

## **Understanding Advanced Directives**

by Gary Villnow

**What are Advanced Directives?** Advanced Directives are documents created by a competent person which appoint an agent to make decisions for the person who created the document, in the event of incapacity. Advanced directives can also express the intent of a person regarding future medical treatment.

Generally, there are three types of Advanced Directives—Durable Financial Powers of Attorney, Powers of Attorney for Health Care, and Living Wills (Declarations to Physicians).

**What is a Durable Financial Power of Attorney?** A Durable Financial Power of Attorney is a document which appoints an agent to make financial decisions. The term “durable” means the document will be effective even after the person who created the document has become incapacitated. When a person signs a Durable Financial Power of Attorney, he or she does not give up the right to manage their own financial affairs, they simply designate an agent that also has the authority to sign documents and make financial decisions.

**When is a Durable Financial Power of Attorney effective?** The authority of the agent can be either “springing” or immediate. In the case of an immediate Power of Attorney, the agent’s authority to make financial decisions starts when the person who creates the Durable Financial Power of Attorney, the principal, signs the document.

An agent’s authority under a “springing” Power of Attorney can only be exercised when the principal has become incapacitated.

A Durable Financial Power of Attorney is only effective during the life of the principal and the agent’s authority ceases upon the death of the principal.

**Why is a Durable Financial Power of Attorney important?** If a person should become incapacitated and has not arranged for an agent to manage financial affairs through the creation of a Durable Financial Power of Attorney, a guardian of the estate may have to be appointed by the court.

The appointment of a guardian for an incapacitated person can be quite expensive. In most cases it requires annual reporting to the court and involves court oversight of decisions that could be left to a person of the principal’s choosing.

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