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By James W. Ummer, Esquire

Picture a timeline with today being at one end and the date of your death being at the other. Today, you are fully capable of managing your affairs. As you move towards the other end of the timeline, you may become unable to manage your affairs due to accident or illness for a short period of time or an extended period of time.

If you become unable to manage your affairs, the question always arises as to who will take care of you during your incapacity. Without a power of attorney, the answer to this question is determined by a court. Someone will need to petition a court to have you adjudicated incapacitated and to have someone (or some entity) appointed as the guardian of your person (health care matters) and estate (financial matters). The guardianship process can be costly from both a financial standpoint and from a "human dignity" point of view (no one wants to be taken to court to be declared incapacitated).

A validly executed durable power of attorney almost always eliminates the need for a guardianship proceeding since you currently name someone to act for you (your Agent) if you cannot act for yourself. The power of attorney is inexpensive to have prepared, and is far less costly than a guardianship.

The power of attorney should be durable (meaning it survives your incapacity) and it should cover health care matters as well as financial matters. If you do not want to name the same person(s) to handle both financial and health care matters, you can assign these tasks to different individuals or entities.

Pennsylvania law statutorily requires anyone or any entity to act pursuant to your Agent's directions, so you can take comfort in knowing that if you become incapacitated, someone will be there to make arrangements for your health care, to pay your bills, to manage your investments, etc. Also, when you name your Agent, you know that the person of your choosing, and not a court's, will be acting for you.

It is for these reasons that I cannot adequately stress the importance of having a durable power of attorney. No matter what your age, if circumstances arise that someone needs to act for you, a power of attorney is invaluable in ensuring that you will be taken care of and by someone you trust. Finally, it is worthwhile to update powers of attorney signed three or more years ago since Pennsylvania laws concerning powers of attorney have changed fairly significantly over the past few years.

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Rothman Gordon P.C.
Attorneys At Law
310 Grant Street
Third Floor, Grant Building
Pittsburgh, PA 15219
phone 412.338.1110
fax 412.281.7304
www.rothmangordon.com

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