



### **Basics about power of attorney**

by Robert Goff

Powers of attorney serve many purposes, but they can also create serious problems if misunderstood or abused.

Nearly everyone has heard some horror story regarding abuse of a power of attorney, usually involving an elderly person and a younger family member.

Understanding how a power of attorney works is often the difference between becoming a fan of powers of attorney, or a victim of their misuse.

The first step in understanding powers of attorney is to understand the associated terms.

When you appoint someone under a power of attorney that person is your agent, often called an attorney-in-fact. The person who appoints an attorney-in-fact is called a principal. Signing a power of attorney is like cloning yourself.

You put the whole world on notice that the agent standing in front of them holding that piece of paper is generally empowered to do everything you could do. As far as anyone else is concerned, dealing with the agent is as good as dealing with you.

There are two kinds of general powers of attorney.

The durable power of attorney gives the agent authority to act on the principal's behalf immediately when the document is signed.

The other general power of attorney, the springing power of attorney, does not grant any authority to the agent until the principal is determined by a court or one or two physicians to be incompetent to handle his or her financial affairs.

Unlike a general power of attorney, a limited power of attorney only gives the agent the power to perform one or more specific transactions.

Powers of attorney are an extremely useful tool in avoiding the embarrassment and expense of guardianship actions.

Guardianship is necessary when a person can no longer act for himself and has not empowered anyone else to act on his behalf.

If a person has appointed an agent under a general power of attorney, there is someone to act for him. Thus, there is generally no need to initiate guardianship proceedings.

If you are thinking about signing a power of attorney there are some considerations you want to keep in mind.

First and foremost you should only appoint an agent in whom you have the utmost confidence that he or she will always act in your benefit and according to your wishes.

If you don't trust someone enough to give her a spare set of keys to your house, to put her name on your bank account or to add her name to your safe deposit box, you certainly shouldn't appoint her as your agent.

Second, read your power of attorney to see if there are any powers you are giving with which you are not comfortable. For instance, some people don't have a problem giving an agent power to make gifts. However, some people are concerned that a child might take advantage of his or her siblings if granted a power to make gifts.

Some people don't have a problem with giving the power to change the terms of a trust or other estate planning documents, but others do. If you don't understand a clause in your power of attorney, ask the attorney who prepared it to explain it to you again.

For those of you who have been appointed under a power of attorney, there are also some basic guidelines to keep in mind.

First, the person who appointed you holds you in the highest degree of trust to look out for his best interests, not your own. The law will hold you to account if you use the power of attorney for your benefit instead of the benefit of the principal.

Second, you may be required to produce an accounting of all actions you have taken using the power of attorney. I recommend that you keep a notebook and record the circumstances surrounding all instances in which you use the power of attorney.

Furthermore, as long as the principal understands what he is doing, he should continue to sign his own checks and any other documents requiring a signature.

Third, you are not allowed to mix your own property with the principal's property. This is often where a lack of understanding of powers of attorney can catch the well-intentioned.

Under no circumstances should you ever deposit any of the principal's money in your bank account or any of your money in the principal's bank account. Doing so will cause you to lose the trust of other family members and anyone else who later reviews the account records.

If you have signed a power of attorney, get it out and review it to make sure you are comfortable with the person you have appointed as agent. Also review the powers to make sure you understand them and are comfortable with them.

When acting as an agent under a power of attorney give some thought to the trust placed in you and how you are going to use that trust for the benefit of the principal. Also, make sure you keep track of your actions as agent.

Lastly, make sure you don't mix your property or money with the principal's property and money.

Robert Goff is an associate with Paducah's Denton & Keuler law firm. His areas of practice include estate planning wills, trusts, estates and probate, contracts, business corporations and partnerships, and elder law. He is admitted to practice in Kentucky, Tennessee and Illinois. He can be contacted at 270-443-8253.

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