



## ELDER LAW AND ESTATE PLANNING

Joseph Karp

# Florida Durable Power of Attorney Law changed in 2011

The Florida Durable Power of Attorney was the subject of last week's column. I responded to a writer asking whether her document, executed in 2011, was still valid. This week, I provide additional information regarding the changes in Florida's Durable Power of Attorney law in recent years.

First, a distinction must be drawn between two types of powers of attorney: An *immediate* power allows your agent (attorney-in-fact) to act on your behalf without regard to your health, competency or availability. In contrast, a *springing* power permits your agent to act only upon your incapacity. Financial institutions tend to be reluctant to honor a springing power, unless they can be 100 percent certain that the individual is in fact incapacitated. Documenting incapacity can be a grueling process.

**Any Durable Power of Attorney executed after Oct. 1, 2011 in Florida must be an immediate power.** A springing power executed after that date is not a valid legal instrument in Florida. However, if your power of attorney is a springing power and was executed prior to October 1, 2011, it remains valid (assuming it was otherwise valid in other respects).

The 2011 law also requires that any so-called "superpowers" - for example, the power to gift money - must be distinguished in the body

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of the Durable Power of Attorney, and the maker must initial those powers.

Another issue to keep in mind: Under current Florida law, if you are married and your spouse is named as your agent, your spouse's authority terminates when a divorce action is filed, unless the document expressly states that your spouse's powers may continue.

Please keep in mind that this is very general information. If you have any doubts about the validity of your Durable Power of Attorney, see a Florida Bar-certified elder law attorney or estate planning attorney. Your attorney can review your document to determine if it provides all the protections you seek or if it needs updating.

*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.*