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## Your Durable Power of Attorney

In the last installment of my newsletter I mentioned that all estate plans should include, at a minimum, three important estate planning instruments: a Durable Power of Attorney, Durable Power of Attorney for Health Care, and a Will. Over the next few months I will discuss the importance of each of those documents, starting this month with the Durable Power of Attorney.

For most people, the durable power of attorney is the most important estate planning instrument available—even more useful than a will. A power of attorney allows a person you appoint—your “attorney-in-fact”—to act in your place for financial purposes when and if you ever become incapacitated.

In that case, the person you choose will be able to step in and take care of your financial affairs. Without a Durable Power of Attorney, no one can represent you unless a court appoints a conservator or guardian. That court process takes time, costs money, and the judge may not choose the person you would prefer. In addition, under a guardianship or conservatorship, your representative may have to seek court permission to take planning steps that he or she could implement immediately under a simple Durable Power of Attorney.

A power of attorney may be limited or general. A Limited Power of Attorney may give someone the right to sign a deed to property on a day when you are out of town. Or it may allow someone to sign checks for you. A general power is comprehensive and gives your attorney-in-fact all the powers and rights that you have yourself.

A Power of Attorney may also be either current or “springing”. Most powers of attorney take effect immediately upon their execution, even if the understanding is that they will not be used until and unless the grantor becomes incapacitated. However, the document can also be written so that it does not become effective until such incapacity occurs. In such cases, it is very important that the standard for determining incapacity and triggering the power of attorney be clearly laid out in the document itself.

Keep in mind, without this document, the Probate Court will be looking over the shoulder of the person who is handling your affairs through a guardianship or conservatorship. Therefore, in order to keep your financial affairs private, and not a matter of public record, it is essential to draft a Durable Power of Attorney.

For more information, contact Jennifer Racine & Associates at

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