



Different Documents, Different Agents? The Power of Diversification in Estate Planning

With mental health on many minds, it's an excellent time to talk about choosing the right person to be your Agent for two crucial roles: Health Care Power of Attorney (HCPOA) and General Durable Power of Attorney (GDPOA). These roles come into play if you cannot make decisions for yourself, either mentally or physically. Both play a significant role, many times when you least expect it.

When we meet with clients to discuss their estate planning, we often find that they have yet to think about the importance of choosing someone to make their medical and financial decisions if they cannot do so themselves. Typically, clients initially contact us to discuss drafting a Last Will and Testament, and sometimes a Trust Agreement. However, we must also discuss with our clients, formally known as the "Principal," the importance of naming an "Agent" who can make health care and financial decisions on their behalf in case they experience mental or physical incapacity.

It's essential to understand that we have the right to choose who will make these decisions if we become incapacitated. To do this, we must create two written documents, following specific formalities required by Ohio law. These documents will allow us to name the primary decision-maker and one or more alternate individuals with the authority to make medical and financial decisions on our behalf. But it's critical to note that these two different Powers of Attorney may not be combined in one document under Ohio law. That is probably for the best, as sometimes the person we choose to make our health care decisions might not be the best choice to make our financial decisions. And while the first person named as Agent in both documents is often the same (for example, a client will almost always name their spouse as the first named Agent in both documents), the appropriate

alternate or successor Agent might not be the same person in each document for many of the following reasons.

Location, Location, Location

Strong preference should be given to naming an Agent living in relatively close proximity to you for obvious, practical reasons: medical decisions are often best made only after face-to-face meetings, not just with you, but with the physicians and any others involved in the day-to-day care of you. Though they may be your preferred choice, there



might be a better choice than naming your only child living overseas or two states away as Agent under the HCPOA. Similarly, handling your financial matters (paying bills, filing tax returns, managing or selling real estate) under a GDPOA may be impractical at a distance, even with the ability to handle many matters online.

Family Considerations

Some clients choose Agents by simply following the birth order of the children. This is often seen in situations when a spouse has passed on. Clients

find this method of choosing to be more logical and, in some cases, to better preserve harmony among the family. Still, those factors should be weighed against the overriding need to pick the person best suited to act in your best interests.

Areas of Expertise

With family in mind and consideration for all things being equal (although they never are), one critical skill set for an Agent to efficiently carry out their duties under the HCPOA and DGPAO could be their organizational skills. How do you know if the person you plan to name has those skills? Many parents will intuitively know which of their children are best suited to make medical decisions (the child working in the medical field, for example) or to make financial decisions (the child with an accounting background, for example), but the child who knows competently take notes at meetings with the doctor, and who organizes their own financial and tax records, balances their checkbook, etc., may be the best choice as Agent.

Remember that while the Agent will ultimately make decisions for you when the time comes, the decisions are not made in a vacuum. Instead, the Agent's informed medical and/or financial decision-making is often made only after meetings with the doctor, the accountant, the financial advisor, the real estate broker, the attorney, etc., as required under the circumstances, and then often only after discussion by the Agent with the other family members. Make no mistake, the Agent is responsible for deciding at the end of the day, but often a consensus can and should be achieved, especially for major medical and financial matters.

Are Two Heads Always Better Than One?

Probably not in this case. Most attorneys who have practiced for several years agree that jointly naming Co-agents to exercise the authority under either HCPOA or GDPOA is to be avoided if possible. The practical difficulties in ensuring all Co-agents are (a) always available and (b) constantly, or at least usually able to agree, can be insurmountable. Similarly, giving different Agents separate and equal authority to act under either or both types of Power of Attorney can lead to confusion, and thus refusal, by doctors, under the HCPOA, as well as by financial institutions, under the GDPOA, to

honor the Power of Attorney, such that neither Agent can act independently of the other.

Things Change.

As with a Last Will and Testament and Trust, the HCPOA and GDPOA can be replaced as circumstances change; for example, children who were too young to serve as Agent are now of an appropriate age to serve as Agent, or those named in previous documents as Agent have moved or have otherwise become unavailable to serve. A change in the name of an Agent (because of marriage, for instance) or a change in phone number or address does not, in and of itself, require that a new document be prepared, so long as the Agent can satisfactorily explain the change in name or address to the necessary parties. Even the move to another U.S. state by the Principal does not invalidate the HCPOA or the GDPOA (or, for that matter, their Last Will and Testament or Trust Agreement). Still, the medical practitioners and financial institutions in the new state will often be more comfortable with (i.e., more likely to accept) an HCPOA or GDPOA that refers to the applicable statutes of the state where the Principal is living.

Remember, life is ever-changing, and your estate plan should reflect those changes. We can assist you in updating your HCPOA and GDPOA documents when circumstances evolve, ensuring that your wishes remain intact and legally binding.