

GENERAL POWERS OF ATTORNEY

This Spring, the Ohio General Assembly adopted Substitute House Bill 246, enacting Sections 1337.18, 1337.19 and 1337.20 to the Ohio Revised Code. The purpose of the enactment of these sections was to create a statutory form for a power of attorney and to set forth general powers for attorneys-in-fact under a power of attorney. Previous to the enactment of Substitute House Bill 246, Ohio did not have a statutory form general power of attorney. With the creation of these new sections of Ohio law, powers of attorney that have been drafted and executed by individuals remain valid. The creation of a statutory form simply provides an alternative document that individuals can use for their power of attorney.

Powers of attorney like the form created by the General Assembly are helpful in providing designated individuals with the authority to perform certain acts on your behalf under defined conditions. A general durable power of attorney, when executed, will allow the designated attorney-in-fact to do anything and everything that the named individual could do. Several years previous, the Ohio General Assembly also provided for the existence of a "springing" power of attorney. Under the springing declaration, the designated attorney-in-fact has no authority until a physician has determined that the individual needs assistance with their affairs. Powers of attorney can be general and broad in nature or can be as specific and limited as one might desire. We encourage all of our clients to have executed powers of attorney as part of their estate plan.

If you have any questions regarding the new statutory form, or if you are in need of a power of attorney, please feel free to contact James Dietz at (740) 363-1313.

ARE YOU ACTING INDIVIDUALLY
OR IN A REPRESENTATIVE CAPACITY?

If you have a trust (and also if you are an owner, member or officer of a corporation or limited liability company), it is important to distinguish whether your actions are as an individual, being done personally, or if your actions are being done on behalf of the trust (or company). Recently, the Ohio Supreme Court had the opportunity to review the issue of legal ownership and operation by individuals in representative capacities. In the case of *Bd. of Edn. of the Columbus City School District v. Wilkins*, Columbus State Community College District applied for real estate tax exemption. A donation of real estate using a charitable remainder annuity trust had been made with Columbus State Community College District, Trustee. Thereafter, an application was made by the Columbus State Community College District for real estate tax exemption. Such applications for exemption are to be made in the name of the property owner. Because the real estate was in the trust and, therefore, in actuality owned by the trust, the application should have been made by the trustee, and not the District itself. The application was rejected by the Ohio Supreme Court because the owner was the Columbus State Community College District, Trustee, and the trustee was not included on the application.

This case serves as a reminder for those who have trusts that there is a legal distinction between yourself individually, as the grantor, as the beneficiary, and as the trustee. Many individuals have revocable trusts as part of their estate plan. Many individuals, likewise, are the grantor, lifetime beneficiary and trustee of their trust. This case reminds us, however, that there is a legal distinction between ownership of the trust and yourself perhaps acting in the capacity of grantor and/or beneficiary. It is important to always remember to distinguish if you are acting as an individual or if you are acting in a representative capacity on behalf of an entity. If you are acting in a representative capacity, make sure you let it be known.

MAKING SURE YOUR WISHES ARE CARRIED OUT

Even though you have a Will, if you also have a Trust, or if you have designated beneficiaries or used payable on death, transfer on death or joint accounts, your assets will be distributed in accordance with each of those separate items, and not pursuant to your Will. It is important to make sure that you understand that placing an asset in your trust will result in

the asset being distributed according to your trust provisions and not according to your Will. Clearly, depending upon your designation, your assets may be distributed differently.

As you know, if you have a joint with rights of survivorship account, the survivor will acquire the entirety of the asset. Likewise, if you use a payable on death or transfer on death beneficiary designation, or if you designate a beneficiary for a life insurance policy or an IRA, the individual so designated will receive the asset. Under these circumstances, your Will will not control what happens to the asset.

In a recent 9th District Court of Appeals Case, *Stephenson v. Stephenson*, there was an issue regarding the individual's funding of their trust. In *Stephenson*, there was an indication that the decedent intended to place the proceeds of a life insurance policy in his trust. The Court considered the method of "funding" by the decedent. Upon the individual's death, there was a question as to who was the beneficiary of the life insurance. You should not leave your wishes/desires to guess or for speculation for your beneficiaries, financial institutions or life insurance companies. Make sure you are aware of what will happen to each asset upon your death, and if it is not the way you desire, make sure that those assets are, in fact, distributed in accordance with your wishes.

If you would like further information regarding any of the items discussed in this Estate Planning Advisory, or if we can assist you with any other aspect of your estate planning, please contact our office at 740-363-1313.