



Powers of Attorney

DO YOU HAVE A POWER OF ATTORNEY? IF NOT, SHOULD YOU? DO YOU REALIZE THAT A POWER OF ATTORNEY IS NOT A SIMPLE DOCUMENT BUT RATHER A POWERFUL LEGAL INSTRUMENT?

What is a power of attorney?

- A power of attorney is a document by which you grant someone authority to handle your personal financial and/or routine health care matters. You, as the person signing the power of attorney, are the “principal;” the person you appoint is your “agent.”

What does a power of attorney allow my agent to do?

- A power of attorney may be as broad or narrow in scope as you choose. You can limit your agent’s power to a one-time event, such as representing you at a closing for the sale of your house, or you can give your agent the power to handle all your financial and routine health care matters.

What is a “durable” power of attorney?

- Under a “durable” power of attorney, your agent retains his/her authority if you become incapacitated. If your power of attorney is not durable, your agent will not be able to act on your behalf in the event of your incapacity. Because most people intend that their power of attorney will be used when they are incapacitated, they prefer to execute a durable one.

Whom do I name as my agent?

- You can name a person or a financial institution willing and able to serve. A financial institution, however, cannot make health care decisions on your behalf.

Can I appoint more than one agent?

- Yes, you can require your agents to act jointly, which means that neither agent can act without the consent of the other, or you can authorize your agents to act severally, which means that each agent may act independently of the other.

When does my power of attorney take effect?

- Generally, a power of attorney takes effect as soon as you sign it and deliver it to your agent. A “springing” power of attorney, however, takes effect only upon the occurrence of a specific event, such as your incapacity. Such a power of attorney may be difficult for your agent to use if your agent cannot prove that the specified event has occurred.

Is my power of attorney ever ineffective?

- Your power of attorney remains in effect until your death or until it is revoked. Some institutions, however, may take the position that your power of attorney has become “stale,” and may not accept your power of attorney if they believe too much time has elapsed since the date you signed it. If such a situation arises, you should consult your estate planning lawyer. Other institutions may encourage you to use their own power of attorney form. You should check with your financial institutions and health care providers to find out what requirements they may have concerning the use of powers of attorney.

How do I revoke my power of attorney?

- You revoke your power of attorney by destroying it. You also revoke your power of attorney by notifying your financial institutions and health care providers that the power of attorney which you previously signed is no longer valid.

Why do I need a power of attorney—can't I just put my assets in joint name with my agent?

- Most assets if registered in joint name will pass upon the death of one owner to the surviving owner. Therefore, if your agent is not your intended beneficiary but you nevertheless put the assets in joint names with your agent, upon your death, the assets will pass to your agent, regardless of the terms of your will.

What if I don't trust my agent?

- If you name someone as your agent whom you think will abuse his or her power, you have designated the wrong agent. Always appoint an agent whom you trust.

How do I find out if my agent has acted under my power of attorney?

- Your agent has the duty to account to you for any decisions he or she may make on your behalf under your power of attorney. If your agent refuses to account to you (or someone on your behalf if you are incapacitated) or your agent acts contrary to your best interests, you (or someone on your behalf) may apply to a Probate Court to compel your agent to account to the court.

What if a conservator is appointed for me?

- Upon the involuntary appointment of a conservator of your estate (a court-appointed person to manage your financial affairs), your power of attorney is no longer valid. By contrast, your power of attorney continues to have effect upon the involuntary appointment of a conservator of your person (a court-appointed person to attend to your physical care).

Federal Tax Law Changes

THE FOLLOWING SIGNIFICANT FEDERAL TAX EXEMPTIONS AND EXCLUSIONS CHANGED AS OF JANUARY 1, 2002:

- The annual exclusion amount for gifts per donee increased from \$10,000 to \$11,000.
- The estate and lifetime gift tax exemption amount increased from \$675,000 to \$1,000,000.
- The generation-skipping transfer tax exemption amount increased from \$1,060,000 to \$1,100,000.
- The maximum estate, gift and generation-skipping transfer tax rate decreased from 55% to 50%.

This bulletin, which has been prepared by the attorneys of the Individual Clients Group of Robinson & Cole, is intended to provide only general information on the topics presented. If you wish to examine how this information may impact your estate plan, please contact Robinson & Cole and ask for an attorney in the Individual Clients Group.



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