



ELDER LAW AND ESTATE PLANNING

Joseph Karp

Is an older Durable Power of Attorney still valid? Part one

Question: My Durable Power of Attorney was drawn up and executed in 2011. Is it still good in Florida?

Answer: I do not know if your particular power of attorney was “good” initially, or even now, since I have not seen it. So let me give you an overview of what this legal instrument should do and some general issues that relate to its validity. Next week I’ll tell you about some changes in Florida law that are relevant to your concerns.

A Durable Power of Attorney allows someone else, called your agent or attorney-in-fact, to handle the financial and business affairs that you have specified in the power of attorney. It is not a legal instrument that gives *carte blanche* authority; the powers you want to give your agent must be specified. That is why the language in the document must be meticulously crafted.

In the absence of a power of attorney, or when it does not authorize the specific actions that you desire (such as gifting to aid a family member, acting on behalf of the principal to facilitate Medicaid eligibility, etc.) a court guardianship might be required. This would allow someone to be appointed to handle these matters on your behalf. This can be a costly and time-consuming procedure and might not even authorize your designated power of

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attorney to be your court-appointed guardian.

As to the “expiration” issue, the durable power of attorney would “expire” under certain circumstances: when you, the maker of the document, pass away; when you revoke it; or if you are declared incompetent and a guardian is appointed by the court on your behalf. Also, it would no longer be valid if your named agents are no longer able to serve, whether through death, incapacity or unwillingness, and no backups have been named.

Next week I will talk more about changes in the Florida law regarding Durable Power of Attorney and how that might impact the validity of your document.

Joseph Karp, a member of the Florida and New York Bars, is a Nationally and Florida Bar Certified Elder Law Attorney and founder of The Karp Law Firm, located in Palm Beach and St. Lucie counties. The firm assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration and estate litigation.