

### **POWERS OF ATTORNEY**

Anyone who is competent can act on his own behalf, or through an agent. Where individuals choose to act through an agent, it is generally through the use of a power of attorney. A power of attorney is a delegation of decision-making authority from one person to another person. Powers of attorney may delegate authority to handle all sorts of business, personal and health care transactions, in which case it is called a *general power of attorney*. Where a power of attorney refers only to one or a few business transactions, it is called a *limited power of attorney*.

The general rule is that a power of attorney is valid only so long as the person who gives it has the ability to understand and consent to the on going agency relationship. Therefore, if a person gives a power of attorney and then becomes incompetent, the power of attorney would become invalid. This tends to defeat the usefulness of the power of attorney.

The person making the power of attorney is called the principal, the person receiving the power of attorney is called the agent or attorney-in-fact. The agent signs on behalf of the principal by signing the principal's name, then their name "POA".

Florida law now recognizes a *durable family power of attorney*. This is a power of attorney, usually in the form of a general power of attorney. The durable family power of attorney must contain certain statutory language.

The durable family power of attorney is particularly useful where it may be anticipated that a family member may become physically or mentally unable to handle business affairs. If disability occurs and the person loses the ability to sign papers, the only way to take control of the disabled person's business affairs may be through the institution of an incompetency proceeding and appointment of a guardian. This involves a court proceeding, requires the hiring of an attorney, and can become quite expensive.

In order for a power of attorney to be placed in effect, it must be recorded in the county where the maker resides, or where the business activities are taking place. A certified copy of the recorded document should be obtained. That copy then becomes the official evidence of authority for the appointed attorney-in-fact to act.

Since the durable family power of attorney is so useful, easy to prepare and inexpensive, everyone considering family and estate planning should consider its use. There are dangers, however. Once given, a power of attorney extends immediate authority to sign another person's name and handle his/her business affairs in the same manner he/she can do himself/herself. A power of attorney remains valid until revoked or until its maker dies. You must, therefore, have a high degree of trust and confidence in the person to whom you give a power of attorney. Consideration should be given to designating a person to receive financial reports from the attorney in fact and to monitor the activities of the attorney-in-fact.

Powers of attorney predating October 1, 1995, should be updated by reason of provisions enacted in the 1995 legislative session.