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What you should know about.....



Financial Powers of Attorney

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Financial powers of attorney are important legal documents that many people use to help handle their financial affairs when they are unable to do so. Because such documents give significant and far-reaching powers to another, financial powers of attorney should be made only after thoughtful and careful consideration. While Ohio law does not require a particular form to be used when creating a financial power of attorney, it is important to use language that comports with current law when creating such a document. Therefore, the assistance of an attorney is recommended.

Q.: What is a financial power of attorney?

A.: In general, a power of attorney is a document that is created to allow one person, called the *principal*, to authorize another person, called the *attorney-in-fact* or the *agent*, to act or make decisions for the principal. A financial power of attorney (in contrast with a health care power of attorney) allows the principal to give authority to an attorney-in-fact or agent to deal with financial matters. In essence, the principal gives authority and power to the agent, and the agent acts for the principal and must follow the principal's instructions.

Q.: What are the main components of a financial power of attorney?

A.: In general, a financial power of attorney will set forth, at a minimum, the following matters:

- It will name the agent.
- It will name successor agents, if any.
- It will lay out the authority and powers given to the agent and any limitations on such authority or powers.
- It will state when the authority and powers begin and end.
- It will state whether the agent can act when the principal is incompetent or disabled.

Q.: What authority or powers will the agent have?

A.: The agent will have only the authority and powers that the principal gives. This means that the principal can give the agent authority and powers to deal with only certain properties or for specific transactions (for example, authority over a particular bank account or authority to buy or sell a particular property). The principal may decide, instead, to give the agent broad and general authority and powers. For example, the principal may decide that the agent should be able to do anything that the principal can do. Oftentimes, when the agent is authorized to do anything that the principal can do,

the power of attorney will list examples of the agent's authority, such as the authority to buy, sell, and invest the principal's property.

Q.: How specific does the authority or power have to be? Can I simply say I want my brother to handle my finances?

A.: The authority or power given to an agent should be stated clearly so that the agent and third parties know what the agent can and cannot do. Ohio law now allows many powers to be given in a "short-form" manner. For example, you can simply state that your brother, the agent, will have the power to handle "banking and other financial institution transactions." The statute (written law) sets forth the details of such powers. An attorney can help you determine the authority and powers you may want to give an agent.

Q.: Can the principal change a financial power of attorney?

A.: Yes. The principal can always change or revoke (cancel) a financial power of attorney.

Q.: Can an agent act when the principal is incompetent or disabled?

A.: Yes. For centuries, an agent could not act if and when the principal became incompetent. In modern times, this restriction made it difficult, if not impossible, for third parties to follow any instructions or directions given by the agent on the principal's behalf. The law has since been changed, and now provides that an agent can act when the principal is incompetent as long as the principal has specifically stated in the power of attorney document that the agent will have authority even if the principal becomes incompetent or disabled.

Q.: Can an agent make gifts of the principal's property?

A.: An agent cannot make gifts of the principal's money or property unless the principal has specifically given this significant authority to the agent. Even if very general or broad authority is given to an agent (for example, authorizing the agent to do anything that the principal can do), this still does not give the agent the authority to make gifts of the principal's money or property. A person may, however, give an agent the specific authority to make gifts or limited gifts, which may include the authority to change the beneficiaries under life insurance policies or retirement benefit plans, consistent with the principal's goals and directions.

Q.: Are there powers that cannot be given to an agent?

A.: Yes. There are some matters that one cannot authorize another to do because such matters are considered too personal in nature. For example, a principal cannot authorize an agent to vote in his or her place.

Q.: When does the agent's authority begin?

A.: The agent's authority will begin when the power of attorney states that it will begin. Many powers of attorney documents state that the agent's authority begins as soon as the power of attorney document is signed. Some powers of attorney documents state

that the agent's authority will "spring" into effect at a future date or upon a particular event. For example, a power of attorney document can provide that the agent's authority will begin if and when the principal is no longer competent as determined by two physicians who have examined the principal. If an agent's authority is to "spring" into effect in the future upon a particular event, such as upon the principal becoming incompetent, it is important to consider how easy or difficult it may be for the agent and others to determine whether such event has occurred.

Q.: When do the powers of the agent end?

A.: The agent's authority will end when the power of attorney states that it will end or when the principal revokes (cancels) the power of attorney. Many powers of attorney documents will not specifically state when the agent's authority ends. If no specific ending to the agent's authority is spelled out in the document, then the agent's authority will end when the principal dies or revokes the power of attorney. An agent can never act after the principal has died.

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

A.: Oftentimes, financial powers of attorney are established by persons who understand that, as they get older, they may need help paying their bills and handling their banking and financial matters. Powers of attorney allow such persons to give to a spouse or child or another person the broad, general authority to step in and handle such matters if and when they cannot. Such powers of attorney are designed and intended to last for as long as the principal is living. Sometimes, people need financial powers of attorney for more limited purposes and for a more limited time. For example, a person who plans to take an extended trip outside the country or someone who is recuperating from a long illness can give a spouse or child or another person a power of attorney to handle his or her financial affairs during this limited time. Financial powers of attorney documents can be fashioned and formed to fit the particular needs of the principal.

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