



Powers of Attorney

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Introduction

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▼ Power of Attorney/ Protection Mandate

- Common Estate Planning Tool
- Often Contentious
- Sometimes Abused
- Frequently Litigated



Specific Questions

Elise Kohno
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▼ The Scope of the Power Granted by the Instrument

- What can an attorney do?
- What can't they do?
- How are powers limited?

▼ Qualifications of the Attorney

- Can anyone receive a power of attorney and act on it?
- Can an individual be disqualified from receiving a Power of Attorney?
- Can the same individual receive a POA and be named as an executor of the testator's will?

▼ Power Struggles: One power, two attorneys.

- What happens when two powers are granted?
- Is there a division of power?
- Are both attorney's authorized to act independently?
- What if there is disagreement?

▼ Power of Attorney: Taking Effect

- When does a Power of Attorney come into effect?
- When the power comes into effect upon a certain condition, who makes that decision and how?
- Do disputes ever arise between donor and donee of the power regarding capacity?

▼ Power of Attorney: Revocation

- Is a Power of Attorney revocable?
- Can a person with Power of Attorney continue to act while a revocation is in dispute?
- What can or should third parties do to protect themselves during a disputed revocation?

▼ Power of Attorney: Compensation

- Is a person granted Power of Attorney entitled to compensation?
- If so, how are fees generally set?
- What about continued support?

▼ Power of Attorney: Duty to Account

- Does the attorney have a duty to account or other reporting obligations? If so, to whom?
- Who can demand an account or a report? How can it be demanded?
- Does the attorney have any “wrap-up” obligations in terms of reporting?

▼ Power of Attorney: Third Party Considerations

- Are third parties required to act on a purported Power of Attorney?
- If they are, how is that enforced?
- If they are not, what recourse does the attorney have to act in the best interests of the donor?

▼ Power of Attorney: Third Party Liability

- Are third parties vulnerable to liability for dealing with a party purporting to act under the authority of a Power of Attorney that they may later learn is illegitimate or ineffective?

▼ Power of Attorney: Third Party Liability

- What should a third party do to insulate themselves from liability when dealing with a person acting under the apparent authority of a Power of Attorney?
- Is looking beyond the instrument recommended or required?

▼ Power of Attorney Across Jurisdictions

- Are powers granted in one jurisdiction effective in other jurisdictions?
- Should third parties accept Powers of Attorney from other jurisdictions as valid?
- Are there risks in doing so?



Q&A

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Disclaimer

The information in this presentation is intended to provide general comments on legal issues. The information in this presentation is not intended to provide legal advice. Participants should seek out legal advice on issues specific to them before acting on any information provided in this presentation. We would be pleased to provide additional information upon request.

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