



Koeberle Law Firm

SPECIAL
POINTS OF
INTEREST:

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- Changes to PA's Power of Attorney Statute went into effect January 1, 2015.
- Health Care POA's are an essential part of every Estate Plan.

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The Elements of a Valid Will!

Recently a dear friend of mine passed away. It was later discovered that in her final days she attempted to hand-write a "will" on a piece of paper. Unfortunately, the document she wrote lacked many of what are considered to be the essential elements of a valid will.

To protect yourself from this same problem, pay close attention to the following essential elements in making a valid will:

- ◆ You must be of "legal age" to make a will. In most states this is 18 years old.
- ◆ You must have "testamentary capacity" to

make a will, which is what many refer to as "sound mind".

- ◆ You must have "intent" to make this document your last will and testament.
- ◆ You must "voluntarily" sign the will and not be under any duress to make a will.
- ◆ The will must properly "dispose" of your property.
- ◆ The will must be a "written" document and "witnessed" by two other parties.
- ◆ The will should be "properly executed" by you.

In addition, pay close attention to the following:

- ◆ Make sure you revoke any prior wills and/or codicils.
- ◆ Provide for the payment of your just debts and funeral expenses.
- ◆ Name an Executor/Executrix (and alternate) who will be responsible for wrapping up the affairs of your estate.
- ◆ If you have any minor children, name a guardian of both your child's person and estate.
- ◆ Make sure that the signatures on the will are acknowledged by a notary.

Changes to PA's Power of Attorney Statute!

On January 1, 2015 sweeping changes to Pennsylvania's Durable Power of Attorney ("POA") statute went into effect. Known as Act 95, the intent of the changes appears to be to curb abuses of POA's by agents. This point is driven home as we continue to read about high profile agents facing both criminal and civil lawsuits over alleged abuses of POA's. The purpose of this article is not to give an exhaustive summary of all of the changes that went into effect last year, but to highlight some of the more sweeping changes.

One of the most important changes involves certain powers granted to an agent that may have been presumed under the old law, but now must be expressly authorized in the POA, such as the power to make gifts to third parties; the power to add names of others to the principal's assets; the power to select and change beneficiaries; the power to delegate authority; the power to create, amend and revoke lifetime trusts; the power to waive certain beneficiary or survivor rights of the principal; the power to exercise the principal's fiduciary powers; and the power to disclaim property.

The principal's "reasonable expectations" must now also be taken into account and carried out by the agent so long as the agent has actual knowledge of such expectations. In addition, the principal can now specify in the POA when records of the agent's transactions should be disclosed and to whom such records should be disclosed.

What was once considered a "one size fits all" document is now a complicated but important part of every estate plan that requires the careful drafting skills of an experienced attorney.



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The Koeberle Law firm is a boutique firm catering to the legal needs of both small businesses and individuals. We concentrate our practice in the following areas:

- Small Business Representation
- Estate Planning/Wills & Trusts
- Real Estate Law/Community Association Law
- Sports & Entertainment Law

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Do I Really Need a Health Care Power of Attorney?

Occasionally when I am meeting with an existing client or prospective client I am asked the above question. Many people are familiar with a Durable Power of Attorney for financial matters, but may not be aware that a separate power of attorney is recommended for health care decisions. This document is known as a “Health Care Power of Attorney”.

Like a Durable Power of Attorney, a Health Care Power of Attorney allows you to appoint an agent and alternate agent(s) to make health care decisions on your behalf when you are either unable to make such decisions, or indicate that you would prefer that your agent make such health care decisions.

The Health Care POA grants to your agent certain powers to make health care decisions on your behalf, such as to authorize, withhold or withdraw medical care and surgical procedures; to authorize, withhold or withdraw tube feeding; to authorize admission or discharge from a medical, rehabilitative or nursing facility; to hire and fire private medical personnel; to request a do-not-resuscitate order (“DNR”); and to carry out the wishes of the principal regarding funeral, burial, cremation and the disposition of the principal’s body.

The document that I draft for a Health Care Power of Attorney also includes a section on Advance Directives, or what is commonly referred to as a “Living Will”. A Living Will allows you to make health care decisions prior to any end-stage medical condition or permanent unconsciousness, should you unfortunately suffer either condition. You can choose not to receive aggressive medical care or life prolonging procedures, such as CPR, mechanical ventilation, dialysis, surgery, chemotherapy, radiation or antibiotics.

You can direct your Health Care Agent to only provide medical care necessary to relieve pain or provide comfort. You can also decide whether or not you want tube feedings. In your Living Will you can state whether your Health Care Agent must follow your instructions, or whether such instructions are only for guidance. The Living Will also provides for organ donation should you wish to donate your organs and tissues for the purpose of transplant, medical study or education.

So the answer is, yes, you really do need a separate Health Care Power of Attorney and Living Will as part of your overall Estate Plan.

This newsletter is intended for general informational purposes only and is not intended to provide specific legal advice. If you have a specific legal issue or question, you should consult with an attorney licensed to practice law in your state or jurisdiction.