

Have You Drafted a Power of Attorney?

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By June Campbell

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In these unsettled times, it's the sign of a smart business owner to expect the best but prepare for the worst. What will happen to your business if you are unavailable due to any circumstance? Perhaps you are a Reservist and get called into active duty, for example.

By drafting a Power of Attorney, you will be giving someone the legal right to look after your business affairs if you are unavailable, away, mentally incapacitated, or otherwise unable to make business decisions.

Just as many individuals postpone writing a will, many business owners avoid the step of drafting a Power of Attorney. Both appear to have a superstitious belief that the act of preparing for potential problems will attract misfortune.

When we apply the clear light of reason, we all know that writing a will doesn't imply imminent death and drafting a Power of Attorney doesn't suggest we'll be unable to operate our businesses. Both are simply evidence of good planning.

What if an accident or an illness causes you lose the mental capacity for a period of time? Without a Power of Attorney, your family, colleagues and the courts will be pitted against one another trying to straighten things out. Advance planning will minimize the problems that will arise later.

Alternatively, perhaps you are planning to be away from your business for an extended period. It's not something

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we like to consider, but in the extended absences of an owner, the potential for employee fraud or theft increases. You want someone in charge who has your best interests at heart.

Naturally, you will want to consult a lawyer to discuss your unique situation. However, the following considerations are likely to be applicable in most cases:

1. When you draft a Power of Attorney, you must be "of sound mind." Powers of Attorney can be revoked or modified, but again, you must be deemed to be of sound mind. Documents drafting or amending Powers of Attorney must be witnessed.
2. By drafting a Power of Attorney, you are giving the "donees" the legal right to carry out transactions on your behalf. In most areas, you can stipulate the powers that you are allocating. Typically, Powers of Attorney include the right to sell or purchase real estate and other assets, the right to make payments of bills and debts, and the right to manage investments of various sorts.
3. Typically you can identify two people to have power of attorney, as well as appointing a substitute in case something happens to one of the first two. Some advisors recommend appointing three donees to work jointly in the management of your affairs. Ideally, one donee should be a family member or friend who has your best interests at heart. The other should be someone who is connected to the business and who is familiar with day to day operations. The third recommended donee is the accountant who handles the company's books.
4. When drafting the document, be very clear what powers you are giving the donees. Avoid "gray areas" or areas that could be open to interpretation.
5. Make sure that at least one of your donees knows where the Power of Attorney document is kept.
6. In most areas, Powers of Attorney can be Continuing or Limited. Continuing Powers of Attorney usually take effect from the date of signing and remain in effect after a person becomes incapacitated. Limited Powers of Attorney give the donee authority to act only under certain circumstances. Limited powers could include real estate transactions, complex investments like term deposits, RRSP contributions, and so on.

Legal Matters - Power Of Attorney

By Lucy Bartlett

A person can issue a letter to another person authorizing him to act in business or legal matters on his behalf and this is called a letter of attorney, or power of attorney in common law. The person who is issuing the power of attorney is known as principal and the person who acts on behalf of the principal is known as attorney-in-fact or agent. The attorney-in-fact is authorized to sign documents in the name of the principal.

When a person is incapacitated because of some ailment and could not sign a cheque, that person can request another person to do so through oral instructions. Institutions such as banks, hospitals, IRS in the US insist on a power of attorney in writing to honour the instructions and they normally take up the original letter with them for their records.

The signature of the principal in a power of attorney should be notarized to get a legal status similar to the case of signatures in any deed in normal circumstances which are notarized. This process is known as "equal dignity rule".

The scope of the power of attorney can be defined in the letter itself. It can be a limited power of attorney to carry out specific acts or it can be a broad or general power of attorney to carry out any and all acts on behalf of the principal. A court will interpret the scope of power of attorney, exactly as described in the letter. A time limit can be set to a power of attorney.

Upon the death of the principal, the power of attorney becomes invalid. It also becomes invalid when the principal becomes incapacitated due to mental illness or physical injury unless a provision is made in the original power of attorney specifically exempting such provisions.

This type of "durable power of attorney" or "living will" enables the agent to make decisions regarding the health care of the principal in case it is needed.

In a "springing power of attorney", the power granted becomes valid only when specific acts described in the letter takes place - such as illness, which incapacitates the principal - in the future. Due to the privacy legislation in US, doctors will not provide medical history or related information regarding the capacity of the principal unless specific authorisation is given in the power of attorney.

The principal of a power of attorney can revoke the powers granted by informing the attorney-in-fact that it is revoked.

A template for various kinds of power of attorney with standardized forms are available for use and various organizations also provide the same to their customers, patients, clients, members or employees.

Lucy Bartlett is a proud contributing author. Find more articles at

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