



THE COULSON  
LAW GROUP

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*Your Life, Your Legacy*

Volume I Issue 8

September 2008

## Come Join Us!

After all the excitement, tension, anxiety, and muscle soreness of re-locating our St. Louis office, we're ready to host an Open House party. We're inviting all of our friends over for a little get-together. Here are the details:

### THE COULSON LAW GROUP OPEN HOUSE

THURSDAY, OCTOBER 9

3:30 P.M. - 6:30 P.M.

1125 OLIVETTE EXECUTIVE PARKWAY  
SUITE 110  
ST. LOUIS, MO 63132

PLEASE JOIN US! LIGHT HORS D'OEUVRES AND BEVERAGES WILL BE SERVED.

RSVPS APPRECIATED.  
CALL (314) 567-9292 OR  
(618) 659-9292  
FOR RESERVATIONS & DIRECTIONS.

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## Powers of Attorney: *You Have Questions, We Have Answers*

### Q. What is a power of attorney?

A. A power of attorney ("POA") is a document by which one person (the "principal") gives another person (the "agent") authority to speak or act on his or her behalf.

### Q. What does a power of attorney authorize the agent to do?

A. Whatever the document says the agent can do – no more, no less.

### Q. Are there different types of powers of attorney?

A. Yes. Partly by custom, partly by law, there are two main types of POA: one for property and financial matters, and the other for health care and personal matters.

### Q. Aren't all power of attorney documents pretty much the same?

A. While most POAs have quite a bit in common, they often vary in some critical respects. For example, many "basic" POA forms do not give the agent the authority to make gifts or take other actions necessary to carrying out effective long-term care asset preservation planning.

### Q. What are the alternatives to powers of attorney?

A. There are only two people who can give somebody else legal authority to speak and act for you: you, by signing a power of attorney; or a judge, by naming someone as your guardian or conservator. Going to court takes time and cost thousands of dollars.

### Q. What about adding somebody's name to my accounts. Does that work?

A. Not very well. That person will be able to pay your bills, but not challenge one. He or she won't be able to deal with any assets or issues other than as to those accounts. And if that person gets sued or falls on hard times, all of your money (not "her half" – all) could be lost.

### Q. Who needs to have property and health care POAs in place?

A. Any adult who may become incapacitated at some point in life; in other words, everyone.

### Q. When is the agent under a power of attorney authorized to start acting?

A. Whenever the POA document says, generally either as soon as the document is signed ("immediate") or when you have been determined to be incapacitated ("springing").

### Q. Is it a good idea to name successors, if the person you name as agent dies or can't or won't act?

A. You should always name successors. What you're really saying, if you don't, is "other than the person(s) I've named, there's nobody I would prefer over whomever it might be that a judge who has likely never met me or my family would name."

### Q. Can I name two or more people to act together?

A. You can, but it's generally a bad idea for several reasons. First, it's impractical; every check and other document will have to be signed by both or all agents. Next, either you will have the issue of tie votes to deal with (can you say "court battle"?), or, if you name an odd number of agents, the risk of having a consistently outvoted, resentful child. Finally, naming co-agents is a great way to not get things accomplished, since in the case of a tie, whoever says "no" wins. If you may need to have surgery, or your house may need to be sold, do you really want the "no" vote to always control?

### Q. (The usual follow-up objection) But my children get along really well!

## DID YOU KNOW?

ALTHOUGH HAVING BOTH IS DESIRABLE, A DURABLE POWER OF ATTORNEY FOR HEALTH CARE USUALLY IS PREFERABLE TO A LIVING WILL BECAUSE IT IS FAR MORE FLEXIBLE AND RESPONSIVE TO CHANGING MEDICAL CIRCUMSTANCES.

<http://www.merck.com/mmhe/sec01/ch009/h009e.html>

A. Congratulations, that's great! You can keep it that way by not naming them as co-agents. If they really do get along well, the one who officially shoulders the responsibility of acting as agent will want to share that responsibility by conferring with the other(s), and you'll get the same result as from naming co-agents. If that turns out not to be the case, then see above.

## ***Powers of Attorney***

*continued*

### **Q. Can I name two agents in the alternative, so that either of them can act alone?**

A. You can, but again, it's generally a really bad idea. Anyone dealing with "your agent" will be concerned about inconsistent directions and potential disagreements. Banks and hospitals don't want to get "stuck in the middle," and in a worst case, they could refuse to honor either POA.

### **Q. What if I only name one agent, and that person turns out not to be trustworthy?**

A. That concern makes an excellent case for taking great care in choosing an agent and in defining what that person can and can't properly do. Whoever you name will have a "fiduciary duty" – the highest standard of care the law recognizes – to properly carry out his or her duties. In a worst case, another family member can seek to have the agent discharged and a guardian or conservator appointed.

### **Q. How long does a power of attorney stay in effect?**

A. Until you revoke (get rid of) it, or a guardian or conservator is appointed for you, or you die. When you die, your POA dies with you, and the agent has no further authority.

### **Q. Does a power of attorney have to be notarized, witnessed, or both?**

A. That varies by document and by state. Simply put, you need to know the requirements.

### **Q. Can I prepare my own power of attorney documents?**

A. Theoretically, yes. Of course, that's also true of performing your own surgery or wiring your own house. Most people wisely choose to hire professionals to handle expert tasks.

### **Q. Do I need to change my power of attorney forms if I move from one state to another?**

A. A document valid in the state in which it was signed is valid in other states, so you don't have to. However, since many states have POA forms which are in general use and receive immediate universal recognition in that state, you may want to change.

### **Q. Can a person with Alzheimer's sign a valid power of attorney?**

A. In many cases, yes. Competency is measured at the time of signing. If someone meets that standard "at a good time of a good day," and signs the POA then, it doesn't matter if he or she would not have met the test on another day or even later that same day.

### **Q. What level of competency is required to execute a valid power of attorney?**

A. Lawyers and courts have expressed reasonable differences of opinion on this. Some say you need to be sufficiently competent to be able to do everything you're authorizing your agent to do. Others think that, sort of like hiring a mechanic or lawyer, you're sufficiently competent if you're aware that there are matters that need to be addressed, that you want somebody to be able to help you with those, and you know the person you're giving the authority to and trust that he or she will act in your best interests. We tend to fall in the latter camp, especially in situations in which there is an existing relationship and a track record of trustworthiness.

***This article is a brief summary of our August 2008 telephone seminar on powers of attorney. For a more in-depth discussion on powers of attorney, get your free CD recording of the seminar by calling our Education and Outreach Manager, Steve Held, at 314-567-9292 in Missouri or 618-659-9292 in Illinois, or by e-mailing [steve@coulsonlawgroup.com](mailto:steve@coulsonlawgroup.com).***

"Your Life, Your Legacy, Your Lawyers"

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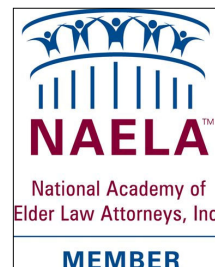
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## September Teleseminars! Missouri Look Back

### September Teleseminars—Sign Up Now!!!

“Don’t Look Back—Successful Medicaid Planning in Missouri & Why the Five Year Look Back Rule Doesn’t Really Matter”

**Wednesday, September 24th**  
**Tuesday, September 30th**

Each Teleseminar begins at 12 Noon

#### Reservations

Call Steve Held @ (314) 567-9292, (618) 659-9292

Or email [steve@coulsonlawgroup.com](mailto:steve@coulsonlawgroup.com)