

# "Your Estate Matters"

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Legal-ease 

## POWERS OF ATTORNEY

### WHAT THEY DO, AND WHAT THEY DON'T!

I think everyone needs a Power of Attorney (POA) **IF** there is another human being out there that you can totally trust to manage your assets for you. I realize the latter part of that sentence is the hardest part. Powers of Attorney are often misunderstood, so I hope this helps to clear up many of these misconceptions.

The "Principal" is the person for whom the POA will benefit, the person *giving* the power. The Principal must have capacity in order to sign the POA as it is a legal document. The Principal must understand, at least in a basic sense, what he/she is signing and how important it is. So many people call our office wanting a POA for mom or dad, and upon further questioning, we find that mom or dad is already incompetent. Unfortunately, it's too late.

The "Agent" (or Mandatary) is the person that the Principal chooses to transact their affairs on their behalf. Legally, you may appoint more than one Agent at a time, but these days most Banks and Brokerages are refusing to accept co-agents on POAs. For example, if the POA names both John AND Susan, the Bank/Brokerage might accept the POA but will limit their liability by accepting instruction from either party acting individually (in essence, now it's John OR Susan).

A POA does not take any power away from the Principal. A POA is much like adding someone to your account along with you, as it allows that person to act "in addition to" not "instead of" the Principal. Many children call our office wanting to get a POA for mom or dad thinking that it will stop mom or dad from writing frivolous checks or withdrawing money from their account. While the POA would also allow the Agent to access the account and get information, it is not going to stop the Principal from writing these checks and withdrawing funds.

Under Louisiana law, a POA can be drafted as a "Procuration". This means that only the Principal, not the Agent, needs to sign. Sometimes parents don't

want their children to know yet that they have a POA. However, we always recommend that the children know where to find the "important papers" if a parent becomes ill.

A POA ends at the Principal's death. An Agent may not continue to manage the Principal's financial affairs through the POA after they have died. That is usually when the deceased's Succession (Probate) must be opened and an "Executor" (with a Will) or "Administrator" (without a Will) gets appointed by the Court. Many times, a Succession can be completed through a "Simple Succession" or an "Affidavit of Succession" and a formal Administration is not needed, but nothing can be done until the final Affidavit or Judgment of Possession is rendered.

If you hold an Individual Retirement Account (IRA) with a brokerage firm, ask your broker to help you submit the firm's POA form for your IRA (most will have them). While married couples may have joint accounts and either may act of behalf of the other, this is NOT the case with IRAs. The first word in IRA – "Individual" – means only that person owns and has access to the account. If the IRA were in Bill's name and Bill became incompetent, his wife would not be able to access the money in this account for their care and expenses without a POA in place.

Unfortunately, when someone has already become incapacitated without ever executing a POA, or it becomes necessary to prohibit the Principal from handling his or her own affairs, a full-blown Court proceeding called an "Interdiction" must be initiated. This is an expensive and time-consuming process that can often be avoided by having a comprehensive POA in place.

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