

Power Of Attorney Can Be A Helpful Document

By former Principal Diane Fox

A Power of Attorney ("POA") is a document by which you (the "Principal") give some other person (your "Agent") the authority to do various things on your behalf. A POA can be a helpful document to have. There are several types; some POAs become effective at a date subsequent to the date it is executed and others are effective only for a specified period of time and/or only for certain specific purposes.

- **GENERAL:** A general POA is one that allows your Agent to do anything on your behalf, such as buying, selling or refinancing your property, handling your investments or financial accounts, making gifts (if the POA permits that), filing or settling legal proceedings, preparing and filing tax returns, managing properties or any other action which you normally would handle yourself. This type of POA is recommended if you are disabled - or believe you are or will soon be unable to handle your own affairs - and is always recommended as part of your estate planning.
- **LIMITED:** This type of POA can be used to permit an Agent to do only one thing (i.e., sell, purchase or refinance a piece of property) or it can contain general powers as described above, but be effective only for a specified period of time (i.e., if you are out of the country on vacation for an extended period of time).
- **MEDICAL:** A medical POA permits your Agent to make certain medical decisions on your behalf. This type should also be part of your estate planning document package.
- **EFFECTIVE DATE:** A POA can be effective as of the date it is executed, or the ability of your Agent to act can be postponed until such time as it is determined that you are unable to continue handling your own affairs. In that case the POA is known as a "Springing Power of Attorney".
- **EXPIRATION DATE:** All POAs terminate upon your death. If it's what's called a "durable" POA, however, it stays in effect even if you become disabled or mentally incompetent. You may, of course, at any time revoke any type of POA by written notice to the Agent.

The Maryland legislature has recently adopted preferred forms of statutory Powers of Attorney. Although these forms are somewhat cumbersome, they are designed to protect you against an Agent who may be less than scrupulous in handling your affairs. The statute also provides that if a bank or brokerage firm, for example, refuses to accept a duly executed statutory form of POA, that entity is liable for reasonable attorney's fees and costs incurred by you in any action taken to force that entity to accept the form. Similar provisions were recently enacted by Virginia when it adopted the Uniform Power of Attorney Act. In the past, many banks or brokerage houses refused to recognize any POA forms except their own.

There are also some technical rules in conjunction with the execution of POAs, and Maryland, the District of Columbia and Virginia each has its own requirements.

A Power of Attorney cannot be used by a trustee, personal representative or executor of an estate or by corporate officers or directors. Generally, in all other circumstances, a POA can be a very valuable tool, BUT you must be very careful who you name as your Agent. It must be someone you can trust to work for your best interests, and you need to remember to whom you give your POA. That will allow you to revoke it if, for example, you have appointed your spouse as your Agent and you become divorced or if you discover that the Agent you originally appointed may no longer be trustworthy or may have died or become incompetent.