

WHY NOT USE A POWER OF ATTORNEY FROM THE INTERNET ?

A durable power of attorney (POA) is one of the most important estate planning documents you can have. It allows you to appoint someone to act for you (your “agent” or “attorney-in-fact”) if you become incapacitated. There are two types of POAs: POA-Healthcare and POA-Property. Without a power of attorney, no one would be able to make health care decisions for you or manage your finances without asking the court to appoint a guardian, which is an expensive and time-consuming process.

There are many do-it-yourself power of attorney forms available, however, it is a good idea to have an elder law attorney draft the POAs for you. **There are many issues to consider and one size does not fit all.**

The agent’s powers: For healthcare, you may wish to provide additional guidance on how the power of attorney document sets out the agent’s powers. Powers given to POA-Property typically include buying or selling property, managing a business, paying debts, investing money, engaging in legal proceedings, borrowing money, cashing checks, and collecting debts. *Some powers will not be included unless they are specifically mentioned. This includes the power to make gifts and the power to designate beneficiaries of your insurance policies.*

The power to make gifts of your money and property is a particularly important power. *If you want to ensure your agent has the authority to do Medicaid planning on your behalf in the event you need to enter a nursing home, then the power of attorney must give the agent the power to modify trusts and make gifts.* The wording in a power of attorney can be significant, so it is necessary to consult an attorney.

Springing or immediate: The power of attorney can take effect immediately or it can become effective only once you are deemed incapacitated, called a “springing” power of attorney. While a springing power seems like a good idea, it can cause delays and extra expense because incapacity will need to be determined by a doctor. If the power of attorney is springing, it is very important that the method for determining incapacity is clearly spelled out in the document.

Joint agents: While it is possible to name more than one person as your agent, this can lead to confusion. If you do have more than one person named, you need to be clear whether both parties need to act together or whether they can each act independently. It might make more sense and be less confusing to name an alternative agent to act in case the first agent is unable to.

Appointing a guardian: Another use of a power of attorney can be to nominate a guardian in case guardianship proceedings become necessary. Including your preference for a guardian can allow you to have some say over who will be managing your affairs. Usually, the court decides who will be chosen as a guardian, but in most circumstances, the court will abide by your nomination in the durable power of attorney.

Executing the power of attorney: To be valid, a power of attorney must be executed properly. Some states require a signature, others may require the power of attorney to be notarized, and still others may require witnesses. It is important to consult with an elder law attorney in your state to ensure your power of attorney is executed properly.

Accepting a power of attorney: Even if you do everything exactly right, some banks and other institutions are reluctant to accept a power of attorney. These institutions are afraid of a lawsuit if the power of attorney is no longer valid. Many banks or other financial institutions have their own standard power of attorney forms. To avoid problems, you may want to execute the forms offered by the institutions with which you have accounts.

When you have questions related to elder law, estate planning, special needs and long-term care planning, probate, and guardianship, think of the attorneys at Dutton Casey & Mesoloras. With over 165 years of combined legal experience, you can depend on our team for the knowledge, advice, and support you deserve to resolve your legal needs.

Resources:

National Elder Law Foundation — www.nelf.org

National Academy of Elder Law Attorneys — www.naela.org

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Appointments are also available in Arlington Heights,
Naperville, Skokie, and Westchester, Illinois or via video
conferencing or telephone.

