

Powers of Attorney Can Be Vital Documents

Most people realize the importance of a will to help direct the transfer of assets after death. During your lifetime, you also may want to have a power of attorney (POA) for convenience and asset protection.

The person who creates a POA is known as the principal. In the POA, an agent (known as the attorney-in-fact) is given the authority to act on the principal's behalf. POAs come in different forms with different purposes.

General POA

A general or regular POA gives the agent the broad ability to act for the principal. This type might be useful when the principal will be unable to act on his or her own behalf for some reason. Someone in the military, for example, might name an agent to handle financial affairs during the principal's overseas assignment.

Limited POA

As the name suggests, these special POAs are not open-ended. There could be a specified time period when you're unable to act on your own behalf. Alternatively, a limited POA could be effective only for a designated purpose, such as signing a contract when you can't be present.

Durable POA

Regular or limited POAs may become void if the principal loses mental competence. Unfortunately, that can be the time when a POA is needed most: when assets could be squandered because of poor decisions.

Therefore, a durable POA can be extremely valuable because it remains in effect if the principal becomes incompetent. The agent can make financial decisions, such as asset management and residential transactions. If a durable POA is not in place, the relatives of an individual deemed to be incompetent might have to go to court to request that a conservator be named, which can be a time-consuming and expensive process with an uncertain outcome.

Springing POA

Some people are not comfortable creating a POA while they are still competent, yet an individual who loses mental capability cannot legally create a POA. One solution is to use a springing POA, which

takes effect only in certain circumstances, such as a doctor certifying that the principal cannot make financial decisions. Note that some states may not allow springing POAs, and some attorneys are skeptical about using them because the process of getting a physician's timely certification might be challenging.

Health Care POA

The POAs described previously empower an agent to make financial decisions. A health care POA is different because it names someone to make medical decisions if the patient cannot do so. The agent named on a financial POA could be someone trusted with money matters, whereas someone with other abilities and concerns could be appropriate for a health care POA.

Powerful Thoughts

As indicated, the agent you name on any POA should be someone you trust absolutely with your wealth or your health. Married couples are best protected if both spouses have their own POAs.

In addition, you might have to check with the financial firms holding your assets before having a POA drafted. Some companies prefer to use their own forms, so a POA drafted by your attorney might not be readily accepted. Moreover, financial institutions might be reluctant to accept a very old POA, so periodic updating can be helpful.

When creating a POA, you should make it clear that the power applies to retirement accounts such as IRAs. Your agent should have the ability to execute rollovers and designate beneficiaries, for example. An attorney who is experienced in estate planning can help you obtain a POA with the power to help you and your loved ones, if necessary.