

What is a Power of Attorney?

People often wonder if their attorney, such as their estate planning attorney, is their "Power of Attorney." A Power of Attorney is a document in which the "Principal" gives powers, duties, and responsibilities to the "Agent" who acts for the Principal under certain circumstances. The Power may be over health matters (a Health Care Durable Power of Attorney – also known as a Health Care Proxy or Advance Health Care Directive in some states) or financial matters (a General Durable Power of Attorney). Even though the Agent may also be called your "attorney in fact," they are seldom the person you consult for legal advice, who is your "attorney at law." Since not all powers of attorney are created equal, here is a primer.

FIRST, THE PERSON CREATING THE POWER OF ATTORNEY AND GRANTING POWERS TO SOMEONE ELSE IS CALLED THE PRINCIPAL. People often say they are the "power of attorney" for someone, but the correct title for acting on behalf of the principal is the "attorney-in-fact." Thus, when the attorney-in-fact (for example, Billy Bob) signs a document on behalf of the principal (Susie Sue), the correct legal signature should look something like "Susie Sue, by Billy Bob, her attorney-in-fact."

SECOND, POWERS OF ATTORNEY HAVE A WIDE RANGE OF NAMES. For example, one might be called a financial power of attorney, and another might be called a property power of attorney. Generally, the name refers to the types of powers the principal is granting to the attorney-in-fact.

THIRD, POWERS OF ATTORNEY CAN BE GENERAL OR SPECIAL OR LIMITED. If a power of attorney is general, it grants a wide range of powers upon the attorney-in-fact. Alternatively, if a power of attorney is special or limited, only limited powers are granted, maybe for a special purpose or situation. Most commonly you will see a special power of attorney for real estate granting to the attorney-in-fact only the powers necessary to complete a specific real estate transaction for the principal.

FOURTH, NOT ALL POWERS OF ATTORNEY COME INTO EFFECT AT THE SAME TIME. You commonly hear about durable powers of attorney and springing powers of attorney. If a power of attorney is durable it remains effective even after the principal becomes incapacitated. A springing power of attorney means that it springs into effectiveness as the result of a certain situation, most commonly when the principal becomes incapacitated.

SHOULD I HAVE A DURABLE POWER OF ATTORNEY FOR HEALTH CARE? Yes. This document allows your agent to make a number of health care decisions on your behalf. Often this is accompanied with a living will and a HIPAA document that can cover the issues of remaining on life support systems under varying circumstances and addressing the new privacy act.

While powers of attorney seem to be pretty straightforward, there are several intricacies and significant decisions to be made based on the principal's circumstances. It is a powerful document and should not be treated lightly. Please come in to see us to learn more about this document and how we can craft a power of attorney as part of a comprehensive estate plan to meet your specific needs.

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