

Unleash the power of a nonspringing power of attorney

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Estate planning typically focuses on what happens to your children and your assets when you die. But it's equally important to have a plan for making critical financial and medical decisions if you're unable to make those decisions yourself. A crucial component of this plan is the power of attorney ("POA"), specifically, a nonspringing POA.

POA defined

A POA is a document under which you, as "principal," authorize a representative to be your "agent" or "attorney-in-fact" to act on your behalf. Typically, separate POAs are executed for health care and property.

A POA for health care authorizes your agent — often, a spouse, child or other family member — to make medical decisions on your behalf or consent to or discontinue medical treatment when you're unable to do so.

A POA for property appoints an agent to manage your investments, pay your bills, file tax returns, continue your practice of making annual charitable and family gifts, and otherwise handle your finances, subject to limitations you establish.

Benefits of a nonspringing POA

A nonspringing or "durable" POA is effective immediately, regardless of the circumstances. Because it's effective immediately, it allows your agent to act on your behalf for your convenience, not just when you're incapacitated. A springing POA, on the other hand, becomes effective only when certain conditions are met.

In addition, a nonspringing POA avoids the need for a determination that you've become incapacitated, which can result in delays, disputes or even litigation. This allows your agents to act quickly in an emergency, making critical medical decisions or handling urgent financial matters without having to wait, for example, for one or more treating physicians to examine you and certify that you're incapacitated.

Disadvantage of a nonspringing POA

A potential disadvantage of a nonspringing POA — and the main reason some people opt for a springing POA — is the concern that your agent may be tempted to abuse his or her authority or commit fraud. But consider this: If you don't trust your agent enough to give him or her a POA that takes effect immediately, how does delaying its effect until you're deemed incapacitated solve the problem? Arguably, the risk of fraud or abuse is even greater at that time because you're unable to protect yourself.

Given the advantages of a nonspringing POA, and the potential delays associated with a springing POA, it's usually preferable to use a nonspringing POA and to make sure the person you name as agent is someone you trust unconditionally.

If you're still uncomfortable handing over a POA that takes effect immediately, consider signing a nonspringing POA but have your attorney or other trusted advisor hold it and deliver it to your agent when needed.

Please contact us if you have questions regarding the use of POAs in your estate plan.

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