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## ***WHAT YOU NEED TO KNOW ABOUT POWERS OF ATTORNEY?***

***By Thomas D. Begley, III, Esquire***

One of the most important legal documents to have is a Power of Attorney. Unfortunately, many individuals don't know there are a variety of Powers of Attorney available nor do they receive proper counseling to select the party who should be acting as the agent under them. The purpose of this article is to address these important issues.

The Power of Attorney is a document by which one individual gives another the authority to act for him or her. There are three types of Powers of Attorney:

- a) *Limited Power of Attorney*
- b) *Specific Power of Attorney*
- c) *General Power of Attorney*

The *Limited Power of Attorney* is a document which has a finite duration. The most common form is a Real Estate Power of Attorney which is granted to complete the sale or purchase of a specific piece of real

property. If it is a sale, it allows the agent to sign the deed for the seller as well as any other relevant closing documents. If it is for a purchase, it allows the agent to sign the mortgage and other closing documents on behalf of a buyer. It is a Limited Power of Attorney because it expires as soon as the task delegated in the document is complete.

The *Specific Power of Attorney* is one which is related to a specific function but does not have an expiration. For example, many of us have Powers of Attorney which allow individuals to operate their bank accounts or specific brokerage accounts.

The most popular form is a *General Power of Attorney*. A General Power of Attorney is comprehensive as it can give one's agent or attorney in fact all the powers in life that he or she possesses. It should cover a wide variety of financial powers as well as the authority to make personal decisions for the person executing the power of attorney.

A *General Power of Attorney* can either be durable or springing. A Durable Power of Attorney is effective immediately and will remain in effect after an individual becomes incapacitated. If the Power of Attorney is not durable, an agent cannot act absent the appointment of him or her as a conservator or guardian

through a court proceeding. In essence, the Durable Power of Attorney remains in effect until one's death or until it is rescinded.

A Springing Power of Attorney does not become effective until an individual becomes incapacitated. Traditionally, a Springing Power of Attorney states that no individual has the authority to act on behalf of the principal until the principal is declared incapacitated or the principal signs a written waiver as to the springing limitation.

One of the biggest issues involving the execution of a Power of Attorney is Fiduciary neglect. Many individuals make poor choices in selecting individuals to act on their behalf. Frequently, many individuals when asked why they selected a particular person to act as their agent, cite extraneous factors such as: a) she is the oldest child, b) he's the man, c) she lives closest, and d) I don't want to hurt his feelings. Individuals have to recognize this is a business decision. The individual has to have the moral character, common sense to carry out the property tasks delegated by this very important document.

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