

DOW JONES, A NEWS CORP COMPANY

DJIA **24285.95** -0.73% ▼

Nasdaq **6938.98** -0.48% ▼

U.S. 10 Yr **0/32 Yield** 3.040% ▼

Crude Oil **50.39** -7.76% ▼

Euro **1.1339** -0.57% ▼

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <http://www.djreprints.com>.

<https://www.wsj.com/articles/when-the-power-of-attorney-lacks-power-1465783682>

MARKETS | YOUR MONEY | WEALTH MANAGEMENT

When the Power of Attorney Lacks Power

If a financial institution won't accept the document, don't take no for an answer



Banks and other financial institutions don't always make it easy to exercise a POA document, so families need to take steps to avoid potential problems. PHOTO: ISTOCKPHOTO/GETTY IMAGES

By *Anne Tergesen*

June 12, 2016 10:08 p.m. ET

For many people, there is no legal document that is more crucial than a power of attorney.

Or one so full of potential pitfalls.

A power of attorney is an inexpensive legal document that gives a designated individual the right to act on another's behalf when making financial decisions. It's typically used by adult children whose aging parents are no longer capable of acting on their own. The problem is that financial institutions don't always make it easy to exercise that power, so families need to take steps to avoid potential problems.

RELATED

- [When an Elderly Parent Has Been Scammed](#)
- [The Difficult, Delicate Untangling of Our Parents' Financial Lives](#)
- [Reader Tips on Dealing With Aging Parents' Finances](#)

Powers of attorney come in several forms. The most basic cover specific situations—for example, a father may give his daughter authority to act for him when selling the family home. Most adult children seek a far broader

document—a so-called durable power of attorney that allows them to take over a parent's finances at any point, which gives them the ability to help in the event the parent is no longer able to manage. (Separate health-care powers of attorney cover medical decisions.)

Unfortunately, experts say, the power of attorney is often abused—either by adult children seeking to enrich themselves or by criminals who forge them to steal from elders.

As a result, banks worried about being held liable for customers' losses have grown wary of accepting powers of attorney, prompting a growing number of states to adopt laws requiring them to do so under certain circumstances. Hope Heyman, 63, of Greenburgh, N.Y., says all but one of the eight financial institutions where her recently deceased father, Paul Heyman, held assets balked at recognizing her power of attorney after he suffered a stroke in July 2014.

“It was the most frustrating three months I have ever spent,” she says of the time it took her to gain control of her parents' assets to pay their bills. “My father was very ill and my mother was not functioning well and my sister and I were both helping out from afar,” says Ms. Heyman. When she finally found an institution that accepted the family's document, that paved the way for her to transfer her parents' assets there.

Avoiding court

In a worst-case scenario, adult children may have little recourse but to take legal action against a financial institution or file with a court to become a parent's legal guardian—an expensive and time-consuming process that's usually open to the public. But there are steps children can take to keep matters from getting to that point.

If a parent has set up the power of attorney, the child's first step is to find out what kind of power it is. While a standard durable power of attorney gives the child the authority to act on the parent's behalf immediately after the document is signed, a so-called springing power of attorney doesn't generally give the child that authority until the parent becomes incapacitated.

While many parents prefer the springing variety, attorneys say it can create extra complications for adult children—and generally should be replaced by a durable power of attorney without the springing provision.

For example, to use a springing power of attorney, many forms require an adult child to obtain a statement from at least one designated person—often a physician—certifying that the parent is incapacitated. But medical-privacy laws can make it difficult to communicate with someone else's physician.

JOURNAL REPORT

- Insights from The Experts
- Read more at WSJ.com/WealthReport

MORE IN WEALTH MANAGEMENT

- The Biggest Mistakes of Negotiating a Retirement Package
- The Psychology of Buying and Selling a House
- Companies Join Effort to Help Student-Loan Borrowers
- The Price of Forgetting Bad Times
- Calculating Health Costs in Retirement

Planning for Incapacity

About half of individuals age 70 and older surveyed say they don't have a power-of-attorney document in place.

	Age ranges			
	40-49	50-59	60-69	70+
Currently have a POA that names someone to act on my behalf	15.1%	16.3%	28.2%	46.0%
Had a POA assigned but canceled it	1.2%	0.2%	0.6%	0.6%
Have informal plans for someone to act on my behalf, but don't have a written POA	12.1%	13.8%	16.5%	13.5%
Considered having a POA assigned but haven't taken any steps	12.3%	14.0%	15.0%	12.9%
Have never planned for someone else to make these decisions for me	59.4%	55.7%	39.7%	27.0%

Source: Federal Reserve Board's Insights into the Financial Experiences of Older Adults: A Forum Briefing Paper July 2013

THE WALL STREET JOURNAL.

Moreover, a doctor may be unwilling to sign such a statement, says Jim Oliver, a financial adviser in San Antonio. After Mr. Oliver's mother-in-law suffered several ministrokes in 2008, he says, her doctor agreed that she was incapacitated but wouldn't sign a letter to that effect on the grounds that she might recover.

Think ahead

Families can frequently prevent problems if parents introduce an adult child with a power of attorney to their financial adviser before a time of crisis and find out more about the procedures their banks and brokerage firms require or request. For instance, many financial institutions ask account owners to sign separate powers of attorney drafted by the firm's own lawyers, if only because it's easier for them to administer a standardized form, says Michael Delgass, chief executive of Sontag Advisory LLC in New York.

Because some of these forms require a person to waive his or her right to sue the firm, people should be sure to read the fine print, says Mr. Delgass, who recommends asking financial institutions to also put the child's own power of attorney on file. At Wells Fargo Advisors LLC, it typically takes three to five days to process a power of attorney, says Ronald Long, the firm's director of regulatory affairs and elder-client initiatives. Staff must ensure the document conforms to state law, he says.

If a bank or brokerage firm rejects a power of attorney, the person should ask why and consider making modifications. Charles Schwab Corp., for example, says it examines durable powers of attorney for language allowing the person being given the power of attorney to engage in specific actions, such as trading options, designating beneficiaries and using a margin account.

Know the law

What should people do if they are rebuffed by a financial institution when trying to use a power of attorney on behalf of a parent who is unable to get involved? First, they should take a shot at an easy solution—ask to speak to a supervisor, or try another branch, says Brad Frigon, an elder-law attorney in Englewood, Colo.

Some financial institutions may ask you to take steps designed to reassure them that your power of attorney is legitimate. Ms. Heyman, for example, was asked to verify her identity by securing a so-called medallion signature guarantee from a bank with her signature on file. If an adult child tries to use a power of attorney without a parent being present, Wells Fargo Advisors asks for a notarized affidavit stating that the document is valid, says Mr. Long.

It also pays to know state law. Some states require financial institutions to accept a power of attorney unless they report suspected abuse to authorities or are aware that someone else has done so. And state laws may authorize penalties against firms that throw up barriers—for example, financial institutions might have to pay costs families incur to hire an attorney to enforce the power of attorney.

Ms. Tergesen is a Wall Street Journal reporter in New York. She can be reached at anne.tergesen@wsj.com.

Appeared in the June 13, 2016, print edition as 'When a Power of Attorney Lacks Power.'

-
- **College Rankings**
 - **College Rankings Highlights**
 - **Energy**
 - **Funds/ETFs**
 - **Health Care**
 - **Leadership**
 - **Retirement**
 - **Small Business**
 - **Technology**
 - **Wealth Management**

Copyright ©2017 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <http://www.djreprints.com>.