
LEGAL INFORMATION YOU CAN USE

The Power of Attorney Issue



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FIRST THINGS FIRST!

Yes, the website Home Page mug shot is scary to some folks! Some people say it is stern, yet others think it shows what a *New York* attorney is *supposed* to look like.

If you spent much of your day butting heads with opposing attorneys, dealing with (sometime) cranky judges, and trying to get service from (sometime) pointy-headed bureaucrats you might end up looking like this, too!

However, people and clients who know me consider me an easy going, casual guy and easy to get along with. Probably, most importantly, they consider me to be a very good explainer of the law and an even better *problem-solver*.

In this issue:

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2. **Who needs** a Power of Attorney?
3. **How do I get one** and **what do I do with it?**

What is so important about a Power of Attorney?

POWER OF ATTORNEY
NEW YORK STATUTORY SHORT FORM (ENHANCED)

¶

(a) CAUTION TO THE PRINCIPAL: Your Power of Attorney is an important document. As the "principal", you give the person(s) whom you choose (your "agent(s)") authority to spend your money and sell or dispose of your property during your lifetime without telling you. You do not lose your authority to act even though you have given your agent(s) similar authority. ¶

¶ When your agent(s) exercises this authority, he or she must act according to any instructions you have provided or, where there are no specific instructions, in your best interest. ¶

¶ Important Information for the Agent(s): at the end of this document describes your agent(s)'s responsibilities. ¶

A recent Wall Street Journal article (June 13, 2016) has prompted me to write again about future planning issues. The article raised two important issues:

1. About half of individuals aged 70 or older have **no power of attorney document in place**. Only about 28% of those in their 60s have a power of attorney in place.
2. Some financial institutions **won't accept a legal power of attorney** causing major problems for families, especially, those faced with dealing with financial and legal issues regarding elderly or incapacitated persons.

First: A power of attorney document **authorizes agents of your choice to manage your financial and other affairs during your lifetime** if you are incapacitated or simply want the convenience of having someone else taking responsibility for your banking, mortgage, insurance, and similar matters (especially if you are sick or immobile.)

The concern is that if you do not have a power of attorney in place, and you become incapacitated (including dementia and Alzheimer's), **that will be no one authorized to handle your financial and other affairs** perhaps causing a great deal of problems for you and your household.

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If you need someone to manage your affairs and you have no power of attorney in place, your family or friends will have to start a proceeding in Supreme Court for guardianship. That is a complex proceeding which *may take months and may cost thousands of dollars.*

What can YOU do:

Obviously, it is way better to plan in advance and to have your power of attorney in place before you may need it.

-Check your records to see if you have a Power of Attorney prepared and safely stored. Make sure to review it and update it as necessary.

What the JOHN SUDA LAW FIRM can do for you:

-If you want your existing documents reviewed for continued effectiveness my firm will do that for you quickly and at low cost.

-We can update existing documents as necessary or draft a fresh set for those who have none.

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2. Second: Current New York State law requires most in-state financial institutions to accept the most recent statutory Power of Attorney document. **They do not have to accept non-statutory documents nor do out-of-state institutions have to accept a New York State Power of Attorney.**

Some brokerage firms, like Fidelity Investments, handling 401(k)s or insurance products for General Motors, Ford Motor Company, and others require people to use only their proprietary forms.

What can YOU do:

Double check now with your financial and other institutions to confirm that they will accept your existing New York State Power of Attorney (if you have one.)

- Make sure to have this issue addressed in advance of any need.

What the JOHN SUDA LAW FIRM can do for you:

- Prepare the proprietary Powers of Attorney document for these out-of-state or noncompliant institutions.

- (I have drafted these proprietary documents for clients for many years.)

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Who needs a Power of Attorney?

Anyone approaching senior citizen status or having or expecting health problems resulting incapacity should have a Power of Attorney in place. Others who may want a Power of Attorney are those who may be out-of-state or out of the country and may need financial or legal needs addressed locally while they are gone.

If you want to be extra careful, you can draft your Power of Attorney to go into effect *only* if your doctor has determined that you are unable to manage your own financial or legal affairs. This type of Power of Attorney is called a "springing" Power of Attorney.

¶ (*****)(W) **SPRINGING:** This document is TO TAKE EFFECT upon the occasion of the signing of a written statement EITHER: ¶

(INSTRUCTIONS: COMPLETE OR OMIT SECTION (I) OR SECTION (II) BELOW BUT NEVER COMPLETE BOTH SECTION (I) AND (II) BELOW. IF YOU DO NOT COMPLETE EITHER SECTION (I) OR SECTION (II) BELOW, IT SHALL BE PRESUMED THAT YOU WANT THE PROVISIONS OF SECTION (I) BELOW TO APPLY) ¶

(I) by a physician or physicians named herein by me at this → → point: → Dr. _____ ¶

Very importantly, if you want to do special nursing home or Medicaid planning to maximize your resources you may want to authorize your agents to *make gifts* of your property to themselves or others during your lifetime. You may do that by authorizing *gifting* authority to your agents in your Power of Attorney.

What the JOHN SUDA LAW FIRM can do for you:

- Advise and prepare the proper Power of Attorney document for your needs.

Be Informed! Be Empowered!

How do I get one and what do I do with it?

What can YOU do:

- Decide whether you need or want a Power of Attorney in place now.
- Decide if you want a springing or immediate Power of Attorney.
- Determine if you need a proprietary Power of Attorney for an out-of-state or non-compliant institution.
- Determine if you want to authorize gifting authority.

What the JOHN SUDA LAW FIRM can do for you:

1. Consult with you and your family regarding your needs in your Power of Attorney.
2. Draft and supervise the signing of your document(s) *quickly* and at *low cost* and advise you *where to safekeep* your original, *to whom to provide copies*, and *whether to record* the document in the County Clerk's office where you may own Realty.



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