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HEALTHCARE PROFESSIONALS SECTION

Q&A: Powers Of Attorney, And How To Handle Them

Whether a signer seeks a power of attorney (POA) for another person or is signing on behalf of a principal, powers of attorney add an extra layer of complexity to notarizations. Because it's tempting for a dishonest person to abuse their positions when acting as another person's representative, Notaries need to be especially alert for problems when notarial acts involve powers of attorney. The Section spoke with **Bernard A. Krooks**, founding partner of Littman Krooks LLP and past president of the National Academy of Elder Law Attorneys, to answer questions Notaries have asked about notarizations involving POA documents and representative signers.

Many states don't require signers to show Notaries proof they have power of attorney when signing on behalf of another person and having their signature notarized. Do you recommend that Notaries ask to see evidence a signer has power of attorney anyway, even if that's not required by state law?

Any time you're asked to notarize a document, you not only need to see the signer's ID but if they are acting on behalf of someone else, you should ask to see the document giving them that authority. I would recommend going even farther and also ask the signer to sign an affidavit that the power of attorney is still in force and in effect.

A Notary recently called the NNA about an unusual situation involving a POA. The signer wanted to use an existing power of attorney to sign and have a document notarized granting herself expanded authority over her mother's affairs. Can a signer use a power of attorney to increase their own representative capacity? Is it appropriate to notarize in this situation, or should the Notary refuse?

The signer cannot do that. The only person who could expand the signer's original power of attorney would be the principal — the mother in this case. The agent can't expand her power of attorney herself. She can delegate some powers to others if the original document authorizes doing so, but can't add powers to herself.

What are danger signs Notaries should look for if an elderly signer asks for a power of attorney to be notarized and the designated representative is present?

It's certainly not uncommon for people to take care of estate planning or powers of attorney in the company of friends or relatives. In many states, including New York, the agent is now required to sign the power of attorney document so it's typical for the person named as the agent to be present. But if the Notary observes the signer appears to only be signing to appease the

agent — for example, the agent says to the signer “I won’t take you to the doctor any more if you won’t sign this,” — that’s coercion or fraud. If a Notary sees this, the Notary needs to step back, ask the would-be agent to leave the room and talk to signer alone to ensure that the signer is willing.