

LEGAL EASE



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Potential problems using powers of attorney

You are named the Agent under a Power of Attorney document for another person, an aging parent or other relative, or a spouse who is experiencing medical problems. You are glad that you have the document which was carefully prepared by an attorney who is knowledgeable about estate planning. But when you go to the bank, the personnel refuse to accept it. What do you do?

When government benefits (such as Social Security, Veterans benefits) are **not** involved, Pennsylvania law protects the Agent, or the person who is attempting to use a valid Power of Attorney document. Sometimes financial institutions claim that the document is too old. Powers of Attorney documents do not become ineffective with age. In actuality, the law in Pennsylvania places an affirmative duty on the financial institution to comply with the Power of Attorney being presented, and to rely on the Agent's authority. An older Power of Attorney document (one signed before 2001) will not have the Notice or the acknowledgement by Agent pages that all subsequent documents should have. However, this is not a reason for the financial institution to reject the document. A valid Power of Attorney must be revoked in writing by the Principal (the person who is giving the power to the agent), and such revocation be delivered to the Agent, presuming that the Agent was in possession of the document to begin with. A financial institution cannot *assume* that a revocation took place, but must assume that the document is still good. The law protects the financial institution from liability for relying on the Agent's authority.

Generally, if the Agent who is experiencing difficulty contacts an attorney, the matter can be easily resolved. A telephone call to the financial institution will often solve the problem. If necessary, the attorney can submit an affidavit that indicates that the document is still in full force and effect. Some financial institutions, such as Vanguard, require this affidavit, in addition to some of their internal forms.

Occasionally, a financial institution, or more commonly, a transfer agent for securities, will ask for a Medallion guarantee. This is not the same as a notary public seal, but must be obtained at a commercial bank, credit union, or broker-dealer who participates in the program. It is generally easier to comply with this request than to fight the system. Obviously, if the situation is such that the principal's signature must be guaranteed, and that person can no longer participate in the transaction, consult an attorney to intervene in the situation.

On the other hand, accessing government benefits, such as Social Security, is another story. The Social Security Administration does not recognize Power of Attorney documents. They require that any person, other than the actual person receiving benefits, be appointed Representative Payee for the beneficiary of the Social Security payments in order to receive or control those benefits. The whole issue can be avoided by having Social Security checks be directly deposited, giving the Agent control over the bank account. The Veterans Administration only recognizes their specific Power of Attorney document.

A valid Durable Power of Attorney document is still the best way to be sure that your finances are managed properly should you become incapacitated. Occasional problems can be overcome, and are not reason enough to avoid executing such a document.