

WHY DOESN'T THE SOCIAL SECURITY ADMINISTRATION ACCEPT POWERS OF ATTORNEY?

One of the most important Estate Planning documents you can have during your life is a Power of Attorney. A Power of Attorney allows a capacitated adult to appoint an individual or individuals to manage his/her affairs in the event he/she becomes disabled, ill, or otherwise unable to manage his/her own affairs.

The core duty of the Agent under a Power of Attorney is loyalty to the Principal, who is the individual signing the Power of Attorney. The Power of Attorney is really an agency agreement by which the Principal, who grants powers and authority to an Agent, who is the individual named to take care of the Principal's affairs when he/she is unable to do so for himself/herself. While a Power of Attorney may be broad and empower the Agent to do just about anything, the Agent's actions must be solely for the benefit of the Principal absent express instructions to the contrary. In fact, the Agent's duties are set forth by the terms of the instrument.

Powers of Attorney are executed for the express purpose of avoiding the appointment of a guardian. The mere existence of a valid Power of Attorney will be found to be the less restrictive alternative, therefore negating a need for the appointment of a guardian. By executing the Power of Attorney, the individual is controlling his/her future by designating who will assist him/her if he/she requires assistance.

Oftentimes, our clients will take Powers of Attorney to the Social Security Administration to handle matters for the Principal; however, the Social Security Administration, (hereinafter referred to as "SSA"), will not accept the Power of Attorney.

If an Agent under a Power of Attorney can handle the affairs of the Principal, then why doesn't the Social Security Administration accept Powers of Attorney? The SSA has its own protective system when it comes to Social Security Beneficiaries. In fact, the SSA

will only deal with the following individuals: 1) the Social Security recipient himself/herself, or 2) the “Representative Payee,” who has been appointed by the SSA after completing a formal application on a Social Security form.

A Representative Payee is an individual recognized by the SSA to receive the Beneficiary’s Social Security benefit, apply the payment for the Beneficiary’s care, and account for how the Beneficiary’s payments were used by the Representative Payee. The Representative Payee program requires a two-step finding by the SSA, which is the following: 1) the Beneficiary must be determined to be unable to manage his/her own payments; and 2) the SSA will consider who should be named as Representative Payee.

So, while a Power of Attorney is an essential Estate Planning tool, it is important to note that not all government agencies, such as the Social Security Administration, recognize these documents. In order to determine what other government agencies fail to honor Powers of Attorneys, you should contact an Elder Law Attorney.

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