

# Not all Powers of Attorney are Created Equally

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October 1, 2013

Many people confuse the identities of all the “players” when it comes to Estate Planning. Frequently, a person may comment that, “I am my mother’s Executor, so I am handling her financial affairs.” To which we respond: “Not while she’s still with us!” You see, it’s easy to confuse legal terms that refer to a relationship where one person acts on behalf of the other. One of the most common situations involves an “Agent” appointed by a “Principal” under a document known as a Power of Attorney. This document allows the Agent to stand in the shoes of the Principal to perform acts on behalf of the Principal in the event the Principal is incapable of performing acts for herself.

Frequent relationships utilizing a Power of Attorney exist between spouses, parent and adult child as well as other adults who may or may not be related. The driving force behind using a Power of Attorney is to provide an inexpensive and efficient way to appoint a surrogate decision maker without resorting to a cumbersome court guardianship proceeding. One of the great attributes of the Power of Attorney is in its durability – a document which can be signed and held in safekeeping for many years until needed. When used properly, a Power of Attorney can be the most important estate planning document.

However, it is important to remember that Powers of Attorney come in all shapes and sizes, with or without lots of bells and whistles. Some relate to general business and tax decisions; others to long term care planning and asset protection measures; while still others simply provide health care surrogate decision making powers. It is important to realize that as we go through life and our situations change, so too do the parameters set forth in an appropriate Power of Attorney that will actually work when called upon. Many clients have been informed that their Powers of Attorney do not address their particular needs, especially as they age, and sometimes it is too late to prepare a new document if the Principal has diminished capacity. In addition, Pennsylvania law governing powers of attorney seems to be in constant flux. So, if you don’t have a Power of Attorney, or it’s been a few years since you’ve reviewed your current one, it might be time to check under the hood just to see if your document needs a tune up.

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