



Elder Law Advisor

Power of Attorney for Finances: An Essential Tool for Elder Care Planning

Most people understand the need to have a will, so that when they pass away, assets will go to their chosen beneficiaries. Most people do not realize that they also need to appoint a power of attorney to make financial decisions and manage assets for them, if they become incapacitated.

If you think about it, most any financial decision we make requires a signature. Selling a house, writing a check, entering into agreements, etc., all require that we be able to sign documents. A signature itself is not even enough; the law imposes a requirement that the person signing the document have sufficient mental capacity to understand what they are signing.

As we age, there is a greater possibility that a time will come when we are not able to sign important legal documents. Or, even if we can sign our name, we may not understand what we are signing. At that point, assets are frozen unless someone has been given the legal authority to make financial decisions for you. The best way to do this is through a power of attorney for finances.

A power of attorney for finances is a document you can sign to appoint another person to make important financial decisions for you in the event you become incapacitated. The person you appoint is called your "agent." It is a good idea to name one or more alternate agents, in the event your first choice is unable or unwilling to serve in that role.

As an Elder Law attorney, one of the most common phone calls we receive is "I need to get power of attorney for my Mom." My answer is always, "that's great, we'd love to help your Mom. Let's schedule a time for her to come in and discuss it." "Well, that's a problem," replies the caller "because Mom has Alzheimer's

Disease, and she won't understand what you are talking about."

In this situation, it may be too late to get a power of attorney. A power of attorney must be signed by a person who is legally competent. This means the signer must have the ability to understand the nature and importance of the document. If someone already has Alzheimer's Disease, or dementia, or has suffered a stroke, it may be too late to sign a power of attorney. Therefore, it is important to sign a power of attorney while a person has mental capacity to understand the document.

When deciding who should be your agent, remember that the most important qualities are honesty and good financial management skills. The main disadvantage to having a power of attorney is, a dishonest agent could use the power of attorney to misappropriate your assets. Therefore, only appoint the most trustworthy people to serve in this role. There are also professional trust companies that may agree to serve as your agent.

A power of attorney should always be prepared by an experienced elder law attorney. It is possible to obtain a generic power of attorney from a legal stationery store. However, this form will not give the agent the ability to make many types of important decisions for a disabled person. An experienced elder law attorney can provide a power of attorney that will give your agent flexibility to make important financial decisions if you are not able to make them yourself, such as disability planning, creating trusts, long-term care cost planning and tax planning.

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- Financial Powers of Attorney
- Advance Directives for Health Care
- Probate
- Planning for Mid-Life & Beyond
- Asset Protection & Financial Estate Planning

Topics in Elder Law include:

- Medicaid Planning & Division of Assets
- Special Needs Trusts
- Asset Protection Plans
- Guardianship/Conservatorships
- End of Life Decision Making
- Long Term Care Cost Planning
- Veteran's Benefits