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Why Do I Need a Power of Attorney?

concerned with those for assets and health care. A POA for assets gives your agent the ability to handle your finances if you cannot do so yourself. The POA for health care permits your agent to make medical decisions on your behalf if you are unable to do so. In Pennsylvania, this power is often combined with a living will to enable your agent to act on your behalf in end-of-life issues. Prior Pennsylvania law only authorized advance directives, which essentially permitted individuals to express their wishes about terminal illness with no guarantee that those wishes would be honored.

What makes a “good” power of attorney? Well, it should be executed correctly. In Pennsylvania, a POA must be witnessed by two witnesses and notarized. Also, you can only record an original POA. Copies cannot be recorded, which would

make using a power for a deed impossible. Therefore, you should prepare at least three originals, so you always have one available. If you have real estate or other property in another state, make sure that the requirements for that state are satisfied in your POA. Make sure that your real estate is specifically set forth in the document. Failure to correctly identify your real estate could be a problem in some states.

Another critical issue is gifting. Pennsylvania law states that, unless you are specific about gifting, then gifting is limited. If you do not grant your spouse unlimited gifting, it could interfere with your ability to obtain medical assistance, which requires that all assets be retitled in the name of the healthy spouse. If your children are your agents, you may wish to permit them to perform Medicaid planning on your behalf by transferring

funds to a trust or to carry out planning that could provide you with more flexibility of care. You may want to indicate that your prior gifting and estate planning need not be followed in an emergency.

A good idea for POA is to separate the health care and asset power holders. Let your health care agent sign you into hospitals and long-term care facilities without binding your assets with their signature. Permit your agent to deal with your health care provider and pension and group benefits administrators. Failure to include this provision in your document could cost time and money when you are sick. Social Security and many federal agencies do not honor a POA. So don't expect your agent will be able to manage your pensions from the federal government. Luckily, much of the work you may want to accomplish with

your benefits can be done online. Make sure to set up access to your Social Security account or obtain an ID.ME account.

Be careful about dangerous powers. These are things like changing beneficiaries and disclaiming assets from an estate where you are a beneficiary. If you give these powers, and many forms routinely do so, make sure you understand how they can be used. An essential element that should be added is regarding “binding arbitration.” Nursing homes routinely want this added to their agreements to avoid jury trials. You should consider a clause in your document prohibiting your agent from agreeing to this.

For a POA for health care, we use a document that follows Act 169 in Pennsylvania and appoints an agent (or “surrogate”) to act on your behalf for medical and end-of-life decisions. Choose a suitable surrogate under Act 169, and that person can evaluate your medical condition or illness and act on your behalf to move forward. Most medical decisions are not clear-cut. We think the best thing to do is choose your surrogate wisely and provide that person with the latitude to weigh all of the facts and make a decision that your surrogate believes would be made by you if you could do so. Of course, if you wish to override such a decision, you may still do so. Make sure your surrogate knows what you want.

Don't be afraid to talk about the issues related to a POA. Talking about them does not mean that they will happen—just like doing a will does not mean you will die any sooner.

There is one thing I always tell clients about their estate planning: it's nice to have a will, but it is *essential* to have a power of attorney (POA). While I do not advocate *against* having a will, in many cases, not having one does not change much for our clients. Most married clients have everything in joint names, and their spouse is the beneficiary of their life insurance and IRAs. For a single individual, intestate law often serves as a decent will substitute. And, unfortunately, since more than three-quarters of all Pennsylvanians will experience some long-term care before they die, many of those die without assets, meaning that a will is not necessary.

On the other hand, failure to name an agent under a POA can have disastrous results. There is no easy alternative to not having an agent. If that happens, the only way someone assists you is by going to court and having you declared incapacitated. This is not a pleasant task. Once this happens, the court will manage how your assets are held and applied. A POA is so much easier, and you, not a judge, decide what happens. If you do not trust professionals, having a POA is even more critical because it is the only way to assure that you control how your money is spent. Choose someone now rather than having someone appointed for you later.

There are several types of POA, but we are mostly

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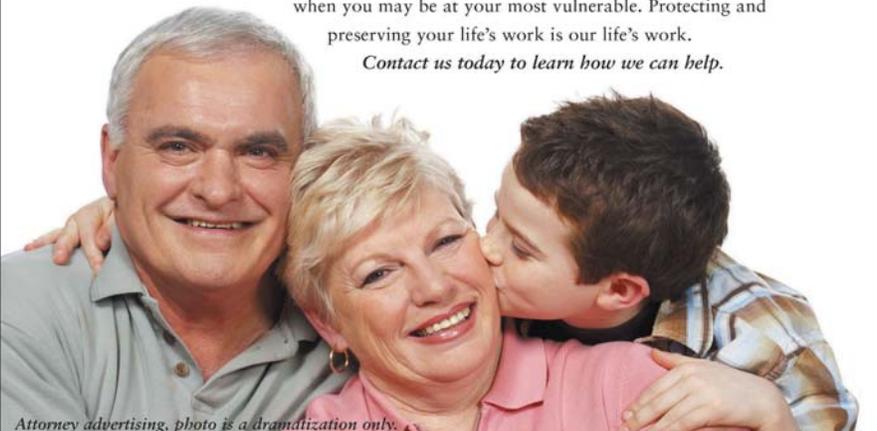
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The attorneys of Shober & Rock have years of experience helping individuals and families with the complex issues of elder law. We are here to help you prepare for and confront what may be the most complex legal hurdles of your life at a time when you may be at your most vulnerable. Protecting and preserving your life's work is our life's work.

Contact us today to learn how we can help.



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