

What if the Bank will not Accept the Power of Attorney?

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Sometimes I get a call from a client after they go to a bank or other financial institution only to learn that the bank will not accept their family member's power of attorney document. I will discuss strategies to discuss with your financial institutions to avoid this issue.

First, what is a Durable Power of Attorney (DPOA)?

A DPOA is a legal document in which you designate who you want to make legal and financial decisions for you if you cannot make them for yourself. For example, who will pay your bills or withdraw funds from your bank accounts if you cannot? "Durable" means that the power of attorney will survive the incapacity of the principal (the person who created the power of attorney). Even a validly executed DPOA can be rejected or called into question by a third party. Banks, brokerage firms, insurance companies, and other financial institutions sometimes raise objections when presented with a DPOA by the named agent (e.g., a spouse or child). The institution may demand proof that the DPOA is still valid or complain that the DPOA is "stale" whereby they may claim that it was executed too long ago and the bank questions whether it is still your intent for the agent to act on your behalf. In some situations, you may need to decide whether it is worth fighting them over this. A properly drafted DPOA should explicitly address the issue of "staleness". Additionally, Massachusetts law states, "the power [of the agent] is exercisable notwithstanding the lapse of time since the execution of the instrument." Also, Massachusetts law gives the agent under a DPOA the authority to take legal action for damages against a bank or financial institution if they

unreasonably refuse to honor the authority of a valid DPOA. This should ensure that when you need your agent to act on your behalf, they will be able to.

What does this mean for you?

Do you want to have peace of mind that your basic estate planning documents, which include your DPOA, will work when you need them? Changes happen and we want to make sure your estate plan continues to do what you intended it to do. Reviewing your estate plan every three to five years will give you peace of mind. A review is a great opportunity to meet with your estate planning or elder law attorney to review your existing documents, suggest new or updated documents (if necessary), address changes in your life, discuss federal and state law changes that may affect your estate plan, and help to ensure that what you have in place will work when it needs to in the future.

Has it been some time since you have reviewed your estate plan? Consider calling your attorney to see if you are entitled to a free review.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.