Using Your Legal Plan

Why Having a Power of Attorney is Essential to Your Estate Plan

Plan for the Future

5-minute read

Being proactive in life is a good thing — especially if you've taken the time to prepare a **will** or **trust** to reflect how you want personal and financial matters handled after death.

Planning for who makes financial and medical decisions for you if you become disabled or incapacitated is just as important as planning for after you're gone. This is where important estate planning documents like a power of attorney (or POA) come into play.

The strength behind a power of attorney

When it comes to advance planning, sit down regularly with your loved ones and **discuss your intentions**, as well as your potential financial and medical needs. Although this can be a difficult conversation, it's crucial anyone involved in carrying out your intentions understands your wishes and agrees to act on your behalf. Then document your preferences through various powers of attorney and other directives, which include:

Financial power of attorney.

When you are ill or incapacitated — either for the short- or long-term — you'll need someone to pay your bills, make investment decisions and handle other financial matters. This person is known as your agent. You will specify your agent and your wishes in a document called your financial power of attorney. There are several types of financial powers of attorney to consider:

- A **limited power of attorney** is usually assigned for a specific purpose and time period. It's often used when you can't handle certain affairs due to other commitments or short-term illness.
- A **general power of attorney** is much more comprehensive and gives your agent broad powers to act on your behalf, including managing all your financial transactions, signing documents, settling claims, operating your small business and any other financial duties you specify. General power of attorney can remain effective until you pass away, but in most states it will automatically end if you become incapacitated.
- A **durable power of attorney** serves the same function as a general power of attorney, but it remains effective even after you become incapacitated. That way, your agent can manage all your affairs after your incapacitation without need for court involvement.
- A **tax power of attorney** is for communications with the Internal Revenue Service (IRS). If you want someone — like your accountant — to act on your behalf in dealings with the IRS, you'll need to fill out IRS Form 2848, Power of Attorney and Declaration of Representative. Note that this form *only* affects dealings with the IRS. **It doesn't give power of attorney for any other matters.**

> It's important to note that once you create a durable power of attorney, it automatically ends at your death. If you want the same agent to manage your financial affairs after your death, you should name that person as the executor of

> your will. Your power of attorney will generally otherwise remain in effect unless you later revoke it.

Health care power of attorney and living will

When naming someone to make health care decisions on your behalf, there are three main types of health care directives for you to consider:

- A **living will** indicates your specific desires about life-sustaining treatments. Your living will should go into as much detail as possible regarding your wishes in a variety of medical situations. For instance, do you want life-sustaining interventions such as cardiac resuscitation, mechanical respiration, tube feeding or antibiotics? Do you want pain relief only? Would you want artificial life support removed if you're found to be irreversibly brain dead? Do you want to donate your organs?
- A **health care power of attorney** names someone that you trust to make health care decisions on your behalf if you're unable to speak for yourself, as well as an alternate agent if your primary agent isn't available. A health care power of attorney — also sometimes known as a health care proxy or an appointment of a health care agent — is more flexible than a living will, since it's impossible to predict every possible medical situation that may arise and your exact preferences for each situation.
- An **advance directive** essentially combines a living will and a health care power of attorney into one document. This document will indicate your health care preferences as well as an agent to make additional health care decisions for you and is often the strongest option if you have strong preferences regarding end-of-life care as well as someone you trust to make health care decisions for you.

> Keep in mind if you don't express preferences for health care or end-of-life treatments in a living will, power of attorney or advance directive, then the law in your state determines who makes those decisions for you when you are unable to make them yourself. Typically, state law sets an order in which family members will receive authority. State law also specifies the procedure for confirming each family

> member's authority and suggests the procedure for resolving indecision among family members.

The next step in planning

Powers of attorney and similar directives are just one piece of your overall legal and financial planning puzzle. You'll also want to make sure you create a **will** and/or **trusts** and review them regularly, as well as regularly reviewing beneficiary designations on insurance policies, retirement plans and other property and accounts.

If your situation is very simple, you may decide to use do-it-yourself (DIY) documents to create a will, powers of attorney or other legal documents. If you do this, you will want to ensure that the DIY document templates you use are state-specific and written/approved by attorneys. However, many people feel more comfortable enlisting the help of an estate planning attorney to help them decide what documents they need and to walk them through the entire process.

Gain peace of mind by planning ahead

Estate planning and advance planning can spare your family from having to make difficult decisions on your behalf — often on short notice and in a state of emotional distress. Do yourself and your loved ones a favor by making these decisions while you are healthy and thinking clearly so you can **make sure your wishes are carried out** when the need arises.

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