



Sabrina Winters
Attorney at Law, PLLC

POWERS OF ATTORNEY. WHAT ARE THEY AND WHAT DO THEY DO

By: Sabrina Winters, Attorney at Law

Generally speaking, there are various types of powers of attorney in North Carolina; each with its' own specific function. Their function is more detailed than I will provide below. However, generally it is as follows...

1. Durable General Power of Attorney: This Power of Attorney is created so that someone can manages finances for you. For the most part, this takes affect the minute it is signed. It does not matter if you become incapacitated the next day. There is typically a statement in the document that says something along the lines of: "This power of attorney is a durable power of attorney, and it shall not be affected by my becoming disabled, incompetent or incapacitated or the lapse of time. It is my intent that the authority conferred herein shall be exercisable notwithstanding my physical disability or mental incompetence."

Often times this is what a husband and wife will use for each other. I do recommend to my clients to check with the banks they maintain their accounts with if they require their own form to be signed in addition. Although it is not statutorily required, I have occasionally seen some local branches of banks require an in house form to be executed as well. If you need to do this please remember to put the agents in the same order. It is going to potentially create some serious problems if your daughter is named as first in one and second in the other!

2. Springing Power of Attorney: This takes effect when the person creating the document becomes incapacitated. It can be signed today and in three years from now when the person is incapacitated it becomes a document that can be used by the agent but not before then. Typically two doctors are needed to certify incapacity. If you no longer are incapacitated, the authority is revoked until the future if it is ever needed again.

3. Healthcare Power of Attorney: This document names a person to make medical decisions. This person is called an agent whom is essentially stepping into the shoes of the person signing the HCPOA and makes the decision that person would have normally made for him or herself. I always suggest to make certain you tell everybody that is close to you, family, friends, even the agent that you appoint, what your wishes are. Even though it is in the document it's a tough decision to make. So if they know and everybody else knows it's a much more comfortable decision to be able to make.

This authority typically kicks in when either a doctor that has been named (or if left blank the doctor attending to you), determines that you lack capacity. The duration of the authority granted via the power of attorney can also be limited. The language would read similar to this: "If I am unable to make health care decisions for myself when this power of attorney expires (on the date I may have inserted above), the authority I have granted to my agent and attorney-in-fact continues to exist until the time I become able to make health care decisions for myself."

Every estate plan should include both a Power of Attorney for finances as well as medical decisions. It is important that your estate be managed after your death, but you may also need assistance while you are still alive.

If you need to revise these documents or create them for the first time, call our Estate Planning firm in Charlotte, North Carolina at 704-843-1446 and we will be happy to assist you in getting your affairs in order.