

COMMON QUESTIONS ABOUT NORTH CAROLINA POWERS OF ATTORNEY PART 1

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Powers of attorney are some of the most useful and flexible estate planning tools available today. Powers of attorney, or POAs, are capable of adding significant protections to any estate plan, and no plan is complete without at least one of them.

The use, creation, and application of powers of attorney is not difficult, but a lot of people are confused about how these documents work. Today we are going to start a two-part discussion on powers of attorney and common questions about them.

THE POA

A power of attorney, or POA, is nothing more than a specific kind of legal document. Through this document a capable adult can pass on to another capable adult, or an organization, certain powers and abilities.



A 'legal document' is a term we can use to describe any document that must meet specific legal standards, or one that conveys, imparts, or otherwise creates legal abilities or requirements. A power of attorney is a legal document in both senses as it both must meet specific standards and conveys specific rights, abilities, and restrictions.

THE PRINCIPAL

The principal under a POA has nothing to do with schools or education. Principals are the people who create a power of attorney, or who have a power of attorney created for them, and who transfer some or all of their decision-making abilities to another through the document. The principal effectively uses the power of attorney to give someone else the right to make



decisions, or enter into agreements, on his or her behalf.

For example, let's say that you are planning on taking an extended vacation. You want to give your brother the ability to use your checking about

to pay your bills while you are away. You can create and use a power of attorney, or more specifically, a limited financial power of attorney, to allow your brother to do this for you. The POA you create in this situation will give your brother specific, but limited, abilities to use your assets, as well as easily allow third-parties, such as your bank, to recognize your brother's legal right to represent you.

A power of attorney creates a special kind of legal relationship, known as a principal-agent relationship. What is an agent? Let's take a look.

THE AGENT

An agent under a POA is the person(s) or organization(s) that receives the right to make decisions on behalf of the principal. The agent, also referred to as an attorney-in-fact (even though the agent does not have to be an attorney or have any legal background) can be any capable and willing adult. The agent's ability to represent the principal and to make decisions, or enter into agreements, on the principal's behalf extend as far as the POA allows. This means that each power of attorney document will include



specific terms that state exactly what the agent is or is not allowed to do when acting on the principal's behalf.

Further, when acting in the capacity of an agent, the agent must act with a heightened legal duty.

This duty, known as a fiduciary duty, requires the agent to act in the best interests of the principal. Agents cannot simply use their powers of representation in any way they choose, and must act only if it serves the principal's interests. Should an agent misuse his or her powers, that agent can face significant consequences, and might even face criminal charges.

MORE QUESTIONS

We've only scratched the surface of what powers of attorney are, what they can do, and why there are important. In our next discussion on this topic we'll take a look at some additional questions about POAs that you should understand, as well as give you some additional advice you might need to help you decide that creating one or more powers of attorney is in your best interests.

But regardless of how much you read about POAs, you should always remember that nothing you learn on your own will ever



be a substitute for the advice and guidance of an experienced attorney. A good estate planning lawyer will be able to give you advice that's not only based on an understanding of the law, but also on the experience that has seen those laws put into practical effect. Your attorney will, in other words, tell you the practical advice you need to know to make powers of attorney work for you.



If you haven't scheduled an appointment to come talk to us about powers of attorney, you should do so as soon as possible. The Law Offices of Cheryl David has years of

experience assisting our clients with POA issues, and can help you regardless of your particular needs or circumstances.

ABOUT THE AUTHOR



Cheryl David is a graduate of UNC-Chapel Hill, the University of Baltimore School of Law, and the prestigious Trial Lawyer's College presided over by Gerry Spence. A former Administrative Judge, Cheryl is certified as an Estate Planning Law Specialist by the ABA accredited Estate Law Specialists Board, Inc. She is also a member of the American Academy of Estate Planning Attorneys, Medicaid Practice Systems and the National Academy of Elder Law Attorneys.

In 2008, Cheryl received the honor of becoming a Fellow with the American Academy of Estate Planning Attorneys. The Fellow program recognizes Academy Members who demonstrate advanced expertise and significant practical experience in the total estate planning, trust, tax planning, guardianship, probate and estate administration fields. In order to maintain this advanced expertise, Cheryl takes over 36 hours of continuing education in Estate Planning, Elder Law, and Taxation each year. Also a Financial Planner, she holds the Series 7 and 66 Investment Licenses in addition to both Insurance and Long Term Care/Medicare designations.

Her professional capabilities, together with over 25 years in practice, have combined to bring positive change to the lives of over 4500 clients and their families.

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