

Preparing for the future

Consider putting a general power of attorney in place

A durable, general power of attorney is a document in which you appoint an agent to make decisions for you and otherwise act on your behalf when you are incapacitated.

“Everyone needs a durable, general power of attorney,” says John T. Ort, an attorney at Semanoff, Ormsby, Greenberg & Torchia, LLC. “They are not just for the elderly.”

Smart Business spoke with Ort about a general power of attorney, how it should be structured and when it becomes effective.

How should one go about addressing the possibility of being incapacitated?

Without a durable, general power of attorney in place, no one could act on your behalf if you become incapacitated. In that situation, your family or another interested party would have to apply to the local Orphans’ Court to have you declared incapacitated and have someone appointed as your guardian to act on your behalf. That takes time and money, and the court-appointed guardian would be subject to continued court supervision.

It’s better to create a durable, general power of attorney now so you can choose your agent.

A ‘durable’ power of attorney is effective notwithstanding your subsequent incapacity. Pennsylvania law makes all powers of attorney presumptively durable.

How should a general power of attorney be structured?

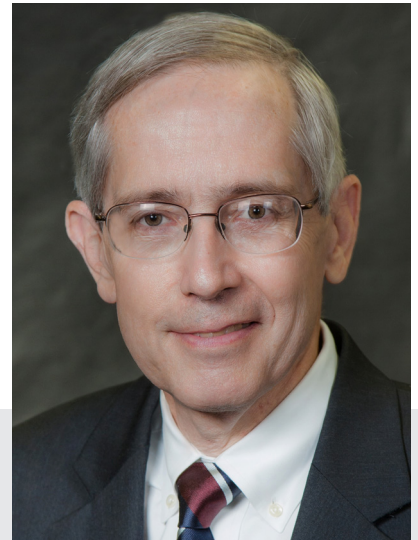
The concept of the general power of attorney is to grant your agent as broad authority as possible because you don’t know what actions your agent may have to take on your behalf in the future. It’s often useful to designate specific powers such as the power to open and close safety deposit

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boxes, to write checks, pay bills, manage investments, sign your tax returns, and to sue or defend against a suit on your behalf.

A general power of attorney typically is not the best way to authorize someone to make health care decisions on your behalf. That should be relegated to a separate document, such as a combined health care power of attorney and living will.

What are hot powers?

In Pennsylvania, there are certain powers that an agent is not granted by a general grant of authority. These so-called ‘hot powers’ are very sensitive and can potentially be abused by the agent. Such powers include the power to create or change rights of survivorship, the power to create or change beneficiary designations on insurance policies, annuities and retirement plans, and the power to make gifts. If you want to authorize your agent to exercise these powers on your behalf, you need to specifically grant your agent such powers.

When is a power of attorney effective?

You can make the power of attorney effective immediately when you sign it. This means your agent could act on your behalf even though you are not disabled. The alternative is a springing power of attorney, which becomes effective at some future point in time and requires a clear definition

of the future event that makes it effective.

One common way for a springing power of attorney to become effective is upon a certification by a physician that the principal has become disabled. This can be problematic if the physician does not want to be put in that position, especially if there’s family friction about whether or not the power of attorney should become effective.

Alternatively, you could delegate to one or more persons the power to make it effective — for instance, a majority of your spouse and your adult children.

What advice would give about choosing agents?

General powers of attorney are powerful documents and can be subject to abuse by the agent, so you need to have absolute confidence that the agent will act in your best interests. You can have just one agent at a time serve on your behalf. Or, you can appoint two or more agents to serve at the same time, in which case it is presumed that they are required to act jointly, thereby requiring unanimous agreement among the agents, which could minimize the possibility of a single agent abusing his or her powers. Also, successor agents should be appointed and you should consider granting the last-serving agent the power to appoint one or more successor agents. ●