Four Reasons Your Power of Attorney May be Out of Date

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A financial Power of Attorney is an essential document in any estate plan. It enables you to appoint someone you trust to manage your finances and other legal matters in case you become unable to do so yourself. The person you name, called your "attorney in fact," generally has broad powers to handle things like paying your bills, filing your taxes, accessing your safe deposit box, managing your investments, and even selling or mortgaging your house.

A "Durable" Power of Attorney remains in effect even if you become incompetent, which is when the document is most likely to be needed. Because it may be years before your Power of Attorney is used, you should review it periodically to make sure it remains current. Here are four reasons to consider having your Power of Attorney revised:

1. **It is more than five years old.** Unless the document states otherwise, a Power of Attorney technically remains valid indefinitely. Still, banks and other financial institutions may be skeptical if the document is more than five years old. Their skepticism may stem from a legitimate concern that the Power of Attorney has been revoked or perhaps superseded by a newer version of the document.

2. **It names the wrong people.** Longtime partners and married couples often name each other as their attorneys, in fact, and another individual to act as a backup in case the partner or spouse isn't able to do the job. If your marital status has changed since you had your Power of Attorney prepared, or if your backup attorney, in fact, has fallen out of favor, it's time to rethink who should be in charge of your finances if you can't be.

3. **It's Not the Maryland Statutory Form.** In October 2023, the Maryland Legislature adopted a new Statutory Power of Attorney. Under state law, Maryland's banks, insurance companies, and brokerage firms are legally obligated to accept this statutory form. Anyone who refuses to honor the Statutory Power of Attorney can be forced to pay the attorney's fees spent getting a court to require that they accept the document. Although other Power of Attorney forms are still valid in Maryland, having the statutory form will help to ensure that the document is honored without delay.

4. **It doesn't include provisions for your digital assets.** Digital assets include things like the electronic data stored on your computer or smartphone, your Internet accounts like LinkedIn and Gmail, and your online pictures and documents. Without explicit authorization, called "lawful consent," no one can legally manage these assets for you if you become incapacitated. Some of these assets, like your PayPal or Amazon accounts, may have monetary value. Others, like your email account or personal blog page, could be of great sentimental importance. Even your voicemail account may be valuable if it includes messages from potential clients or expressions of support from loved ones during an illness.

Only a newer Power of Attorney will include provisions for your digital assets, and it may be wise to have yours updated for this reason alone. It is also important to make a list of your passwords and login information. This should be kept in a safe place so your attorney, in fact, can find it when the need arises.

Do you really need a Power of Attorney? Without one, it could be necessary for the court to appoint someone to become your legal guardian. A guardianship proceeding is an arduous and expensive process. In addition, the guardian would need to file annual accountings with the court to verify how your assets had been spent. Taking the time to have a Power of Attorney prepared—and to keep it current—is well worth the small effort required.

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