

Power of Attorney (POA)

Contacts

Gary J. Hoagland, 732-545-4717, ghoagland@hoaglandlongo.com

There are two types of POAs: Limited and General:

A Limited POA deals with a specific asset, such as a bank account or a specific piece of real estate.

A General POA gives the attorney in fact control over all of your financial assets, including the following: real estate, stocks, bonds, bank accounts, retirement accounts, cars, filing of your tax returns, access to your safe deposit box, control over any business interest, and the ability to make gifts for estate planning or medicaid planning purposes.

There are three forms of POAs: Durable, Springing and Lapsing:

A Durable POA is effective as soon as you sign it and continues to be in effect after you become incompetent. This POA is the one that is most recommended.

A Springing POA springs into effect when you become incompetent, however, the POA may have difficulty proving to a bank or other institution that you are disabled. The POA may need a doctor's affidavit or court order, and having to get a court order would defeat the purpose of having a POA.

A Lapsing POA ceases, when you become disabled or incompetent.

Choosing a POA - you should choose someone who you trust. If you are choosing someone other than your spouse and you do not feel comfortable giving it to them, you can put it in a safe place in your house and let them know where it is in case they need it. You should not put the POA document in your safe deposit box because the POA may not be able to gain access to it.

Execution Requirements - A POA needs to be notarized by an attorney or notary.

Alternative - If you do not have a POA, your spouse or family member will need to hire an attorney to file a complaint for a Guardianship. The court will then appoint an attorney to represent you, (the incompetent). In addition, two doctors will have to submit affidavits and a court appearance will be required for the person seeking to be your guardian. As a result, the cost of a Guardianship Action could cost between three and five thousand dollars.

Spouses - It's important to have a POA even if you are married because your spouse will not be able to sell your house, or access your 401(K) or IRA without a POA.