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What is a POA and which one should you have?

A Power of Attorney (POA) is a legal document that is a key component of any estate plan. This legal document allows you to appoint an agent, or “attorney-in-fact”, to make decisions about healthcare and financial matters and manage these affairs if you are unable to do so. The power of attorney may help provide peace of mind and some control after unpredictable events. States have different rules, but generally, there is a POA that covers healthcare, like a healthcare proxy or advance medical directive, and there are financial POAs. The financial POA allows the designated agent to make financial decisions on your behalf.

The two major types of financial POAs are General and Durable. Both documents grant a designated agent the legal authority to act on behalf of the person granting the power. The key difference is that a Durable POA is enforceable in the event of the granting party’s incapacity, whereas a General is not. Incapacity is broadly defined as the inability to make sound decisions, often due to mental or physical impairment. The specific criteria for determining incapacity may be in the document, or defined by the laws of the jurisdiction in which the document is executed.

A Durable POA is the gold standard in estate planning and is highly recommended. If someone feels anxious about having their agent make decisions for them while they’re incapacitated, they should probably designate another agent. Many states like Idaho, Texas, and Washington have adopted the Uniform Power of Attorney Act (UPOAA). The act states that a Power of Attorney is durable unless otherwise specified in the document. For states that have not adopted the act, durability is not a given. In these instances, the language in the document should state that the terms are enforceable in the event of incapacity.

Durable POAs come in two forms: Immediate and Springing. An Immediate allows the agent to make legal decisions on behalf of the named individual when the document is signed, regardless of capacity. We recommend an Immediate if the granting party is exhibiting signs of cognitive decline. Alternatively, a Springing takes effect when the individual is incapacitated. Determining whether a person is incapacitated requires a doctor or multiple doctors to confirm that the granting party is unable to make sound decisions. This can take some time. If the granting party is healthy, a Springing POA is usually a better fit.

Power of Attorney documents are typically lengthy and contain a lot of legal language. It’s a necessary evil to cover all possible situations where the power could apply. This method, called the ‘kitchen sink approach,’ ensures that the agent can act in whatever situation necessary. Financial institutions sometimes reject POAs that are too general. Reasons for rejection may include outdated documentation, missing legal requirements like notaries or witnesses, and that a document designates multiple agents and requires each to sign. The laws vary by state, and it’s important to review these finer points with a qualified estate planning attorney.

Assigning multiple agents in a POA is not recommended. Aside from a higher likelihood of a financial institution rejecting the document, multiple agents may disagree, and the decision-making process is rendered inefficient. Another common mistake is assuming one is too young for a POA. But they are not only for individuals in their 80s and 90s. Unfortunately, accidents happen, and it’s critical that someone act on your behalf.

Please reach out to your Wealth Manager with questions regarding Power of Attorney documents.

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