

When people consider estate planning, they often think that preparing a will, or perhaps a trust will cover their needs. Certainly, these documents are very important to guarantee that property passes according to ones wishes upon death. However, when one considers estate planning, it is important to think of managing ones affairs not only after death, but also during ones life.

A "power of attorney" is a grant of legal rights and powers by one person to another. The person granting the powers is know as the "principal," and the person receiving the power is known as the "agent" or "attorney-in-fact." The agent essentially stands in the shoes of the principal and acts for him/her on financial matters. If the documents so states, the agent can do most anything the principal can do in financial transactions -- withdraw funds from bank accounts, trade stock, pay bills, and cash checks. It is important to choose this person carefully because he or she can control your assets.

A power of attorney can be very handy in the event that one is unable to take care of his/her own financial affairs, for reasons such as extended travel or illness. This type of document becomes even more important, however, in the event of mental incapacity. A standard power of attorney will terminate upon the principal's mental disability. However, a durable power of attorney will continue beyond mental incapacity or disability to provide the principal with a safety net of financial management. Massachusetts Uniform Durable Power of Attorney Act was enacted to allow a standard power of attorney document to stay in effect in the event the principal became mentally incapacitated; hence the term "durable power of attorney." When one does not grant a "durable" power of attorney, family members of a person stricken with a mentally incapacitating illness most often must resort to probate court proceedings to obtain the legal authority to handle their loved one's financial affairs. The probate process can be time-consuming and an expensive procedure which could be avoided if there was a valid durable power of attorney in place.

Third parties that may become involved in transactions with the named agent by presentation of the power of attorney should also be considered. This third party could be a real estate purchaser or seller, a retirement plan administrator, or the principal's business associates. More frequently the third party is a financial institution, such as a bank, broker, or IRA custodian, that is presented with a power of attorney document by an attorney-in-fact along with a request that such power be recognized. When preparing the document the principal should consider particular types of transactions or accounts, which financial institutions are likely to be relying on the document, and the nature of the accounts owned by the principal, to aid document acceptance. Verifying the authority of the attorney-in-fact to act for the account owner, therefore, is the first priority of every financial institution, and each principal and his/her agent should set this expectation. Although, the typical power of attorney may grant the agent very broad powers, it does not give the agent full authority to take the principal's money and run away with it. The agent must use all of the finances for the benefit of the principal. In other words, it is a management tool. The principal can give his/her appointed attorney-in-fact broad or *limited* financial management. For example, you may want to limit the duration of the instrument to a period of time or limit what powers you give to the agent. Before you grant and sign a power of attorney, be sure you understand exactly what you want your attorney-in-fact to do in your place.

Your changing needs may necessitate the revision of an existing power of attorney, ensuring it accomplishes exactly what you need done and nothing else. Therefore, it is a good habit to periodically review ALL of your legal instruments (power of attorney, will, etc.) A little time spent reviewing and revising may save you a great deal of trouble later.

It is important to note that a power of attorney does NOT take away the rights of the principal. It is similar to handing the keys to ones car to someone else. Just as the keys can be taken back, so can a power of attorney be revoked. Both a standard and a durable power of attorney will terminate upon the principal's death.

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