

“A power of attorney is one of those crucial estate planning tools that is used to accomplish a great many goals.”

POWER OF ATTORNEY IN CALIFORNIA



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probate, trusts, estates



Estate planning is an effective way to plan for the future. It involves the execution of various legal tools that allow individuals to lay out their plans for passing on their assets to their families and others in a way that accomplish their goals and protects their assets from loss.

A power of attorney is one of those crucial estate planning tools that is used to accomplish a great many goals. There are different kinds of powers of attorney, drafted to achieve each person's unique goals. Whether you require a general or limited power of attorney, or your goal is to plan for future finances or health care needs, your estate planning attorney can guide you through the process and create the proper planning tool for you.

WHAT IS A POWER OF ATTORNEY?

A power of attorney is a document that gives an "agent" legal power or authority to act on behalf of someone else, referred to as the "principal." An agent may also be known as an "attorney-in-fact" in some states. The two most common purposes for an attorney of power is the management of finances or medical care. When your mother reaches that time in her life when she needs some assistance paying bills or managing her finances, she can execute a power of

attorney for finances. This will allow her the ability to choose someone she trusts to serve as her agent, and handle her finances for her.

HOW IS A SPECIAL POWER ATTORNEY DIFFERENT FROM A GENERAL POWER OF ATTORNEY?

A General Power of Attorney, as the title suggests, conveys broad power and authority to the agent. So, a general power of attorney for health care would authorize the agent to make nearly any decision related to the principal's medical care and treatment. On the other hand, a limited power of attorney, also called a special power of attorney, provides only specific power and is usually limited to certain identified transactions. For instance, a limited power of attorney for selling a family business would only grant the agent the power to make decisions related to the selling of that company. Once the agent accomplishes all of the tasks described in the limited power of attorney, the powers are revoked and the legal document is no longer effective.



Creating a general power of attorney is a good option when the principal has become generally incapacitated and no longer to handle his or her own affairs. With a general power of attorney, the agent will be able to take over under the authority of the legal document and handle whatever transactions may be required.

DURABLE POWER OF ATTORNEY

A Durable Power of Attorney is a particular type of power of attorney, the effectiveness of which is not altered by the incapacity of the principal. In other words, if the principal becomes incompetent after a durable power of attorney is created, the agent's authority will remain intact. Otherwise, a standard power of attorney would no longer be effective after the principal becomes incapacitated.

BENEFITS OF HAVING A POWER OF ATTORNEY

There are many advantages to being able to choose your own agent. The alternative is letting a judge make that important decision for you, during conservatorship proceedings, for example. Planning ahead and creating a power of attorney will give you the opportunity to consider and specify how you want your financial affairs handled, or the type of medical treatment you are willing to consent to. That way, if you ever become incapacitated, you will have the peace of mind in knowing that your chosen agent will take care of everything.

Another benefit is the protection that a power of attorney will give. An agent cannot legally take any actions or conduct any transactions that you have not authorized, especially after your death. That means, to ensure that your estate is handled as you wish after your death, you will also need to create a will, trust, or other estate planning tool to accomplish those goals.

A power of attorney is an efficient tool that does not require you to give up all of your rights to manage your affairs, as would be the case with the appointment of a conservator by the court. Instead, you can retain control over any aspect of your affairs you choose, even after a durable power of attorney has been signed. The agent will only be allowed to take actions at your discretion, as long as you are competent. Also, you always have the right to revoke the power of attorney at any time.

HOW IS A POWER OF ATTORNEY TERMINATED?

A Power of Attorney can end based on different circumstances. If a specific date for termination is specified in the document itself, the date will be controlling. A Power of Attorney will end automatically if either the agent or the principal dies.



Also, the agent resigns or becomes incapable of continuing to serve, and an alternative agent was not specified, the power of attorney will terminate. Of

course, the principal can always revoke the power of attorney in writing and file the revocation in court, as long as the principal is still competent. The court can also revoke the power of attorney if it is determined that the agent has violated his or her duties in any way.

Although do-it-yourself power of attorney forms are available everywhere, allowing an attorney to draft this legal document specifically for you, is a better idea. Contact a California estate planning law attorney for assistance.

About the Author



Scott P. Schomer is a graduate of Boston University School of Law and is a frequent lecturer on estate planning and elder law issues, having appeared on local and national television discussing the importance of estate planning. Scott has an extensive litigation background and has over the years obtained in excess of twenty five million dollars in judgments and verdicts for his clients. Scott is a member of the Probate Volunteer Panel and has been appointed by the Los Angeles Superior Court to represent numerous parties in contested proceedings in the probate court. Scott has also served as Judge Pro Tempore of the Los

Angeles Municipal Court and also been appointed by the court as an expert in probate matters. Because of his extensive experience, Scott brings a unique perspective to helping protect his clients.

SCHOMER LAW GROUP

Schomer Law Group is a professional law corporation that specializes in elder law, probate, wills, trusts and conservatorships. We counsel clients on the unique legal issues relating to advancing age. Whenever possible, we prefer to help clients plan for the future, avoid probate, minimize taxes and solidify their legacy. We also help clients plan for possible incapacity and long-term care. We help our clients deal with issues of aging with independence and dignity. In addition to estate planning, our firm has considerable experience helping victims of elder abuse. Our firm has aggressively pursued remedies and recovered assets belonging to our elderly clients where unscrupulous individuals have taken advantage of the elderly because of diminished capacity or other impairments.

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