

CREATING A POWER OF ATTORNEY IS A SERIOUS MATTER

One of the most important Estate Planning documents an individual needs during his lifetime is a Power of Attorney. A Power of Attorney is a written document in which an individual, who is known as the “Principal”, gives another person, who is known as the “Agent”, the authority to act for the Principal in accordance with the terms and conditions set forth in the document. Everyone over the age of 18 should have a Power of Attorney. Even when a married couple owns the majority of their assets jointly, each spouse should execute a Power of Attorney so any assets owned solely by one spouse, such as an IRA or life insurance policy, can be accessed on behalf of the incapacitated spouse via the Power of Attorney, if necessary.

If you ever suffer an illness or an accident and are unable to manage your personal and financial affairs, with a Power of Attorney, you can decide who will have the authority to make decisions on your behalf. Therefore, when creating a Power of Attorney, you must decide how much authority to give your Agent. Do you want your Agent to be able to do anything you can do? Or, do you want your Agent to only be able to pay bills and manage your bank accounts? You want to create a Power of Attorney that suits your situation. Since an Agent under a Power of Attorney can only perform the duties set forth in the document, it is important to determine how broad or narrow the powers are that are given to the Agent.

Also, serious thought must be given to who you name as your Agent. Since your Agent will have access to all of your assets, you need to be absolutely certain that you trust the person you name to act as your Agent and you must be certain this person will not abuse his/her authority. In addition, since the Agent under your Power of Attorney will be responsible for handling your finances, you must name someone who is good with financial matters and who handles affairs in a prudent and timely fashion. For example, if you want to name your son as Agent under your Power of Attorney but you are aware of the fact that your son frequently does not pay his bills on time, then you may want to reconsider whether you name him to act as your Agent.

In 1999, Pennsylvania changed the laws surrounding Powers of Attorney in several ways. As a Pennsylvania resident, it is important to know there are certain requirements that Powers of Attorney must

meet in order for them to be valid. The following are vital to having a valid Power of Attorney if it was created after April 12, 2000:

1. The Power of Attorney needs to contain a notice which is signed by the Principal and appears in all capital letters at the beginning of the document. Pennsylvania's statute sets forth the language that must be contained in the notice.
2. The Power of Attorney must specify how much, if any, gifting authority the Principal wants to give the Agent. Specifically, the Power of Attorney must state whether the Agent has limited, unlimited, or no gifting authority.
3. The Power of Attorney must contain an acknowledgement executed by the Agent named in the Power of Attorney. In the acknowledgement, the Agent agrees to accept the authority to act as Agent and to abide by strict standards when handling the Principal's affairs. By signing the acknowledgement, the Agent agrees to do the following: to exercise the powers for the benefit of the Principal; to keep the assets of the Principal separate from the Agent's assets; to exercise reasonable caution and prudence; and to keep an accurate record of all actions, receipts, and disbursements on behalf of the Principal. Before an individual can act as the Agent, they must sign the acknowledgement.

In order for a Power of Attorney to be valid, the Principal must be of sound mind when the document is executed. As a result, it is best to create a Power of Attorney before a crisis emerges and before the Principal's capacity could be called into question.

By taking the time to plan now, you can have peace of mind knowing that your affairs will be managed by a competent, trusted individual, who you have selected to act on your behalf. An attorney well versed in the intricacies of Estate Planning can help you create a Power of Attorney to address your concerns and to minimize its abuse.

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