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## POWERS OF ATTORNEY

While a simple will often is most estate planning clients' initial request in the first interview with their attorney; upon evaluating the clients' needs and desires it frequently becomes apparent that simply drafting a will is not sufficient. All estate planning's ultimate goal is to meet your needs at the lowest cost if serious illness strikes, and at death. To meet these needs, one must consider whether the estate planning package should include General or Special Powers of Attorney, a Durable Power of Attorney for Asset Management, and/or a Durable Power of Attorney for Health Care.

A **power of attorney** is simply a written authorization given by one person, a "*principal*," to another person, an "*agent*," to perform certain acts on the principal's behalf. The instrument which grants the authority is called a "*Power of Attorney*." A principal may authorize an agent to do any act that the principal might do, except those which clearly require the principal's personal attention.

A **General Power of Attorney** gives the agent **FULL AUTHORITY** to transact any and all kinds of business for the principal. For example, an agent with a General Power of Attorney can sell the principal's home, execute a note and deed of trust, purchase and sell stocks held in the principal's name, and sign contracts for the principal.

A General Power of Attorney is terminated by the expiration of any time period or event specified in it; revocation by the principal; the principal's or agent's death or incapacity; or divorce, annulment or legal separation of the principal and agent if they happen to be husband and wife.

A **Special Power of Attorney** gives the agent **LIMITED AUTHORITY** to transact business for the principal. The principal is usually not bound by the agent's acts which are beyond the scope of authority granted. A Special Power of Attorney that is limited to signing specific documents (for example, a grant deed in a specific real estate transaction) would be particularly useful if a seller will be out of town when the document needs to be signed.

A Special Power of Attorney is terminated in the same manner that a General Power of Attorney is terminated and in addition is terminated if the Power of Attorney's subject matter has been destroyed or is no longer in the principal's control.

Besides General and Specific Powers of Attorney, California allows two other types, namely a **Durable Power of Attorney** and a **Durable Power of Attorney for Health Care**. These two instruments are particularly useful when serious illness or incapacity occurs and should be executed in at the same time as any will or inter vivos trust.

A Durable Power of Attorney and a Durable Power of Attorney For Health Care differ from the General and Special Powers of Attorney in that both of them will survive the principal's later physical or mental incapacity; hence the term "*durable*." A principal also has the option in a Durable Power of Attorney or a Durable Power of Attorney for Health Care to make it effective either immediately or upon incapacity. Because of this adaptability to many different situations and

needs, the agent is frequently able to act in a manner similar to that of a conservator or trustee.

A Durable Power of Attorney for Health Care authorizes the agent to make health care decisions for the principal consistent with the principal's wishes or best interests. This includes the decision to accept or deny any care, treatment, service or procedure to maintain, diagnose or treat the principal's mental or physical condition. In addition the principal can designate who he or she wishes to act as the conservator of his or her estate if it should become necessary.

An agent under a Durable Power of Attorney for Health Care cannot consent to the principal's commitment or placement in a mental hospital; nor can he or she consent to convulsive treatment, psychosurgery, sterilization or abortion.

Since situations and decisions are apt to change, it is essential that you have your estate planning package, whether it is a simple will, inter vivos trust, or Powers of Attorney, reviewed at every major crossroad in your life and at the minimum, every five years. With proper attention, these powerful tools can minimize both time and expense in your family's hour of need.