

Legally Speaking

Power of Attorney: Your Financial Life Saver

Several months ago I addressed the most important document in the estate plan: the Last Will and Testament. Second in importance and also vital to a good estate plan is the Statutory Durable Power of Attorney.

There is a significant difference between the two documents. Your Last Will and Testament becomes effective upon your death, whereas, a Statutory Durable Power of Attorney is only effective while you are alive. In general, a power of attorney is a written document that allows an individual, known as the *principal*, to designate another person, known as the *agent*, to act on the principal's behalf with regard to financial and/or business matters. The document makes it possible for the principal's financial affairs to continue without interruption due to incapacity, and, therefore, it allows the principal to avoid a guardianship proceeding.

There are two options regarding the effective date of the Statutory Durable Power of Attorney: effective immediately upon signing, or when the principal is legally incapacitated due to serious illness or injury such as a stroke. Allowing the document to become effective upon incapacity is called a "springing power" because the document springs into effect upon incapacity of the principal. If the document is to become effective immediately, then the document will stay effective throughout incapacity of the principal.

A Statutory Durable Power of Attorney can be a very powerful document. This document allows the agent to conduct everyday transactions of the principal related to: real property; personal property; investments; banking; insurance; litigation; governmental benefits; retirement plans; and tax matters. Additional powers can be added to the document, including: 1) the power to make gifts of property; 2) the power to take legal action on behalf of the principal; 3) the power to create and/or fund a revocable trust; 4) the power to manage principal's interests in community property; 5) the power to appoint a substitute agent; 6) the power to do all and everything that the principal could do on his or her behalf.

The only powers that cannot be given to an agent are: (1) the power to create a Last Will and Testament; (2) the power to revoke a Last Will and Testament; and (3) the power to create a Directive to Physician.

Although the Statutory Durable Power of Attorney gives your agent complete power over your financial matters, this document is extremely important because it avoids a guardianship. I have often been contacted after it

was too late to create this document. For instance, a child will contact me after a parent's illness if they are denied access to the parent's checking account to pay bills or handle other financial issues. At this point, it is generally too late. This places a burden on the child to seek a guardianship, which is essentially court supervision over a person's finances. This is a very inefficient way to manage financial matters.

Not enough attention is given the Statutory Durable Power of Attorney and what it accomplishes and avoids. Make this a part of your estate plan and it could save you and your family a lot of time, stress and money later on.

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