

Naming Agents in a Power of Attorney

In your durable power of attorney (DPOA) you can name one or more agents to act for you on financial matters in the event of incapacity. This can be your most important estate planning document and can save your family a lot of trouble and expense if you become incapacitated.

Who to name, and whether to name more than one agent, can be difficult questions.

Consider fictitious John Doe, age 85, has two daughters, both competent. John wants daughter A to be primary agent, and daughter B as the alternate (or back-up agent). Daughter B reminds John that A is not always available because of travel for her work, and thinks they should be joint/equal agents. Should I prepare one DPOA with two joint holders, or two separate DPOA's naming A on one and B on the other?

As a starting point, clients should name people they trust and who are organized and financially responsible. They should also select an agent who will communicate with other family members. Lack of communication with other family members leads to suspicions and accusations of misconduct.

Clients worry that if they name one child in the DPOA, and not others, it will seem like favoritism and imply that this child is more trustworthy and fiscally responsible than the others. So, can John name more than one child as agent? Yes. Doing so can also solve some of the communication issues, since the named co-agents can have access to financial records.

Is there a limit on the number of co-agents to appoint? Some clients with three children don't want to leave one out and appoint all three. I recommend no more than two co-agents, otherwise the need to make decisions together can become cumbersome.

Should co-agents be able to act independently or should they be required to act together at all times? It is much more efficient if either agent can write checks, deal with financial institutions and sign contracts. Two signatures on every check and document will make it difficult for the agents get anything done, especially if one or both of them travel extensively. On the other hand, it does provide a strong check and balance.

Clearly, every situation is different and requires a different solution. But here are a few rules of thumb:

- Appoint someone you trust.
- Consider co-agents if that will make it easier to carry out the functions and will facilitate communication.
- Provide that each agent may act independently unless you feel a real need for checks and balances.

This will save you and your family from considerable expense and frustration.

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