



Durable Power of Attorney: Legal and Financial Planning

AN EXPERT GUIDE

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Summary

Estate planning is the strategic management of a person's assets to ensure they are distributed according to their wishes, both during their lifetime and after their death. This includes deciding how assets will be passed on to heirs, loved ones, and/or charities. Estate planning also encompasses:

1. Planning for potential incapacity.
2. Reducing uncertainties in the administration of a probate.
3. Maximizing the value of the estate by minimizing taxes and other expenses.

The ultimate goal of estate planning is not set in stone, but rather a flexible concept that can be shaped by the goals of the estate owner. It can be as simple or complex as the owner desires.

Estate planning includes a variety of tasks and legal mechanisms such as preparing a will, establishing trusts, specifying beneficiary designations, and setting up powers of attorney, including durable financial and medical powers of attorney.

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Introduction

A Durable Power of Attorney (DPOA) is a legal document that authorizes a person (the “agent” or “attorney-in-fact”) to make decisions on behalf of another person (the “principal”). Unlike a standard Power of Attorney, a DPOA stays in effect even if the principal becomes incapacitated, ensuring continuous management of the principal’s affairs. There are different types of DPOAs, each serving a specific purpose.

Durable Medical Power of Attorney

This document, often referred to as a Healthcare Power of Attorney, allows the agent to make important healthcare decisions on behalf of the principal. This includes decisions about medical treatments, selecting healthcare providers, and making choices regarding end-of-life care.

Durable Financial Power of Attorney

This type of Durable Power of Attorney grants the agent the authority to handle the principal’s financial affairs. This includes managing banking activities, making investment decisions, handling property transactions, ensuring bill payments, and filing taxes on the behalf of the principal.

Springing Power of Attorney

A DPOA and a Springing POA differ in their activation conditions. These roles are typically characterized as active versus inactive. Specifically, a DPOA becomes active as soon as the document is created, while a Springing POA only becomes active when the principal becomes incapacitated.

General Power of Attorney

A General POA allows the agent to make decisions and take actions on behalf of the principal in various areas, such as legal, financial, health, and business matters, as permitted by the local law.

Importance of a Durable Power of Attorney

A Durable Power of Attorney is a critical tool for seniors to ensure their affairs are managed according to their wishes, even if they become unable to make decisions for themselves. Establishing a DPOA is crucial for seniors for several reasons:

HONORS THE PRINCIPAL'S WISHES

By selecting an agent and outlining their responsibilities, the principal ensures that their wishes are respected. This can include specific instructions regarding medical treatment, managing financial investments, or making decisions about the sale of property.

LIMITS FAMILY CONFLICTS

A clear and legally binding DPOA can reduce potential conflicts within families by clearly outlining and specifying the individual who holds the authority to make decisions. This can play a crucial role in minimizing disputes and guaranteeing seamless management of the affairs of the principal.

PREVENTS COURT INTERVENTION

If a senior becomes incapacitated without a DPOA, a court may have to step in and appoint a guardian or conservator to make decisions on their behalf. This legal process can be lengthy, expensive, and may lead to the appointment of someone who the senior would not have wanted to manage their affairs.

CONTINUOUS OF CARE AND FINANCIAL MANAGEMENT

With a DPOA, the appointed agent can handle important tasks, such as paying bills and making medical decisions, without the need for court approval. This power

allows for quick and effective management, providing peace of mind for both seniors and their loved ones.

Selecting an Agent

Choosing the right agent is an important step when establishing a DPOA. The chosen agent will hold significant power and carry out critical responsibilities. It is important to designate an individual who is not only reliable and competent, but also willing to prioritize the best interests of the principal. Characteristics of a good agent include, but are not limited to:

TRUSTWORTHY

The agent must be someone the principal trusts completely. This person should understand the principal's values. They will have access to sensitive personal and financial information and will have the authority to make important decisions on behalf of the principal.

COMPETENT

The designated agent should be able to handle the responsibilities assigned to them. In the case of a healthcare POA, the agent will need to understand and navigate potentially complicated medical choices. In the case of a financial POA, they should have financial knowledge and strong organizational abilities.

AVAILABLE

The agent selected should always be prepared to act, particularly if the DPOA only becomes effective under certain conditions or if the principal's health might decline quickly. The agent's proximity to the principal is important, but advancements in communication technology can help mitigate this to some extent.

WILLING

Finding someone who is willing to take on the responsibilities associated with being an agent and having a thorough discussion with the potential agent beforehand to make sure they fully comprehend and are willing to take on the duties is critical.

Additional considerations for selecting an agent include someone who can act objectively, appointing multiple agents, or appointing a professional.

FAMILY DYNAMICS

It is important to consider family dynamics when selecting an agent and potential conflicts or feelings of resentment that can arise when appointing a family member. The chosen individual should be someone who can make decisions impartially and prioritize the best interests of the principal.

MULTIPLE AGENTS

The principal may appoint multiple agents, and they will be given the authority to act together or independently. While this can help distribute decision-making power and create a system of checks and balances, there is also room for potential conflicts to arise. It is important to detail and communicate the roles of each agent to minimize the chances of misunderstandings or disagreements between the agents.

PROFESSIONAL AGENTS

In certain situations, the principal may decide to enlist the services of a specialist, such as a lawyer, accountant, or financial advisor, particularly for matters related to finances. While this can provide specialized knowledge and guidance, it might also involve additional expenses.

