

What are the benefits of a durable power of attorney?

No one likes to think about being incapacitated, but the threat is quite real. According to recent statistics, in the United States, about one out of every 10 people age 65 or older are affected by Alzheimer's disease, while roughly one-third of the adult population has at least one of the leading risk factors for stroke. Don't think that you're immune.

This raises some troubling thoughts about how your personal and financial affairs will be handled in the event you're incapacitated. If you haven't already done so, address the possibility as part of a comprehensive estate plan. One common solution is to create a power of attorney. The optimal protection is afforded by a durable power of attorney.

The basic principles

A power of attorney is defined as a legal document authorizing another person to act on your behalf. This person is referred to as the "attorney-in-fact" or "agent" or sometimes by the same name as the document, "power of attorney."

A power of attorney can be either specific or general. The general power of attorney is broader in scope. For example, you might use a general power of attorney if you frequently take extended trips out of the country and you need someone to authorize business and investment transactions while you're gone.

However, a specific or general power of attorney is no longer valid if you're incapacitated. For many people, this is actually when the authorization is needed the most. Therefore, to thwart dire circumstances, you can adopt a "durable" power of attorney.

A durable power of attorney remains in effect if you become incapacitated and only terminates on your death. Thus, it's generally preferable to a regular power of attorney. The document must include certain language required under state law to qualify as a durable power of attorney.

Note: With a "springing" power of attorney, the document takes effect at the time you're incapacitated. But this technique is only available in a number of states.

The choice is yours

This leads to a common question: Whom should I name as the attorney-in-fact? Despite the name, it doesn't necessarily have to be an attorney, although that's an option. Typically, the designated agent is either a professional, like an attorney or financial planner, or a family member or close friend. In any event, the person should be someone you trust implicitly and is adept at financial matters.

Regardless of whom you choose, it's important to name a successor attorney-in-fact in case your top choice is unable to fulfill the duties or predeceases you.

Usually, the power of attorney will simply continue until death. However, you may revoke a power of attorney — whether it's durable or not — at any time and for any reason. If you've had a change of heart, notify the attorney-in-fact in writing about the revocation. In addition, notify other parties who may be affected.

Health care implications

A durable power of attorney can also be used for health care decisions. For instance, you can establish the terms for determining if you're incapacitated. It's important that you discuss these matters in detail with the attorney-in-fact to give him or her more direction.

Don't confuse a power of attorney with a living will. A durable power of attorney gives another person the power to make decisions in your best interests. In contrast, a living will provides specific directions concerning terminally ill patients.

Finally, remember that a durable power of attorney can be established only for someone who's currently competent. However, just because a person has been diagnosed as having a specific disease doesn't mean that he or she is incompetent. For instance, if an elderly person is in the beginning stages of Alzheimer's, it still may be possible to use a durable power of attorney.

Making the pieces fit together

Estate planning documents shouldn't be created in a vacuum. Coordinate a durable power of attorney with other components of your estate plan. Your estate planning advisor can provide the guidance that you need.

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