

The Real “Power” in Estate Planning

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The thought of being incapacitated—either permanently or temporarily—certainly is not a pleasant one. Nevertheless, it is important to take precautions in the event you suddenly become incapable of managing your financial affairs. No one is immune.

One common means of ensuring some measure of protection is to create a “power of attorney.” In particular, it may be beneficial to use a “durable” power of attorney. Here are the answers to several questions about this technique.

Q. How does a power of attorney work?

A. In simple terms, a power of attorney is a legal document that authorizes another person to act on your behalf (called the “attorney-in-fact”). This may also be used to describe the person acting for you. The power can be either specific (e.g., limited to having someone sell your home or car) or broad. A regular power of attorney is no longer valid after you become incapacitated. However, a durable power of attorney remains in effect if you become incapacitated and terminates upon your death. That is why this variation is often preferred.

Q. Can I set up a durable power of attorney to take effect at the time I become incapacitated?

A. It depends. Such a “springing” power of attorney is not authorized in all states. You must find out the applicable state law from an experienced attorney. Similarly, you should rely on an attorney to do all the other necessary paperwork for the durable power of attorney.

Q. What if I change my mind about granting a power of attorney?

A. While you are competent, you may revoke a power of attorney (whether or not it is durable) at any time for any reason. The best thing to do is to notify the “attorney-in-fact” in writing. Also, notify other parties who may be affected.

Q. Can a durable power of attorney be used for health care decisions?

A. Yes. For instance, you can establish the terms for deciding whether or not you are incapacitated. In addition, it is important that you discuss these matters in detail with the attorney-in-fact to give him or her more guidance.

Q. How is this different from a living will?

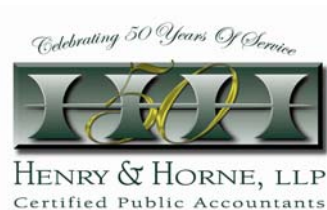
A. A durable power of attorney gives another person the power to make decisions in your best interests. In contrast, a living will provides specific directions concerning terminally ill patients. Living wills are now recognized in every state.

Q. Can I set up a durable power of attorney for a relative who is no longer competent?

A. No. A durable power of attorney is binding only if the grantor of the power was competent when it was drawn up. However, just because someone has been diagnosed as having a specific disease does not mean that he or she is incompetent. For instance, if an elderly person is suffering from Alzheimer's disease, it still may be possible to utilize a durable power of attorney.

If you have a power of attorney executed, it should be coordinated with other aspects of your estate plan. Seek professional assistance for your personal situation.

Chuck Inderieden, CPA, PFS, Co-Managing Partner of Henry & Horne, possesses an extensive knowledge in estate, gift and trust planning services for individuals, trusts, and small to medium-size businesses. He can be contacted at (480) 483-1170 or ChuckI@hhcpa.com.



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