

The Personal Trusted Agent

General.

People who live alone should consider having a personal trusted agent. Similarly, it is also sensible for an older couple to have a personal trusted agent. The obvious question: what is a personal trusted agent, hereafter referred to as the agent? An agent is a person who has made a commitment to assist another person or persons when the latter is unable to take care of his, her or their personal affairs. The agent should be someone who can be trusted with personal affairs, finances, and valuable items. An agent is, for the most part, not bonded, that is, not insured. A trusted agent should be someone with the physical and mental ability to manage someone's affairs, including making difficult decisions and negotiating through complex legal and financial affairs.

The relationship between the person (collective if a couple is involved) and the agent is informal; however, the controlling factors are based on the formal legal documents that are executed when the relationship is established.

An agent is often a close family member - son, daughter, niece, nephew or sibling. However, in the absence of a close family member, the person seeking an agent can select a person based on a history of mutual friendship and trust.

When identifying an agent, the person doing the selection should be careful to manage expectations of all involved, including extended family members, who do not reside near the person and the agent. The agent should be someone reasonably available in time of need. The agent is expected to act in the person's best interests, maintain a focus on the welfare of the person, and stay in close contact with the person.

There is no general rule on close contact. The agent maintains sufficient close contact to assure the agent's duties and tasks are properly and correctly accomplished.

The agent will normally be a trusted friend conversant with all relevant aspects of the person's life.

An agent is not normally conversant in every aspect of the agent's mission. When situations arise that the agent cannot master, the agent must seek competent assistance.

American and German Planning Considerations.

The principal focus of this paper is that the agent is assisting the person in Germany and most of the assets, financial and other, are in Germany. The assets, if any, that are in the United States of America (USA) need to be considered when establishing the relationship.

Generally, banks in the USA do not recognize the determination by a German probate court as to the disposition of financial assets. Therefore, if the person with financial assets in an American bank does not have the agent as a joint owner of the account, access to the financial assets is blocked after the person dies. The credit unions with operating branch offices in Germany are essentially American banks. Therefore, establishing the joint ownership with the trusted agent must be accomplished if access is required after the person's death.

If the bank(s) is in the USA, the person and the agent must appear at the bank to establish the person-agent joint ownership. In nearly all cases, this is not feasible. Accordingly, the bank accounts in the USA should be closed. Any US Government payments (Social Security, SBP, etc.) can be set up as international direct deposits to the German bank.

There may be other payments in the form of annuities (life insurance, individual retirement accounts, etc.) that are being sent to the American bank. If the company paying the annuity cannot make an international direct deposit to the German bank, this presents a problem that must be worked out with the companies concerned.

In addition to naming pay-on-death beneficiaries for financial accounts, U.S. citizens residing outside the U.S. should consider naming contingency beneficiaries to receive the residual annuity assets (stream of payments or lump sum) after the owner dies. These arrangements are beyond the scope of this paper, but are mentioned here because they must be made.

Establishing the Relationship.

The first step is for the agent to become familiar with the person's personal affairs. These include general state of health, business relationships, financial assets, non-financial assets, close friends, and lastly, funeral and burial desires. It is necessary to execute legal documents to manage your affairs during your life or an extended illness or period of incapacitation, and after your death.

There are five basic documents that must be executed. It is possible as well as desirable to include the first three documents described below in single document, the general power of attorney.

The General Power of Attorney in Germany. The German general power of attorney is prepared by a notary public and can be set up to remain in force after the grantor's death. This is very important, because many actions must be accomplished after the grantor's death. The American power of attorney, usually made by the Judge Advocate General within the US Army garrisons, becomes null and void upon the death of the grantor. A full German power of attorney should include three distinct powers as detailed below.

- ***Vorsorgevollmacht.*** This is the basic and durable power of attorney that is a subset of the general power of attorney. The *Vorsorgevollmacht* provides the agent, on behalf of the grantor, with the authority to take all legal and administrative actions permitted by law. This includes such actions as medical treatment decisions and placing the grantor in an institution.

- ***The Patientenverfügung (Advanced Directive/Living Will)***. In the event the person becomes terminally ill, this document states the person's desires and wishes concerning the types of medical treatment, continued or discontinued, until death occurs.
- ***Betreuungsverfügung (Guardianship Order)***. The agent becomes the guardian of the grantor when the grantor is unable to articulate personal decisions and needs. Two good situational examples demonstrate the need for guardianship: the grantor survives a stroke and is handicapped or has advanced dementia.

The German Bank Power of Attorney or Joint Ownership. The grantor grants the agent total access to all bank accounts. This power of attorney may or may not remain in effect after the grantor's death depending on the national laws and the policy of the individual banks. Note that naming someone as a joint owner rather than as a beneficiary includes the risk that creditors (if any) of the agent could attach the assets if the agent has non-performing debts, that is, not paid up-to-date.

