



# Do I Need Power of Attorney?



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**D**o I Need a Power of Attorney?" is a frequently asked question by clients who are generally older, perhaps widowed, or who may be experiencing health problems. Besides an analysis of the client's individual circumstances, a brief explanation of what a Power of Attorney is provided.

One of the most commonly used devices among family members, the Power of Attorney, is a written grant of authority to another, the agent, to act in the name of and on behalf of the grantor. Generally, anyone with the legal ability to contract may grant a Power of Attorney to another. While the laws of agency generally govern the relationship between the grantor and the agent, state statutes have been enacted which define and enumerate specific powers. Powers of Attorney can be limited in scope and duration, conditioned on the incapacity of the grantor, or extremely

broad and durable. The written powers granted are strictly construed and should mention specifically any powers to be conferred. While some powers may be inferred from the granting of specific powers, powers which are

not specifically included are deemed not to have been granted. In the case of banking, New Jersey Statue N.J.S.A. 46:2B-11 provides for a short hand recital of the powers contained within that statute to grant broad banking authority to the agent to save several lengthy paragraphs of text from being incorporated into the document as most Powers of Attorney are utilized to assist in financing matters. This codification is extremely useful for the grantor, agent, and banking and financial institutions. The fact that Powers of Attorney are in writing is for the benefit of third parties who deal with the agent as evidence of the agent's authority.

So what circumstances benefit from Powers of Attorney? In most family situations we commonly see their use between spouses and parents and children who assist elderly or ailing parents with their legal and financial affairs. These are situations where the grantor is not legally mentally disabled, but needs assistance in managing financial matters.



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Oftentimes spouses will have powers prepared and kept on "standby" to use as needed should one of them become ill or disabled; likewise, parents often make the same arrangement with children. Another circumstance may be for the convenience of the grantor to enable the agent to handle designated legal chores while they are absent, such as while traveling or on an extended vacation abroad.

The agent who accepts the Power also accepts the obligations of a fiduciary and must account to the grantor for its acts. What this means is the agent must act for the benefit of the grantor or principal and not in the agent's own interests. This issue often comes up when the agent pays money or transfers property to themselves

where such transfers, even for consideration, are not specifically provided in the Power. While the reimbursement of expenses for the performance

of certain duties is appropriate, an outright gift to themselves is inappropriate. There are situations where gifts may be desirable and expressed, such as for estate planning needs or for holiday or birthday gifts when the grantor may be away.

The most effective use of the Power of Attorney can only be determined after a comprehensive analysis of an individual's given situation. Basile & Testa, P.A., invites you to contact one of our attorneys to discuss these personal matters in a professional and confidential setting.

Please feel free to contact  
Robert Casella of Basile & Testa at  
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*Robert J. Casella was born in Vineland, New Jersey. Robert is a graduate of the Widener University School of Law and was admitted to the New Jersey Bar in 1977. He is also admitted to practice before the United States District Court to New Jersey and the United States Supreme Court. He has represented and counseled clients in Municipal Court, Superior Court, and Federal District Court. Mr. Casella concentrates his practice in the areas of Wills, Estates, Probate, Real Estate, Zoning, Corporations and Bankruptcy. Prior to joining the law firm of Basile & Testa, PA, Robert was a partner in the law firm of Casella & Casella from 1977-2003. Mr. Casella's professional associations include Cumberland County Bar Association and the South Jersey Business Association.*