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LEGAL BRIEFS

Crisis Management: General Powers of Attorney

What happens with your assets and finances if a medical condition renders you incapable of making responsible decisions? Perhaps the condition is temporary, or maybe the condition is permanent. It could be caused by accident or by disease.

Whatever caused the disability, you are now at the mercy of others to pay your bills, manage your investments, and pay your taxes. What can you do?

Take control of the situation. Do this by making arrangements ahead of time for someone of your choosing to take care of these matters for you. It could be your spouse, your child, a friend, or someone else. Then, set up a general power of attorney with which this person can manage your affairs should something happen in the future. Without this power of attorney, the only recourse would be for someone in your family to petition a court to have a guardianship established to manage your property through the courts.

A power of attorney is a document in which you appoint someone else as your agent to make decisions for you if you are unable or unavailable to do so. There are two types of powers of attorney. A “general power of attorney” provides your agent with broad powers to manage your property on your behalf. A “limited power of attorney” grants your agent power to take specific actions (e.g. selling your home).

One limitation of a general power of attorney is that third parties are under no obligation to recognize it. Banks and brokerage companies, in particular, are notorious for questioning the authority of an agent under a power of attorney. However, these businesses often have their own limited powers of attorney that can be used. Therefore, it is a good idea to request such documents from your bank or broker and complete them prior to any disability.

Be careful to avoid using a “springing” power of attorney whenever possible. Such a power of attorney, by its terms,

comes into effect upon your disability. Since there is no universal definition of “disability,” including this limitation within the document can cause confusion or delay at the time the power of attorney needs to be implemented.

In Maryland, general powers of attorney need to be explicit. In other words, any power that you want an agent to have must be set forth in the document. This means that these documents are often long and include lots of “legalese.” That cannot be helped.

In the absence of a general power of attorney, your family will be faced with the costly, time consuming and sometimes adversarial process of having the court appoint a guardian to manage your property for you if you become disabled. The attorneys fees, court costs, and bonding fees can be quite significant. And, any guardian is really acting as an agent for the court, which means that annual accountings must be rendered by the agent to the court.

You should be aware that a power of attorney becomes ineffective upon the death of its maker. You can revoke a power of attorney at any time, provided you notify both your agent and anyone who has accepted your agent’s authority under your power of attorney. Although this revocation can be done orally, it should be in writing.

Often the term “durable” is used to describe a general power of attorney. This means that the power of attorney can be used when you are incompetent or disabled. Under a recent law, in Maryland, all general powers of attorney are now presumed to be durable.

Preparing a properly drafted power of attorney now can save enormous hardship and cost in the future. In these cases, an ounce of prevention is truly worth a pound of cure.