

What You Should Know about Powers of Attorney

Q: What is a power of attorney?

A: A power of attorney is a document whereby an individual, known as the “principal,” appoints another individual, known as the “attorney-in-fact,” to make financial and business decisions for the principal. This should not be confused with a “durable health care power of attorney” that appoints another individual to make health care treatment decisions for a principal if the principal is unable to make his or her own decisions.

Q: What types of powers does the attorney-in-fact have?

A: It depends upon the specific language of the power of attorney document. The power of attorney can be “limited,” giving the attorney-in-fact only very limited powers (such as the power to transfer the principal’s assets to a trust established by the principal), or it can be “general,” giving the attorney-in-fact all of the powers that the principal would have if personally present.

Q: When do the powers of the attorney-in-fact begin?

A: Again, that depends upon the specific language of the power of attorney document. The document can be prepared so that the powers begin as soon as the document is signed, or it can be prepared so that the powers “spring” into effect in the future when a particular event occurs (for example, when the principal is no longer competent—perhaps due to a physical or mental illness). Defining exactly when a “springing” power of attorney is to become effective oftentimes can be very difficult.

Q: When do the powers of the attorney-in-fact end?

A: The powers of the attorney-in-fact end whenever the principal revokes (cancels) the power of attorney. If the power of attorney document contains certain language, the powers of the attorney-in-fact will continue if the principal should become incompetent, but according to the law, the powers will end when the principal dies.

Q: What are some of the common uses of a power of attorney?

A: As parents get older, they sometimes need help paying their bills and handling other banking matters. A parent can designate his or her child as attorney-in-fact rather than adding the child as an owner of a bank account. In addition, someone who plans to take an extended trip outside the country or who is recuperating from a long illness may wish to name a friend or relative as attorney-in-fact to pay bills or address property concerns.

Q: Does Ohio law include guidelines for a form that can be used to create a power of attorney?

A: Yes. Section 1337.60 of the Ohio Revised Code includes form language for creating a valid power of attorney document.