



## Power of Attorney: The Broader, The Better

*Contributed by Jessica L. Whaley*

When speaking about estate planning in general terms, most people tend to direct their attention to those documents that plan for after they have departed this life (i.e. a will or trust). However, when we prepare an estate plan for our clients, we not only want to prepare documents to assist in the administration of their estate, but also to aid in the years of life ahead. This is where a Power of Attorney (“POA”) becomes a useful document when it is drafted correctly. As we will discuss below, without the proper powers assigned within the document, a POA can be a source of grief for those attempting to help rather than the powerful document it was intended to be.

**WE RECOMMEND THAT ANYONE WITH  
A POA PRE-DATING 2010 HAVE A  
NEW DOCUMENT CREATED**

In basic terms, a POA is a document which grants authority for an agent to act on behalf of the principal in regard to legal and financial matters. In 2010, Delaware passed the Power of Attorney Act stating that each principal must grant both General and Specific Authority within the POA, which includes agent powers such as the ability to make gifts or create irrevocable trusts. Given the change in law, we recommend that anyone with a POA pre-dating 2010 have a new document created. Further, we also recommend that our clients grant their agent the broadest authority possible in order to empower their trusted decisionmakers to act however is necessary.

Our recommendation for broad authority stems not only from our desire to protect our clients during all seasons of life, but also, unfortunately, from seeing the effects of a POA that fails to do this. Issues with a limited POA most often arise when a family has asked for our assistance in protecting assets from the costs of long term care. In this case, a family may come to us under the impression that the POA in effect is sufficient to complete the necessary planning. Imagine the frustration they feel when we inform them that the planning is not possible with the current POA since it fails to provide the powers needed or requires that the principal be incapacitated. It is this frustration that drives our push for education of not only our colleagues in the legal field, but also the community as a whole.

So, now you may be left asking what we do when a client comes to us with a defunct POA. First, we ask whether the principal has the ability to sign a new POA that is all inclusive. If they have capacity, then we have them execute a new POA and the problem is solved. However, when a principal is incapacitated and a new POA cannot be signed, we then are left to petition the Court for guardianship, which can be a time-consuming and expensive process. Further, the Court often requires that we file two petitions when

225 High Street  
Seaford, Delaware 19973

17252 N. Village Main Blvd., Unit 16  
Lewes, Delaware 19958

616 William Street  
Berlin, Maryland 21811

[www.pwwlaw.com](http://www.pwwlaw.com)



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we are completing Asset Protection Planning: one to create the guardianship and a second petition to approve whatever planning the family wishes to do. Unfortunately, with the time it takes to create a guardianship and the cost of nursing home care (\$12,000+ per month), we are sometimes unable to proceed at all because, as a result of the delay, the assets the family was trying to protect have been eaten up paying for long term care.

While our hope for each client is that they never need to use a POA for failing health or incapacity, the reality is that many do come to need the broad agent powers we include in our POAs. As you can see, when it comes to a POA, the broader the authority, the better it is for long term use. What is important is naming the best person(s) for the job!

Try to resist the urge to download forms off the internet. Hire an experienced elder law attorney to create an estate plan that will actually work when you need it to (upon your incapacity and/or death).

## CHILDREN'S CLOTHING AND EQUIPMENT

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CHILDREN'S TOYS

Donations accepted at the offices  
of Procino-Wells & Woodland, LLC  
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Pickup across the Eastern Shore  
can also be arranged by contacting  
Meagan at [mls@pwwlaw.com](mailto:mls@pwwlaw.com)  
or 302-296-7639.



Resale to be held in Berlin in August 2019.  
All proceeds to benefit the Alzheimer's Association.  
Donors will receive an in-kind donation receipt.

## BELLA'S BRIEF

*The Office from a Dog's Perspective*



I've been hearing a lot about a simple practice of decluttering that would immediately spark joy in my life. Well, let me be the first to tell you it doesn't work. If anything, looking through closets and drawers sparked my fight or flight response. The more I looked for the joy the more my heart raced and my breathing quickened. That's when it

hit me; there's more than one way to find joy. I love my designer bed and baskets of plush toys and blankets, but I would toss it all in a pile to make another memory with my humans. I'm no Marie Kondo, but my life changing advice is to create more memories with the people you love. Take a vacation, snap a selfie with your grandkids, play a game, be silly, teach your family a recipe from another generation. Whatever you do, en-joy!

xoxo Bella 

## TIME OUT — STAFF PROFILE

*Jessica L. Whaley*  
*Estate Administration Coordinator*

**ON THE CLOCK:** Originally from Lancaster County, Pennsylvania, Jessica made Delaware home in 2012 following her graduation from Roanoke College with a degree in Political Science. She then attended Delaware Law School while working full-time as an administrative assistant at a boutique bankruptcy and corporate litigation firm in Wilmington. Following her graduation from Delaware Law in 2016, she worked as a law clerk for a prominent Delaware insurance defense firm, working for senior partners in the firm's workers' compensation department. She is currently a licensed lawyer in New Jersey.



**OFF THE CLOCK:** When not working to serve our clients in the area of Estate Administration, Jessica enjoys spending time with her husband, Neil, her daughter, Rosalee, and two dogs, Beau and Quinn. She also loves to cook and bake, spend time with her extended family, cheer on the Phillies, travel, and explore local antique shops.

## UPCOMING EVENTS

- |     |  |
|-----|--|
| 4   | Offices Closed   |
| Jul | Independence Day   |
| 11  | 2019 Elder Law Series (also on 8/8 & 9/12)   |
| Jul | 2 <sup>nd</sup> Thursday of every month, 10:00 - 11:00 am<br>MAC Inc. Area on Aging, Salisbury, MD |
| 2   | Offices Closed   |
| Sep | Labor Day  |
| 4   | OLLI Elder Law Series (also on 9/11, 9/18 & 9/25)  |
| Sep | 9:00 - 10:30 am<br>Fred Thomas Building, Lewes DE Campus   |
| 12  | CARES Program Member Appreciation Event  |
| Sep | 5:00 - 8:00 pm<br>Indian River Senior Center, Millsboro, DE  |
| 13  | Elder Law Workshop   |
| Sep | 9:30 - 10:00 am<br>Ocean Pines Community Center, Ocean Pines, MD                                   |
| 1   | Elder Law Workshop   |
| Oct | 5:30 - 7:00 pm<br>Worcester Technical High School, Newark, MD                                      |

## LEGAL MUMBO JUMBO

*Legal Language in Layman's Terms*

### CONTINGENT BENEFICIARY

A person/entity you select to receive an asset upon your death. This person/entity will only receive the asset if the primary beneficiary (the first person/entity you select has passed away before you, cannot be found or refuses to accept the asset.

### *A note from the attorneys...*

Did you know that our Seaford office is full of heritage? From the cookies we serve to some of the furnishings, we've made it a point to infuse some of our personal legacy into our daily lives. In the coming months, we will continue to add heirlooms to our décor in all the offices to honor our families in the same way we strive to take care of yours.

*Michele, Owen & Lusia*



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225 High Street  
Seaford, Delaware 19973



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## OFF THE CLOCK

We would like to thank our featured referrer of the month:

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