

Power of Attorney

One of the more common legal documents people encounter is a power of attorney (POA). For a number of reasons, at some point in our lives, most of us will need to designate someone else to do something for us that has legal implications.

For example, grandparents may want to take their grandchild with them on an off-island vacation. The grandparents will need to obtain a power of attorney from the parents before departing Guam to prove that they are authorized to remove the child from Guam.

Under a POA, a person, called the principal, grants another person, known as the agent, the authority to make certain decisions and to perform certain acts on the principal's behalf. The authority can include financial, legal, or healthcare matters, and may be either broad or limited.

The broadest POA is a general POA. This type of POA gives the agent unlimited power to act on the principal's behalf for all matters.

Why would anyone give someone else such powers? A common example is when an active-duty military member is deployed for six months or longer. The member may designate a spouse, a close relative, or friend to serve as a general POA agent in the principal's absence so that bills can be paid, bank deposits made, and emergency matters addressed.

A general POA can be very dangerous because it can so easily be abused. For example, the agent could drain the principal's bank accounts by simply writing a check on the principal's behalf. A general POA grants the agent such authority. Believe me, this happens with greater frequency than you might think.

For this reason, I seldom advise a client to give anyone a general POA. Rather, I recommend that the client use a limited or specific POA. Under a limited POA, the principal narrows the agent's power. For example, the agent might be authorized to pay specific bills and to deposit money into a specific bank account, but not to withdraw funds from the account.

Using the example given above, parents of a child who will travel off-island with grandparents should give the grandparents a Limited Childcare POA. Under this POA, the grandparents will be authorized to travel with the child away from Guam and to take whatever action is necessary for the child's welfare during the trip, such as approving emergency medical care should the need arise.

General or limited POAs can expire on a given date or upon the occurrence of a specific event. For instance, in the example given above, the grandparents' POA could state that their authority automatically terminates on a specific day or immediately upon their return to Guam. POAs can also be terminated at any time by

the principal, either in writing or orally, and will automatically terminate if the principal dies.

POAs will also terminate automatically if the principal becomes mentally incompetent, unless the agent is given a *durable* POA. With a durable POA, the agent can continue to act on the principal's behalf, even if the principal becomes incapacitated.

Guam law recognizes durable powers of attorney. The durable POA must specifically provide that "this power of attorney shall not be affected by the disability of the principal." Durable POAs can be general or limited.

Last week, I discussed Guam's Natural Death Act. This law allows Guam residents to prepare a written declaration, called a living will, instructing their physician to withhold or withdraw life-sustaining treatment in the event of a terminal condition or permanent unconscious condition. A durable healthcare POA is frequently prepared along with a living will.

Where a living will is only effective when death is imminent and only addresses whether life-sustaining treatment should be given a dying patient, a durable healthcare POA can take effect whenever designated by the principal and can be very broad in scope.

This type of POA can encompass all healthcare decisions and permits the agent to sign all medical documents on the principal's behalf. Of course, the principal can limit the scope of the agent's power to specific tasks, should the principal so desire.

Before signing a POA, I highly recommend that you discuss the matter with an attorney to be sure you are using the right POA and tailoring the language to meet your specific needs. With POAs, one size definitely does not fit all!