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Power of attorney is crucial



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I know there has been a big discussion over health-care proxies, however what would happen to you and your family if you became disabled or unable to manage your financial affairs? Who would pay your bills, make crucial estate planning decisions, execute trusts and make other financial choices for you?

If you don't have answers to those questions, you need to know about a legal instrument called a durable power of attorney. Establishing one probably isn't as high on your must-do list as, say, writing a will. But the durable power of attorney may be even more important. While a will can help your loved ones after you're gone, you may need a durable power of attorney when you're alive and most vulnerable.

The durable power of attorney effectively delegates to a chosen representative the power to legally conduct your affairs. By selecting a trusted person, you may avoid interruptions of your business and financial matters. Without such an agreement, no one could gain access to your bank account, securities or any other property in your name without resorting to lengthy legal proceedings. Even a spouse could only make decisions about assets that you hold jointly.

Creating a durable power of attorney is generally a job for an attorney, who can write your will and health-care proxy at the same time. It is similar to a health-care proxy in that both documents give someone you trust the right to make decisions for you under circumstances that you specify.

Some states permit two types of durable power of attorney. A springing power of attorney becomes effective only when you become incapacitated, and a general one is effective the moment you sign it, even if you are in good health. People who balk at the

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idea of giving even a trusted friend carte blanche to make financial decisions may favor a springing power.

With a springing power, however, comes a caveat. If you are in a car accident or otherwise suddenly incapacitated, a doctor must certify that you aren't able to make your own decisions. Physicians are sometimes reluctant to do that for fear of becoming enmeshed in a family struggle for your assets.

The most important factor in drafting this versatile instrument is the selection of a capable, trusted person as your attorney-in-fact. Ordinarily, a spouse might be most familiar with family needs. However, you should not overlook having a successor designated in your agreement. Couples frequently travel together and might be subject to simultaneous risks.

Also, you could establish a durable power that names two agents and requires them to act jointly on your behalf. Putting your financial decision-making in the hands of two people you trust should eliminate fear of wrongdoing.

You could write a power yourself, using software or forms available in an office supply store. However, the boilerplate language may not cover all of the situations your document should address. For instance, your power could allow your agent to make gifts of your assets to family members if you become incapacitated. Such gifts or transfers to a trust could allow you to qualify for government assistance in a nursing home without having to deplete all your assets.

Don't confuse a durable power of attorney with a general power of attorney. The latter has a serious flaw that prohibits it from functioning as a method of planning for incapacity. If you have a stroke or other incapacitating event, the power of attorney is no longer effective.

These days, with life expectancies lengthening and Alzheimer's disease on the rise, durable powers of attorney have become an essential in financial planning. And they are not just for the old or infirm. A durable power can protect anyone who becomes suddenly disabled or incompetent, even if just temporarily.

Whatever you do, please seek the guidance of a qualified attorney.

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