

A Useful Tool in Old Age.

By Harry Kessaram

As we age, we tend to have to rely on others more and more. The day may come when you need to legally authorize someone to conduct your affairs for you, especially if you become infirm. To do this, you might consider giving someone a power of attorney.

The word “attorney” is defined by Webster’s Dictionary as “one who is legally appointed by another to transact business for him”. A power of attorney then is simply a document that authorizes someone to transact on your behalf. The person whom you authorize is legally regarded as your “agent”, you being “the principal” in the relationship. The legal effect of your agent’s actions is the same as if you had done them yourself.

A power of attorney (P.O.A. for short) can be very specific or very broad, for a limited duration or unlimited, revocable or irrevocable. You can, for example, give someone a P.O.A. simply to sign a single document or alternatively, to do all your business for you. But your agent under a P.O.A. will cease being able to act for you if you lose legal capacity (i.e. become mentally incompetent). This is because your agent draws his authority from you, and if say, you’re in a coma, you are no longer in a position to authorize anybody to do anything. There is an exception though in the case of a P.O.A. which expressly states that your agent will retain authority to act for you if you become mentally incompetent. This type of document is called an enduring or durable P.O.A. but even this document is invalidated by death (after which your Will kicks in).

Why have an enduring P.O.A.? Well, it’s not a nice thought but, with longer life-spans these days, the probability of contracting some form of senile dementia increases. Equally unpleasant, a serious traffic accident and head injury could render you mentally incompetent. But in either case, life goes on. If you have taken the precaution of executing an

enduring P.O.A., then your agent can pick up the reins and run your affairs for you without any delay and possibly without the need to make a costly court application in order to take charge.

Obviously, if you are thinking of giving someone a P.O.A., you need to select the right person: a competent person whom you can fully trust. More so if you opt for an enduring power of attorney and more so still if you want a power of attorney with “living will” provisions built into it. (A living will is an American construct which gives your agent a special power to terminate life support if, say, you’re in a coma and not likely to come out).

Some powers of attorney are designed to take effect only on the occurrence of a certain event, such as a doctor certifying your mental incapacity. Obviously, the time to consider giving someone a P.O.A. is when you’re healthy. In order for a P.O.A. to be valid, the person giving it (the principal) must obviously be “with-it” mentally at the time they sign. No sense taking Granny to a lawyer after she’s slipped her moorings. Also, exerting undue influence on someone to sign would (as in the case of all legal documents) render a P.O.A. voidable. The document must be signed by the principal of his own free will. A good time to consider an enduring P.O.A. may be when you’re doing your Will. Consider it part and parcel of a good overall estate plan.

We can only hope that as we age, we’ll be able to “take care of business” to the end, but it wouldn’t hurt to have a tool in the form of an enduring P.O.A. in the event we need some help.

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