

10 Things to Know about Powers of Attorney

1. They are powerful.

A lot of people do not understand that a power of attorney is one of the most powerful legal documents that we have. It can give another person (or persons) the ability to act on your behalf with regard to all financial and medical matters. They are typically able to engage in such actions, without your direct oversight, because the document allows for that.

2. There are many different types.

People often think that one power of attorney document is like all others. This is simply not the case. There are powers of attorney that are limited to healthcare. There are also ones that are limited to financial or property matters. There are powers of attorney that are limited in time. There are also powers of attorney that are no longer valid if you become incapacitated. It is important to understand what you are trying to accomplish with a power of attorney and then make certain that you have such a document crafted for that purpose.

3. Appoint someone you trust.

This can't be overstated. You are appointing someone to make all of your business, financial, and medical decisions for you. It is important that you have no doubt in the ability of that person to perform honorably in any areas for which you give them authority. If you have a child that has made poor financial or personal decisions, don't give them the opportunity to make similar poor decisions on your behalf. You must trust them.

4. Don't put too many cooks in the kitchen.

Parents with children often want to appoint all of their children, or multiple children, to serve as co-agents for them. They do this because they want to be fair to all of them and don't want anyone to feel slighted. While these are valid reasons, it can create issues down the road. Multiple

agents have to get along and cooperate with each other. They may all be required to sign documents together and this can slow down important matters. It is often preferable to choose one child to serve with another child serving as a backup.

5. You can't put the toothpaste back in the tube.

If it is discovered that your power of attorney abused that position and has taken money from you, it can be difficult to recover all of the property. It is like putting toothpaste back into the tube at times. Therefore, as mentioned in #3 above, it is important to appoint someone you trust. Second, if you suspect that someone is abusing the power of attorney, then you need to act quickly to cut off their authority before they do more damage. Better safe than sorry.

6. You still have power to act.

Appointing someone to act on your behalf does not prevent you from acting on your own behalf. If you still have the capacity to make your own decisions, then it is important to recognize that you still have the right to do so. A power of attorney does not remove your power to act, it just authorizes someone else to also act under the limitations that you have placed. It is not the same as a conservatorship, where a court removes your power to act and places that power in the hands of another.

7. They are fully revocable.

A power of attorney is always able to be revoked or amended. As long as you have the capacity to make appropriate legal decisions on your own behalf, then you have the right to make changes to your power of attorney document. If you do not believe that the document is in keeping with your wishes, then you should certainly consult with an attorney about how to get the document changed to reflect those wishes.

8. They do not "trump" a will.

We often hear concern that you already have a last will and testament

and you have appointed an executor under that document, so you don't want to cause confusion about who has the power to act. The will that you have created controls who will act on behalf of your estate when you pass away. This person does not have any authority to act until you have passed away and the court appoints that person to act on behalf of the estate.

9. They cease at death.

A power of attorney loses all authority at the moment of death. See #8 above to see what happens to your assets when you pass away. In many instances, we see powers of attorney continuing to act under the document after the passing of the person that appointed them. This is not appropriate and doesn't have legal authority. Anyone that serves as an agent under a power of attorney should cease all action under that document at the moment of death. If they continue to try and act under the document, then they are putting themselves at risk.

10. Be careful.

This warning is two-fold. First, if you are creating a power of attorney, please be careful about what it covers and whom you appoint. Second, if you are appointed as an agent under a power of attorney, be careful to respect the strict reading of the document. At times, it is very easy to unintentionally get yourself in trouble through the use of a power of attorney. The guiding north star for any agent should always be to act solely in the best interests of the person who granted the power of attorney. You cannot use the power of attorney to provide any benefit to yourself.