

Understanding Power of Attorney

What is Power of Attorney?

Power of attorney grants another person legal authorization to act on your loved one's behalf in business matters, legal rulings, and medical decisions. For your terminally ill loved one, having an established plan for power of attorney is very important to ensure that wishes and legal dealings are carried out according to their specifications.

Parties Involved in Power of Attorney

In matters concerning power of attorney, there are two parties involved: the principal and the agent. The principal is the party who seeks to give the control of the legal, business and financial dealings to another trusted individual. The agent is the party who is given authority, by the principal, to conduct legal, business, and financial matters on behalf of the principal.

When assisting your loved one with the creation of power of attorney documents, your loved one is the principal, and the person who is to conduct matters on their behalf is the agent. It is common for the primary, at-home caregiver of a terminally ill individual to be chosen as the agent concerning matters involving power of attorney.

Choosing a Qualified Agent

The rights bestowed by a power of attorney document can be as limited or broad as your loved one, the principal, desires. The power given to an agent can allow a great deal of control over your loved one's life. In light of this, choosing an agent is an important task that warrants thoughtful consideration. When helping your loved one select an agent, consider the following criteria:

- **Is the potential agent at least 18 years old or older?** In the United States, only legal adults can be selected as an agent.

- **Is this person assertive, confident, and able to make tough decisions in stressful situations?** Your loved one's agent could potentially be handling legal matters, business dealings, and medical concerns. Ability to make decisions under pressure is an important factor when considering a potential agent for your loved one.
- **Does the potential agent have your loved one's best interests in mind?** An agent will represent your loved one for many issues, potentially including end-of-life care concerns. The potential agent must be above reproach in their commitment to your loved one's best interests.

Non-Durable Power of Attorney and Durable Power of Attorney

Power of attorney largely falls into two groups: non-durable and durable. The primary difference between durable and non-durable powers of attorney is that durable power of attorney agreements allow the agent to act on behalf of the principal even after the principal's incapacitation or certified incompetence. With non-durable powers of attorney, the agent's rights expire immediately upon incapacitation or incompetence of the principal.

The authority granted to an agent by a power of attorney agreement can also expire for other reasons:

- **If your loved one dies**, the rights of the agent immediately expire, and they can no longer legally represent your loved one as specified in the power of attorney agreement. Upon death, other legal documents, such as a trust or last will, take legal precedence.
- **If your loved one revokes the powers of the agent** at any time, that agent's rights specified within the power of attorney immediately expire. Your loved one does not have to specify a reason as to why the agent's authority is being revoked. Rights can be removed from the agent prior to any expiration date stated within the power of attorney agreement.
- **If the agent has completed the tasks specified by the power of attorney agreement**, their rights as an agent immediately expire.
- **If the power of attorney agreement includes an expiration clause**, the agent's rights expire after that expiration date has passed.

Types of Power of Attorney

Power of attorney agreements can be established for many long-term and short-term uses in matters concerning legal dealings, finances, business, and health care. Your loved one can choose to elect different agents to handle different matters, with each agent being granted a specific type of power of attorney.

- **General power of attorney allows the agent the rights to handle legal, financial, and business decisions on behalf of the principal.** General powers of attorney can be given specific durations where rights are only granted for a limited amount of time or until a specific task or event has been completed.
- **Special power of attorney allows the principal to set up a specific set of guidelines and permissions for the agent** for the completion of a specific set of tasks.
- **A healthcare power of attorney gives the agent the right to make healthcare decisions on behalf of the principal** when the principal is unable to make those decisions for themselves due to incompetence or physical incapacitation. A medical physician must certify that the principal is unable to communicate. This type of power of attorney commonly expires if your loved one, the principal, regains the ability to act, speak, and think.
- **Springing power of attorney is given to the agent only after certain events, specified by the principal, have occurred.** Events that trigger springing power of attorney agreements include dates, incapacitation, or mental inability on behalf of the principal to effectively communicate. Once the power of attorney has been triggered, rights pass to the agent for a specified duration or until revoked by the principal.

When assisting your loved one in the creation of their power of attorney documents, it is important to remember the weight that these documents carry. The choice of agent, the specification of the agent's rights, and the limitations of those rights is vitally important in ensuring that your loved one's wishes are correctly carried out in possible cases of incapacitation or incompetence. Thoroughly discussing each item of a power of attorney agreement with your loved one and proper legal counsel helps ensure that your loved one's agent acts fairly and correctly on behalf of your loved one.

References

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