

Practical Probate: Introduction to Powers of Attorney

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Recently, I was asked how someone could plan for the management of their finances if they were to become incapable of doing so at some point in the future. They had seen an acquaintance with a serious medical condition lose their ability to pay bills and manage their finances. Family members had to intervene, going to the probate court to have a conservator appointed to manage their loved one's finances. Unfortunately, this is a common occurrence that can be very stressful for families.

I mentioned how a durable power of attorney could allow them to designate a trusted friend or family member the legal authority to manage their finances.

Depending on the circumstances, the existence of a durable power of attorney may prevent the need for appointment of an involuntary conservator.

A durable power of attorney remains effective even after the grantor becomes incapacitated. For that reason, a durable power of attorney is particularly well suited in planning for legal incapacity. The authorities that may be granted under a power of attorney include engaging in banking transactions, real estate transactions, estate transactions, paying bills, gift giving and investment transactions. That's one of the advantages of a power of attorney - it can be tailored

for each person's needs, including authority for a wide variety of purposes, or for a single, very narrow purpose.

However, as with all legal tools, durable powers of attorney have disadvantages. As soon as the durable power of attorney is executed, the holder of the power of attorney can engage in the activities allowed by the document. It does not require the grantor to become incapable before it becomes effective.

In the wrong hands, the holder of the power of attorney may abuse their authority and steal assets from the grantor. It's very important that the person or persons granted power of attorney are trustworthy and reliable, and they should keep accurate records of all the transactions they engage in as power of attorney.

Another disadvantage is that the powers granted may be insufficient for unforeseen circumstances. No one knows what the future will bring; even a power of attorney that grants broad authorities may fall short of what is needed.

There is no requirement that third parties, such as financial institutions, recognize a power of attorney. This can render the power of attorney useless under some circumstances. However, third parties may have a good reason for not recognizing a

power of attorney. A financial institution may not know whether a power of attorney, particularly one that is several years old, is still valid.

While healthcare decision making authority can be granted with a durable power of attorney, it is best accomplished with a designation of healthcare representative, the subject of another article on this website.

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About the author



Dom Calabrese has been a Connecticut Probate Judge since 2002. He's currently the judge in the Region 22 Probate District in Southbury, Connecticut and is a judge in the Waterbury Regional Children's Court.

Dom also practices law with locations in Stamford and Watertown, Connecticut. His areas of practice include probate, estate planning, trusts, wills, planning for incapacity, asset protection, commercial transactions, contracts and agreements, and business counsel.

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