



Power of Attorney Uses

Answer by John Burnett, BOL Guru

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Question: Can a power of attorney be used to change the beneficiary on an account?

Answer: To the best of my knowledge, an attorney-in-fact is not allowed to make such a change in most states. It's possible that some states would permit such action if specifically authorized in the POA document; I would not recommend accepting such instructions from an attorney-in-fact unless you had the POA checked by your counsel who has knowledge of POA laws in your state.

The Power in a Power of Attorney

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Question: An individual says she recently married a gentleman who has accounts with us. She comes in with a durable power of attorney that has been filed with the court. She wants to be added as POA on the accounts because he is incapacitated. She wants his sons deleted as beneficiaries on one account and herself put on as an owner on the other account. She states he can't sign the new signature cards nor could he comprehend what was happening. If we are unable to contact our account holder, should this POA be accepted and these changes be made based on it?

Answer: First, talk to your bank counsel. In some states, it's mandatory to accept a durable power of attorney.

However, this case looks miserably problematic. The new lady of the house -- if she is truly married to your customer -- appears to be a bit of a gold-digger.

Unless the POA document specifically says so (it almost never will), she cannot change the beneficiaries on an account, nor can she add herself as joint owner. All she can do is sign on the account.

If you cannot speak with your customer in this case, I'd recommend refusing to accept the POA (if state law permits it) and get your counsel involved. Counsel may ask a court for guidance here. The court may set aside the POA document and make one of the sons his father's legal conservator. That would trump the evil stepmother.

Power of Attorney Abuse

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Question: There is a POA on a TCD account. When the TCD matures, the POA wants a check payable to him. Is there any liability if the check is payable to the POA when the account is closed?

Answer: Depending on state law concerning powers of attorney, I can see plenty of problems if you follow the attorney-in-fact's (AIF's) instructions. Many states prohibit an AIF from transferring ownership of the grantor's property to himself; it's a form of gifting, and it's self-dealing besides.

Make the check payable to the principal; let what the AIF does with the check after it leaves your doors be someone else's concern.

Authority of Someone With a Durable POA

Answer by John Burnett, BOL Guru
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Question: Can an agent with a durable POA, sign documents to name a transfer on death?

Answer: In general terms, a durable POA provides no more authority than a non-durable power, except that the durable power can either kick in or continue when the grantor/principal is unable to handle his or her own affairs.

Also in general, POAs do not provide the authority to create a gift or ownership interest in property. Therefore, unless the POA document itself includes such authority explicitly, the attorney in fact cannot legally designate or change a beneficial interest in an account.

Personal POA Used for Corporate Business

Question: Can an individual use a Power of Attorney to sign corporate papers? We have a man and wife, the husband has a corporation, he is the President, his wife has his power of attorney, can she use this POA to conduct business in his corporation?

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Answer: I'm beginning to believe that the power of attorney is one of the most abused documents we see!

A power of attorney is a personal thing. It is granted by one person in that person's capacity. So, if the president of the company has given his wife his power of attorney, she is empowered to act on his behalf with regard to personal matters only.

Only if the wife also holds a power of attorney or other form of authority from the corporation may she act on corporate matters.