



The Importance of

Powers of Attorney

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I tell my clients that if they allow me to prepare only one estate planning document for them, that document would most likely be a financial power of attorney. So what is a financial power of attorney and why is it so important?

A power of attorney gives someone legal authority to do something for you. There are two main types of powers of attorney: financial ones and health care ones. The financial one allows someone to take care of financial matters for you (such as bank accounts, real estate, business matters), and the health care one allows someone to take care of health care matters.

The significance of a financial power of attorney is that it gives someone legal authority to take care of financial matters for you. For example, if you are hospitalized and need someone to pay your bills, a financial power of attorney gives the person this power. If you have a stroke and are no longer able to live in your home, a financial power of attorney gives someone the power to sell your home and use the proceeds to pay for your care. If someone needs to act for you but this document is not in place, a guardian will most likely need to be appointed for you. This is a court proceeding which involves significant time and expense.

A health care power of attorney works much the same as a financial one: you give someone legal authority to make health care decisions for you.

The person named in these documents to act for you is called the “Agent.” I recommend that a primary agent be named, as well as alternate agents. That way, if the person you choose as your primary agent is unable or unwilling to act, someone else has been named that can act for you. Agents under powers of attorney are not legally required to act. But if they do act, they are required to act in your best interests.

A power of attorney can be effective immediately, which is how a health care power of attorney is usually set up. Or it can be effective upon the happening of an event, such as you becoming unable to manage your affairs. Under such a power of attorney (sometimes called a “springing” power of attorney), the person you name has no authority as long as you are able to act for yourself.

Powers of attorney are usually “durable,” which means they continue in effect even after you are unable to take care of your own affairs. Powers of attorney terminate at death (except to the extent necessary to consent to organ donation).

I call powers of attorney “powerful little documents” because they are inexpensive to draft but provide your agents with great powers. It’s crucial that the agents you name be trustworthy, so that the power of attorney is not used to steal money from you.

In sum, it’s important to have powers of attorney in place so that your affairs can be managed without a guardianship proceeding, and so that you decide who will manage your affairs for you (as opposed to a court deciding who will do so).

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