



Mesmer & Deleault, PLLC
41 Brook Street, Manchester, NH 03104
Seacoast Office: One New Hampshire Ave., Suite 125
Portsmouth, NH 03801



Independence Day

“Tip of the Month”

The Durable Power of Attorney

Every estate plan should include a Durable Power of Attorney (DPOA). Durable means it will still be effective in the event of incapacity, which is usually when it is needed most. The DPOA is only good as long as you are alive; it is void at time of death. Between spouses, the power is usually granted to each other, but you also want to include a back-up in case your first candidate is unavailable.

The DPOA is very powerful, effectively allowing the other person to step into your shoes and do whatever you could do with your assets, including access to bank accounts, or to sell your property or give it away. Because of the potential of abuse, the NH legislature came up with two voluntary forms to help with security.

The first is a Disclosure by you, the Principal granting the power. This says that you understand how powerful this is and you’re willing to do it anyway. The second is an Acknowledgement by your Agent, the person getting the power. Your Agent will sign the promise to be good, like a fiduciary, and not violate your trust or steal your money.

Usually, we don’t let the DPOA out until it’s needed, such as by way of the Principal’s specific request, or by a doctor’s note. That is when the Agent will sign the Acknowledgement and we will have a talk about what it means to be a fiduciary. Sometimes in addition to these forms the Principal might include an Escrow Letter asking the attorney to hold the DPOA until it is ready to be released under conditions.

Sometimes these conditions are built into the DPOA, which is then called a Springing Power. It will only be effective, for example, in the event of incapacity. This can be tricky if the Agent then has to get an order from the Probate Court upon proof of the Principal’s incompetence.

The DPOA is a general grant of broad powers, but it can be tailored and made more limited. For example, it can be made to limit the power to make gifts of your property. Sometimes a Limited Power of Attorney can be restricted to a specific purpose, such as to authorize someone to attend the closing on the sale of property in your absence.

In any event, it is important to grant the power only to those deemed fully trustworthy to manage finances and property. If you have questions about the power of attorney or about estate planning, then call the attorneys at Mesmer & Deleault today at 668-1971, or contact us by email at mailbox @ biz-patlaw.com.

Frank B. Mesmer, Jr.
Robert R. Deleault (USPTO Reg.)
Sarita L. Pickett (USPTO Reg.)
Joshua N. Mesmer



(603) 668-1971

Fax (603) 622-1445

E-mail: mailbox@biz-patlaw.com

Website: www.biz-patlaw.com