The Last Will and Testament. This document, like the power of attorney, is absolutely required and will identify the agent as the executor of the estate. The last will and testament must clearly state the specific actions that the agent must take. All other actions not specified are considered implied actions.

General Duties and Specific Tasks.

General Duties. When the grantor is unable to take care of personal affairs, the agent will be expected to take all required administrative actions which include paying bills, monitoring all bank transactions, maintaining contact with the attending physician(s), reading incoming mail and taking all actions required, and, most important, keeping the grantor informed of the agent's accomplishments.

Specific Tasks. The following list of specific tasks is not exhaustive, in no special order and will vary from person to person based on the individual situations.

- Maintain contact with the person's distant family members.
- Upon the grantor's death, notify the German and American governments of the death. The extent of the notification depends on place of residency (where registered), citizenship, the receipt of Social Security, survivor benefits plan, dependency and indemnity compensation, German Social Security annuities and any other annuities.
- Notify the bank(s) and any credit and debit card issuers
- Notify friends and relatives.
- Notify the health insurer, as appropriate.
- Obtain necessary death certificates.

- Arrange for the funeral and interment.
- Last Will and Testament. If it's an American will from US legal assistance and the deceased is a resident of Germany, it must be probated locally, that is, in Germany. Prior to submitting the will to the German probate court, an official translation is required. If it's a German will, notify the lawyers who drew the last will and testament to start the probate process. If the agent is able to write a cover letter in German, the lawyer's fee can be avoided when submitting the will to the German probate court. The probate of a will in Germany does not require the involvement of lawyer.
- Close out the house or apartment (telephone, electricity, water, heat, trash pick-up, etc.) or nursing home/senior residence, as appropriate.
- Dispose of personal property.
- Submit income tax returns, both American and German. Unless the agent is a certified tax preparer, use a certified company that can prepare the American tax return. In the case of the German income tax return, use a German tax adviser (Steuerberater).
- After the probate of the will, take all actions specified in the will. In Germany, some of the actions specified in the will can be taken as soon as the will is submitted to the probate court.
- Wills that are stored at a probate court are sealed. The probate court will examine the will and look for abnormalities. Finding none, the probate court will send a report to the agent (executor of the estate) so stating or if there are abnormalities, listing the abnormalities. If there are abnormalities, the agent must respond to the probate court. The report also includes the opening of the will protocol.
- The transfer of assets (funds, property, etc.) to the heirs specified in the will can only be accomplished after probate court issues its report (discussed above) as to the validity and correctness of the will. If the bequeaths in the will are clear, that is, all of the heirs are properly identified and there is no chance of a dispute, a certificate of inheritance is not required. The cost for the certificate of inheritance is based on the size of the estate and can be significant. It is best to avoid this expense.
- The agent is also responsible for submitting the inheritance tax return to the responsible German finance office (Finanzamt) and paying any inheritance taxes required after the finance office has completed its processing and issued the payment request.
- When all financial actions have been completed, the agent closes out the bank accounts.

Agent Compensation.

There are various expenditures associated with the agent's duties and tasks before and after the person's death. Agent compensation or lack thereof while the person is alive is generally agreed upon at the time the relationship is established. The person and the agent should formalize the relationship in the form of a contract or other written document that may result in taxable events (i.e., payment for services).

Subsequent to the death of the person, the agent may bill the estate at a fair-market rate for the hours worked and any associated expenses. Often, the hourly rate includes routine expenses (telephone, automobile use, etc.).

If the agent is identified in the will as the executor of the estate and not one of the heirs, when the will is drawn the agent's fee for accomplishing the settlement of the estate can be specified as a percentage of the value of the estate generally up to 5%. The agent generally bills the estate 50% plus value added tax of the expected fee based on the estimated value of the estate. When the settlement is complete, the agent bills for the remaining 50%.

The final value of the estate is determined by the German tax office that is responsible for assessing the inheritance tax. This determination is in the form of an information document that establishes the amount of the estate. This amount is the basis for the agent to determine the agent's final fee.

The agent must distribute the funds to the heirs and pay the inheritance tax.

After the grantor's death, the agent, who is now the executor of the estate, must maintain meticulous records of all expenses incurred, that is, bills paid, transfer of financial bequeaths and agent compensation.

Summary and Final Words.

The duties and specific tasks performed by the agent are a great responsibility. At the time the relationship is established, the agent is committed until such time as the grantor terminates the relationship by cancelling the power of attorney and changing the last will and testament. After the grantor's death, the trusted agent remains committed until all actions related to the grantor's estate have been completed.

There may be difficult times during the relationship. Often, the agent must exhibit the patience of Job.

The agent's commitment is truly sacred and must be fulfilled.

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