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Financial Power of Attorney

What Is A Financial Power Of Attorney?

A financial power of attorney (FPOA) is a written document by which a competent adult, known as the principal, appoints and authorizes another competent adult, known as the attorney-in-fact (A-I-F), to act on the principal's behalf. Financial powers of attorney usually cover financial, business, personal and real estate matters.

What Is A Durable Financial Power Of Attorney?

A durable financial power of attorney (DFPOA) authorizes the attorney-in-fact to act on behalf of you, the principal, even after you become incapacitated or incompetent. FPOAs are durable by default unless they specifically provide that they terminate by the principal's incapacity. Non-durable FPOAs are rare because they terminate when the principal becomes incapacitated or incompetent.

What Powers Are Generally Given In A FPOA?

Since a FPOA authorizes the A-I-F to act on your behalf, the powers you give your A-I-F can be specific or general, depending on what you need or want. Specific powers over certain affairs, such as the sale of a car, may be appropriate in certain situations. Most individuals want their A-I-F to be able to exercise broad general powers over all their financial affairs, including receiving and depositing checks, signing their name to checks, paying all bills, handling all bank accounts, CDs, stocks and bonds, and taking possession of any real estate or personal property, including the power to sell any real estate or personal property. In other words, most principals want to give their A-I-F the power to perform any legal act which the principal could do for himself.

Are There Any Limitations To The A-I-F's Powers?

Yes. Because you can delegate either broad or narrow powers to the A-I-F, the document itself limits what your A-I-F can do. No FPOA can give the A-I-F the right to agree to acts the FPOA opposes. A-I-Fs are fiduciaries, which means they must act in good faith and deal honestly with you and others on your behalf. In addition, a FPOA does not prevent the principal from continuing to act on his/her own behalf and to perform any of the powers delegated through the FPOA document.

Note that the A-I-F generally is not personally responsible for the contracts or debts of the principal. However, the A-I-F may be liable for a debt of the principal if the debt arose due to the A-I-F's negligence or the A-I-F went beyond the authority granted in the DFPOA to create the debt

How Can Abuse Of The FPOA Be Prevented?

Selecting a trustworthy A-I-F is your best safeguard against abuse of the FPOA. An inept, dishonest or negligent A-I-F can result in the FPOA doing more harm than good. To protect you even more, the FPOA may require the A-I-F to file an annual accounting with a third party that you choose. You can also require the co-signature of this designated third person for transactions involving real estate or

more than a certain amount of money. The A-I-F can also be required to post a bond. Because FPOAs are effective as soon as they are created, you may want to have the FPOA become effective only after the happening of a specific event. You can do this by creating a springing durable financial power of attorney.

What Is A Springing DFPOA?

A springing DFPOA is one which becomes effective upon a later date or event. You would be most likely to use it if you wanted the power to go into effect if you become incapacitated in the future. Because a springing DFPOA only goes into effect if you are incapacitated, this ensures that it cannot be used until that time. As a practical matter, however, a springing DFPOA carries with it certain risks. Questions may arise as to when the incapacity occurred. Third parties may be reluctant to accept a springing FPOA without specific proof of your incapacity. Thus, when you create a springing DFPOA, the document should be very clear in describing what exactly determines incapacity. For example, if a doctor's written statement specifying your incapacity is required, it should be clearly stated in the document. If the FPOA does not specify what constitutes incapacity, the FPOA will become effective upon a determination of incapacity by a physician, psychologist, or appropriate governmental official.

How Is A DFPOA Created?

To create a DFPOA, you must be competent. DFPOAs should be drafted so that third parties, such as banks and insurance companies, will recognize their validity. These documents should be written clearly and specifically and should allow photocopies to be used. If the DFPOA is for a specific purpose, any institution involved with that purpose should be consulted as to its own DFPOA policies. The DFPOA should be prepared by an attorney, signed by the principal and notarized.

If the DFPOA authorizes any real estate transactions, transfers of personal property, or business related to personal property, it must be recorded in the county where the real estate is located prior to any real estate transfer.

What Is Ohio's Statutory Power of Attorney?

The Ohio Revised Code includes a blank form that can be used to create a DFPOA on your own, without acquiring legal counsel. However, the document must be signed and notarized if it authorizes the transfer of real estate.

What Additional Powers Can Be Delegated In A DFPOA?

You can delegate to an A-I-F any legal act, including:

(a) nominating someone to be your guardian, the guardian of your estate or your children;
(b) funding a revocable trust;
(c) allowing access to a safe deposit box;
(d) making gifts or charitable contributions
(e) paying taxes;
(f) conferring the right to prosecute any action or lawsuit, or be involved in any legal proceeding;
(g) appointing a successor A-I-F.

Can A DFPOA Be Terminated?

Yes. A DFPOA can be ended if you state in writing that you are revoking it, if the DFPOA itself states that it ends at a certain time or event or if you die. A DFPOA is not affected by your incapacity or incompetence or by the passing of time. An A-I-F may continue to act past the revocation or your death until the A-I-F has actual knowledge of your death or the revocation.

A springing DFPOA which becomes effective when you become incapacitated, terminates when you die or when your incapacity ends. If another event or a particular date springs the DFPOA into effect while you are still competent, it can be terminated by your written revocation or by your death. The revocation should be signed, dated and notarized.

A recorded DFPOA which gives the A-I-F the power to buy and sell land cannot be revoked unless the revocation or death of the principal is recorded in the same office where the DFPOA was originally recorded. In addition, to be effective, any revocation of a DFPOA must be given to the A-I-F. The A-I-F must also be notified of the death of the principal because any act the A-I-F does in good faith without knowledge of the principal's death or revocation of the DFPOA is valid and enforceable against the heirs and personal representatives of the deceased principal.

What Is A Durable Power Of Attorney For Health Care?

A durable power of attorney for health care (DPOAHC) allows you to give an A-I-F the power to make all of your health care decisions. See Pro Seniors *Health Care Power of Attorney* Factsheet for more details.

Pro Seniors helps older Ohioans solve legal and long-term care problems and fight Medicare fraud. Our Legal Helpline provides free legal information and advice for Ohio residents aged 60 and older.
This fact sheet provides general information, not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Helpline or consult an attorney in elder law.

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