most recently. Consult with your estate planning attorney if you would like further clarification on this topic regarding your specific situation.

NON-DURABLE VS. DURABLE POA

Any Power of Attorney, whether Healthcare or Financial, may be durable or nondurable. Durable means that the powers associated with the POA remain in effect after incapacitation. A nondurable POA means that the powers cease upon incapacitation. If the POA document does not specifically state that the powers are durable, it is considered a nondurable POA.

A nondurable Power of Attorney makes sense if you need to achieve a specific goal, like getting a document signed while you're unable to be present. Otherwise, typically a durable POA is most likely what you'll want to achieve longer-term goals.

GENERAL POA VS. SPECIAL POA

Your Power of Attorney designation may be general or special. A General POA agent has much broader power versus a Special POA agent. For example, a General Financial POA allows an individual to manage your finances on a very broad level, while you may appoint a Special Financial POA to, say, pay your property taxes or other bills but not manage your investment accounts. You may have several Special POAs executed to ensure all of your financial matters are cared for.

SPRINGING POWER OF ATTORNEY

A Springing Power of Attorney is one that comes into effect only after one becomes incapacitated. It is the opposite of a nondurable POA. This may be ideal if you do not want anyone to have the right to make decisions on your behalf until you are totally incapable of making them yourself.

Examples

- **General Nondurable Financial POA:** Broad powers to make financial decisions, which becomes invalid upon incapacitation.
- **General Springing Durable Healthcare POA:** Broad powers to make health care decisions only after incapacitation.
- **Special Nondurable Financial POA:** Limited powers to make financial decisions, which becomes invalid upon incapacitation.
- **General Durable Financial POA:** Broad powers to make financial decisions before and after incapacitation.

What Happens After Death?

After death any POA (whether durable or nondurable, general or special, financial or healthcare) is no longer valid. It is important to have all your other estate planning documents in place, such as a valid Will, to ensure that your affairs are taken care of after death in the manner you wish. Your Will should name a personal representative who will manage your assets and make decisions on your behalf after you pass away. While often the same person, your personal representative may be a different person than the one you name in your Power of Attorney during your lifetime.

Designating a POA Agent SELECTION

Careful thought is required when designating a POA agent. Make sure you select someone you trust to appropriately represent your wishes. Careful selection of the right representative up front can prevent future problems. Even if you know someone well, it pays to carefully vet them for any credit or legal issues or potential conflicts of interest. If conflicts arise or someone is clearly abusing the powers, it is possible to bring it to the attention of a judge who can act to remove a POA.

While parents often want to be “fair” and name multiple children as their agents, it is best to only select one, because all must agree before a decision may legally be made. Many families choose to separate financial POA and healthcare POA duties, naming one child who is more financially adept and another with more healthcare knowledge to these respective roles. It is hard to get multiple adult children to all agree, so selecting one you feel will best represent your wishes is best.



COMMUNICATION

Direct and open communication is important with all affected parties.

Once you've gone to the trouble to name a POA agent and create appropriate legal documents, it is critical to communicate those responsibilities to the parties that need to know. Keep a copy of POA documents in the file with other important documents such as your Will. Make sure the named agent also receives a copy. You may also want to share these documents with your financial advisor or financial institution. Your attorney should also keep copies on file.

Make it clear to your named agents what your wishes are. Help them to understand how you've made financial decisions and what you expect them to do. Share your health care wishes with the agent of your healthcare POA, including any health care directives.

In addition to communicating to the person or people you name in your POAs, it is important to communicate to anyone affected including other family members. Tell them why you are naming a POA agent and share your expectations.

DOCUMENTATION

If there is any question at all as to what you expect a POA agent to do, it is best to set it out in writing. Your POA document will define exactly what powers the agent will have.

In addition to clear communication with the agent, be sure to state in writing why you are naming the POA agent and what your expectations are.

Further, we encourage anyone who is acting as a POA agent to document their actions and decisions. As attorney-in-fact, the individual is acting solely on your behalf. However, family dynamics can make these decisions complicated or, in some cases, difficult. Attorneys-in-fact should carefully document any actions and why they believe it is consistent with the wishes of the person they are representing. They should say what they think "Dad might have done" under similar circumstances, for example, and why the choice is consistent with his wishes. This documentation can be helpful if someone later questions the decision.

Conclusion

A Power of Attorney is just one of several essential estate planning documents. These documents serve a very specific purpose, and when accompanied by your Will, Trust, Medical Directives, Beneficiary Designations, etc., you can feel more confident and secure that your affairs are in order.

Beyond estate planning, POAs can be very helpful tools to make sure your affairs will be managed the way you desire. When the unexpected happens, it can be incredibly stressful. Having a POA established can help defray the stress of a difficult or unexpected situation.

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