

The Power Of Attorney; Managing Life's Business When You Cannot

By: Managing Director – Family Wealth Strategist,
Abbey Flaum, J.D., LL.M.

Whether it's paying bills, directing investment purchases and sales, closing on real estate transactions, applying for loans, or something else, we all make a hundred decisions and take actions relating to the business of living every day; but what if you cannot make those decisions, sign closing documents or communicate with your investment advisor? What if you need to leave the U.S. for an extended period of time, go in for emergency surgery or you are in an accident? A power of attorney may prove indispensable.



A power of attorney is a legal document in which you, the “principal,” name another person, your

“attorney-in-fact,” to act on your behalf to handle life's business for you. This document may be immediately effective and either terminate in the event of your incapacity or remain effective in the event you become incapacitated. In some states, you may choose to make the power of attorney effective only in the event you are mentally unable to manage your affairs yourself. The power of attorney may be broad, enabling your attorney-in-fact to effectively step into your shoes for all matters you would typically handle on your own, or it may be limited in scope and/or in duration, allowing you to appoint an individual to handle matters during a particular timeframe (i.e., closing on the purchase of a real estate transaction). Importantly, your power of attorney becomes void upon your death, at which point the only people with authority to act on behalf of your assets will be the personal representatives or trustees you have named in your will and/or trust(s).

Your chosen attorney-in-fact will have a legal, fiduciary obligation to act in your best interest, but selecting an attorney-in-fact to act on your behalf may nevertheless be tricky. You do not need to

name a lawyer, CPA, or banker; instead, you should select someone who has a good head on his or her shoulders, who you trust implicitly, and who you believe would act similarly to the way you would if you were handling financial matters yourself. If you are inclined to name more than one person to serve as your attorney-in-fact (i.e., two adult children), be sure to consider whether there is potential for conflict and/or impasse that may arise by doing so. Think also about the potential for friction that may arise if, for example, you name a second spouse as your attorney-in-fact when you have adult children from a prior relationship; you don't want to put anyone in a precarious position with your family if you may avoid doing so. If you are lucky enough to have several trusted people in your life, consider naming them to act in succession, in case your first chosen attorney-in-fact becomes unable or unwilling to serve.

What happens if you do not have a power of attorney and you become mentally unable to manage your own financial affairs? Without a power of attorney, your family may need to initiate conservatorship proceedings in court and ask the court to select someone to manage your business for you. Not only may conservatorship proceedings be time-consuming, expensive, and frustrating, but they may result in the appointment of an individual to act on your behalf that you would not otherwise approve of.

About half of the United States have power of attorney forms that are available free online; however, understanding the intricacies of all the choices available to you in a power of attorney may seem like an insurmountable task.



A qualified estate planning attorney will understand the importance of a power of attorney in your overall estate plan and can guide you through the establishment of a power of attorney and the selection of the right attorney-in-fact, with appropriate limitations and powers for the correct span of time. Don't become so busy living life that you overlook the importance of planning for the management of life's business when you cannot.

To learn more about a power of attorney or review your overall estate plan, please call 404.264.1400 or visit us at www.homrichberg.com.

Important Disclosures

This article may not be copied, reproduced, or distributed without Homrich Berg's prior written consent.

All information is as of date above unless otherwise disclosed. The information is provided for informational purposes only and should not be considered a recommendation to purchase or sell any financial instrument, product or service sponsored by Homrich Berg or its affiliates or agents. The information does not represent legal, tax, accounting, or investment advice; recipients should consult their respective advisors regarding such matters. This material may not be suitable for all investors. Neither Homrich Berg, nor any affiliates, make any representation or warranty as to the accuracy or merit of this analysis for individual use. Information contained herein has been obtained from sources believed to be reliable but are not guaranteed. Investors are advised to consult with their investment professional about their specific financial needs and goals before making any investment decision.

©2023 Homrich Berg.