

Future Care Planning Series: Importance of Powers of Attorney for Parents and Caregivers

Powers of Attorney: The Basics

A **Power of Attorney (POA)** is a legal document that allows an individual to choose a trusted person to manage their affairs if they become unable to do so themselves. Without a POA, a court-mandated guardianship process is the default for incapacitated individuals, which is often slower, more expensive, and requires public accounting before a judge.

Core Components and Types

- **The Principal:** The person who creates the document and grants authority.
- **The Agent:** The person designated to act on the principal's behalf.
- **Healthcare POA:** Covers medical and personal decisions, including communicating with doctors and making care choices.
- **Property POA:** Manages financial assets, such as paying bills, handling bank accounts, and managing real estate.

Activation and Authority

- **Timing:** A principal can choose to make the POA effective immediately or only upon a physician's written certification of incapacity (i.e., durable vs. springing).
- **Retention of Rights:** Principals never lose their right to make their own decisions as long as they maintain the mental capacity to do so.
- **Early Implementation:** Once an individual reaches age 18, their parents **no longer** have automatic authority to make medical or financial decisions, making early POA establishment important.

Selecting an Agent

- **Specific Strengths:** It is recommended to choose agents based on their aptitude for the specific role (e.g., choosing someone with financial expertise for a Property POA) rather than based purely on family hierarchy.
- **Successor Agents:** It is preferable to name one primary agent followed by several successor agents rather than naming co-agents, as multiple simultaneous agents can lead to disagreements.

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Risks and Considerations

- **Duties of Agents:** Agents are legally required to act in the principal's best interest. Failure to keep records or using the principal's funds for personal gain (self-dealing) can result in criminal charges.
- **Third-Party Rejection:** Banks or hospitals may refuse to honor POAs that are too old or do not use current legal language.
- **State Relocation:** If moving to a new state, POAs should be updated to match local rules and avoid any issues or delays.
- **Organizing Documents:** Outdated versions of POAs should be destroyed to prevent confusion regarding who currently holds authority.

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