How to Create a Durable Power of Attorney

The requirements for powers of attorney tend to vary from state to state. General steps to create a DPOA include:

1. ASSESSING THE NEEDS AND GOALS

Consider which aspects of your life you want to delegate decision-making authority over, such as financial matters, healthcare, or both. Additional things to consider are what specific powers will the agent have? Should the DPOA take effect immediately or only if you become incapacitated? Are there any limitations or conditions on the agent's powers?

2. SEEKING LEGAL COUNSEL

Since laws surrounding Durable Powers of Attorney differ from state to state, it is important to consult with an attorney who specializes in estate planning or elder law. An attorney can explain state-specific requirements, tailor the DPOA to reflect the goals and wishes, and help avoid common mistakes that could lead to legal challenges and invalidate the document.

3. SELECTING AND NOTIFYING THE AGENT

The agent should be fully aware of the responsibilities involved and be willing to act when needed. They must agree to serve in this role before the document is completed. Some states may have restrictions on who can serve as an agent, particularly for healthcare DPOAs.

4. DRAFTING THE DOCUMENT

The DPOA document will need to be drafted with attention to detail and in compliance with state laws. The document will need to include the necessary

provisions to give the agent powers. The document can be personalized to the principal's wishes, including any limitations or special instructions for the agent.

5. SIGNING THE DOCUMENT

In most states, you are required to sign your POA form in front of a notary. Some states also require additional witnesses. Your attorney will ensure that the execution of the document complies with state laws and advise on the best way to validate the document. Keep your DPOA forms in a safe place with your other estate planning documents.

6. DISTRIBUTING COPIES TO KEY PARTIES

Give a copy of your DPOA form to your agent and other interested parties, like your bank and medical office.

7. REVIEWING AND UPDATING AS NECESSARY

Periodically review the DPOA and update it as circumstances shift. For instance, in the death of a spouse, a divorce, or a major health change. Laws may also change, requiring the DPOA to be updated to remain compliant.

Examples

DECLINING HEALTH OR DIAGNOSIS OF A DEGENERATIVE DISEASE

John is 72 years old and has recently been diagnosed with early-stage Alzheimer's disease. Knowing his ability to make decisions will decline over time, he wants to ensure that his financial and medical affairs will be managed properly as his condition progresses. He decides to create two types of DPOAs.

Durable Financial Power of Attorney: John will appoint his son, David, who is a financial advisor, as the agent under this DPOA. David will be responsible for managing John's bank accounts, paying bills, and handling investment decisions.

Durable Medical Power of Attorney: For healthcare decisions, John appointed his wife as his agent. She knows John's healthcare preferences and will make decisions on his behalf, such as selecting medical treatments and making end-of-life care decisions if John becomes unable to communicate his wishes.

PLANNING FOR FUTURE INCAPACITY

Diana is in good health, but at 75 years old, she is aware of the possibility of future incapacity as she continues to age. As part of her estate planning, she wants to make sure her financial and medical needs will be addressed without court intervention or disputes among her family. She will set up multiple DPOAs for this reason.

Springing Durable Financial Power of Attorney: This DPOA will only take effect if Diana becomes incapacitated. She names her trusted financial advisor as her agent. The financial advisor will be responsible for managing Diana's investments, property, and day-to-day financial matters if Diana is unable to do so.

Durable Medical Power of Attorney: Diana appoints her daughter to be her agent. Her daughter is a nurse with a fundamental understanding of Diana's healthcare preferences and will make decisions related to her treatments and care if she is incapacitated.

SUDDEN INJURY OR ILLNESS

Mary, a 70-year-old widow, had a sudden stroke that left her unable to make decisions about her medical treatment or finances. Fortunately, she planned for this situation and set up a DPOA, which now allows her family members to manage her affairs without delay.

Durable Financial Power of Attorney: Before the stroke, Mary appointed her nephew as her agent. His experience in finance will allow him to make sound decisions regarding her bills, investments, and tax filings.

Durable Medical Power of Attorney: Mary named her best friend as her agent. Her friend understands Mary's medical preferences and values and will make decisions about her care, including selecting a rehabilitation facility and coordinating with healthcare providers.

Terms to Know

Durable Power of Attorney (DPOA): A legal document that grants a designated agent the authority to make decisions on behalf of the principal even if they become incapacitated.

Agent: The individual designated by the principal in the DPOA to make decisions and act on the principal's behalf in legal, financial, or medical matters.

Principal: The individual who creates the DPOA and grants authority to an agent to act on their behalf.

Durable Medical Power of Attorney: A DPOA that grants the agent authority to make healthcare decisions for the principal if they are unable to do so. This includes decisions regarding medical treatments, surgeries, end of life care, and other health-related matters.

Durable Financial Power of Attorney: A DPOA that grants the agent authority to manage the principal's financial assets, such as bank accounts, investments, property, and debts, and to conduct financial transactions on the principal's behalf.

Springing Durable Power of Attorney: A DPOA that only goes into effect if the principal is incapacitated.

Incapacity: A condition in which a person is unable to make or communicate decisions due to mental or physical impairment. This is determined by medical professionals and triggers the agent's authority to act under a DPOA.

Additional Resources

At LifeWorx, we are committed to supporting you through every stage of planning for future healthcare needs. We offer a range of resources to help you understand options for long-term care and ensure peace of mind. Here are some additional topics that may be helpful:

- [Long-Term Care Insurance White Papers](#)
- [Guides](#)
- [FAQ](#)