Power of Attorney

With a power of attorney, you can appoint someone to act on your behalf known as an agent or Attorney-in-Fact. Your agent should be someone you completely trust in making personal decisions for you.

Listed below are several important terms to remember when looking at appointing a power of attorney:

- **General Power of Attorney** - With this power of attorney, your agent can perform many legally binding transactions on your behalf without prior notice to you.
- **Special or Limited Power of Attorney** - A power of attorney granting your agent only certain powers or powers within a specified time period.
- **Durable Power of Attorney** - Typically a power of attorney will cease to be in effect if you become incapacitated. At which time, the court will appoint someone to act for you. However, if your power of attorney specifies that it should remain in effect even if you become incapacitated, it is considered a durable power of attorney. A general or special power of attorney can be durable with the correct wording. In North Carolina a durable power of attorney must be recorded with your local Register of Deeds office.
- **Springing Power of Attorney** - A durable power of attorney that is effective only in the event of your incapacity or incompetence.

Always remember that you can revoke your power of attorney at any time as long as you are not incapacitated. Also, your power of attorney will cease to be in effect upon your death. Since a power of attorney is an important legal document, it should always be kept in a safe place, and your family should be informed of its location.
Frequently Asked Questions

1. **What is a Power of Attorney?**
   A Power of Attorney is a legal document that allows you to appoint someone you trust completely to act on your behalf in financial and legal matters. This person is known as your Attorney-in-Fact when acting under the authority of your Power of Attorney document.

2. **What does a Power of Attorney allow my Attorney-in-Fact to do on my behalf?**
   You can grant your Attorney-in-Fact broad and sweeping powers to perform almost any financial and legal transaction for you. These powers can include one or all of the following:
   - banking transactions
   - real estate and personal property transactions
   - insurance transactions
   - dealing with your safe deposit box
   - tax matters
   - stocks, bonds and securities transactions
   - business operating transactions
   - estate transactions
   - personal relationships and affairs
   - social security and unemployment benefits
   - military benefits
   - employment of agents
   - gifts to charities and others
   - gifts to the named attorney-in-fact
   - the power to name and revoke another attorney-in-fact for you

3. **When is the Power of Attorney effective?**
   You can choose to make the Power of Attorney effective immediately or only in the event of your incapacity.

4. **What is a Springing Power of Attorney?**
   A Springing Power of Attorney is a Power of Attorney that is effective only in the event of your incapacity.

5. **What is a Limited or Special Power of Attorney?**
   A Limited Power of Attorney is effective only during a specific time period and a Special Power of Attorney allows the Attorney-in-Fact to perform a specific power. Your Power of Attorney can be both limited and special.

6. **Is the Power of Attorney valid during my incapacity?**
   It can be. You must include wording to indicate that you intend for the Power of Attorney to be durable and that it is not to be affected by your subsequent incapacity or mental incompetence. With this language, your Power of Attorney is known as a Durable Power of Attorney and is therefore valid until your death. A Durable Power of Attorney must be recorded in order to be valid after your incapacity.

7. **Is the Power of Attorney revocable?**
   Yes, you may revoke the Power of Attorney at any time as long as you are not incapacitated.
8. When does the Power of Attorney end?
The Power of Attorney automatically ends at your death. The Power of Attorney can also include a specified expiration date. If your Power of Attorney does not contain durable language, it will end upon your incapacity.

9. Do I still need a will if I have a Power of Attorney?
Yes, your Power of Attorney allows your Attorney-in-Fact to manage your assets during your life and a will allows your Executor to manage your assets after your death. The authority granted in a Power of Attorney ends at death.

10. Do I need a Power of Attorney?
If you know that you have a condition where you may not be able to act for yourself in the future, you may want to create a Power of Attorney. If you were to suddenly become incapacitated and you did not have a Power of Attorney, the courts would have to appoint a guardian to act on your behalf. It may not be the person you would have chosen. Accountings would have to be filed with the courts as well, which would allow your assets to become a matter of public record. There would also be a delay in the management of your financial affairs until the guardian could be appointed.

11. Do I need an attorney to create a Power of Attorney?
SECU recommends that you consult an attorney in creating a Power of Attorney document. There are self-service templates that will allow you to make your own Power of Attorney document; however, we recommend consulting an attorney to obtain legal advice about your individual situation to avoid making an unforeseen mistake. A Power of Attorney is a very important legal document that grants someone else control of your financial and legal affairs. An attorney can assist in creating a document that is specific to your needs.

12. What is the cost to have a Power of Attorney prepared by an attorney?
Attorney fees to draft a Power of Attorney can be as little as $35 or much more depending on the complexity of your situation. You should ask about the fee before you agree to the services provided.

13. What should I do with my Power of Attorney document?
You should give a copy to your attorney, your financial institution, your Attorney-in-Fact named in the document and/or a trusted relative. You may also elect to file it with the Register of Deeds office in the county of your residence.

14. Is there a requirement that my Power of Attorney document be recorded?
Your Power of Attorney document must be recorded in order to continue to be effective after your incapacity. In addition, your Power of Attorney document may need to be recorded if your Attorney-in-Fact is authorizing a transaction that must be recorded, such as a real estate sale or real estate loan. If you intend for the document to be durable, you may elect to have it recorded at any time.

Questions about powers of attorney may be answered by consulting an attorney. The material above is intended to be accurate; however, consultation with appropriate professionals for assistance is recommended.