

Powers of attorney: Springing vs. nonspringing

Published on August 17, 2017

Estate planning typically focuses on what happens to your assets when you die. But it's equally important (some might say *more* important) to have a plan for making critical financial and medical decisions if you're unable to make those decisions yourself.

That's where the power of attorney ("POA") comes in. A POA appoints a trusted representative (the "agent") who can make medical or financial decisions on your behalf if an accident or illness renders you unconscious or mentally incapacitated. Typically, separate POAs are executed for health care and property. Without them, your loved ones would have to petition a court for guardianship or conservatorship, a costly process that can delay urgent decisions. (Depending on the state you live in, the health care POA document may also be known as a "medical power of attorney" or "health care proxy" - we label ours an "Advance Health Care Directive".)

A question that people often struggle with is whether a POA should be springing or nonspringing.

To spring or not to spring

A *springing* POA is effective on the occurrence of specified conditions. Typically, springing powers would take effect if you were to become mentally incapacitated, comatose or otherwise unable to act for yourself.

A *nonspringing*, or "durable," POA is effective immediately. A nonspringing POA offers two advantages:

It allows your agent to act on your behalf for your convenience, not just when you're incapacitated. For example, if you're traveling out of the country for an extended period of

time, your POA for property agent could pay bills and handle other financial matters for you in your absence.

It avoids the need for a determination that you've become incapacitated, which can result in delays, disputes or even litigation. This allows your agent 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.

A potential *dis*advantage to a nonspringing POA — and a common reason people opt for a springing POA — is the concern that the agent may be tempted to commit fraud or otherwise abuse his or her authority. 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 incapacitated solve the problem? Arguably, the risk of fraud or abuse would be even greater at that time because you'd be unable to monitor what the agent is doing.

What to do?

Given the advantages of a nonspringing POA, and the potential delays associated with a springing POA, a nonspringing POA is generally preferable. Just make sure the person you name as agent is someone you trust unconditionally.

Please contact us with any questions regarding POAs.

© 2017

The Law Office of Eugene Gorrin, LLC
17 Watchung Avenue, Suite 204
Chatham, NJ 07928
973.701.9300
egorrin@gorrinlaw.com
www.gorrinlaw.com