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POWER OF ATTORNEY

What you need to know regarding Power of Attorney and your aging loved ones

Great news! America is getting old. If that doesn't sound great to you, consider the alternative. What I'm talking about here is the continuing increase in the percentage of Americans aged 65 and above. As those of the Baby Boomer generation reach retirement age, more and more families find themselves in care-giving roles. By 2030, all baby boomers will be older than 65, and the Census Bureau projects that will grow the size of the older population so much that 1 in 5 people in the U.S. will be retirement age. According to the latest population projections, by 2035 adults 65 and older will outnumber children for the first time in U.S. history. And by 2040, adults 85 and older will increase by 126%. Along with the responsibility to help keep our loved ones happy, healthy, and cared for often comes the responsibility to assist in handling financial matters. That is why **it is important, despite the fact that it can be a difficult topic, we should all have conversations with our loved ones about designating Power of Attorney rights when necessary.**

With the increasing age of our population, something else is also increasing: financial exploitation of the elderly. Numbers vary depending on the source, but it is estimated that at least \$2.9 Billion is lost each year to elder financial exploitation. There are a variety of ways to help protect against this, but one of the simplest and most important things you can do to protect the financial affairs in your family is to arrange for another person to manage finances if anyone should become incapacitated for any reason. Although many people overlook this important step, **if you don't set up a financial power of attorney, assets could be thrown into chaos if unforeseen circumstances arise.** Many years of hard work spent building an estate could be left at the mercy of the courts who will decide how to handle affairs. Americans do not like to talk about money. A Lexington Law poll found that we are more likely to talk about any other subject—including romance, politics, and religion—than money. Though a serious

and unexpected health crisis could occur, and no one would know how to access a parent's finances to do simple things like pay household bills. There are steps that families can take ahead of time that can help caregivers save time and energy when stressful events arise.

It should come as a relief to know that **setting up power of attorney documents is not difficult.** Some states allow you to complete forms on your own while other states may require a more formal process. In all cases, you'll need to make sure the proper document is signed in front of witnesses and then notarized. A



separate but equally important consideration is a power of attorney related to healthcare, giving a trusted individual the right to make health-related decisions on another's behalf if that ever becomes a necessity. One can note specific wishes about treatments, or even to deny treatment, such as adding a Do Not Resuscitate Order.

Legally, a power of attorney is a document that allows a principal to appoint an agent to act for them should they become incapacitated. The agent is expected to



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place the principal's interests ahead of his or her own, which is why it is important for you and your loved one to pick a trusted individual. There are multiple types of decisions that the agent can be given the power to make, including the power to:

- Make financial decisions
- Make gifts of money
- Make healthcare decisions, including the ability to consent to giving, withholding, or stopping medical treatments, services, or diagnostic procedures. (Note: your loved one can also make a separate "health care power of attorney" to give only this power to another individual.)
- Recommend a guardian

There are four types of power of attorney that each have their own unique purpose:

1. *General Power of Attorney*

In this situation, the agent can perform almost any act as the principal, such as opening financial accounts and managing personal finances. A general power of attorney arrangement is terminated when the principal becomes incapacitated, revokes the power of attorney, or passes away.

2. *Durable Power of Attorney*

This arrangement designates another person to act on the principal's behalf and includes a durable clause that maintains the power of attorney after the principal becomes incapacitated.

3. *Special or Limited Power of Attorney*

In this instance, the agent has specific powers limited to a certain area. An example is a power of attorney that grants the agent authority to sell a home or other piece of real estate.

4. *Springing Durable Power of Attorney*

In some states, a "springing" power of attorney is available and becomes effective when a specified event occurs such as when the principal becomes incapacitated.

Power of attorney is flexible and can take effect at any time, not just after you sign it. For example, a financial power of attorney may kick in only after a doctor certifies that a person has become incapacitated. The person selected to have a power of attorney then becomes your agent and has legal authority to act on your behalf regarding your financial affairs.

The ability to give broad-based authority to a designated agent is available, or can be limited to only certain functions such as dealing with real estate, or securities or other specific elements of an estate. The key is to remember that a power of attorney ends with death, after which time the executor of the estate takes charge of assets. It's helpful to have these conversations in happy times, when your loved one is well so you can determine their wishes for their financial security and healthcare should a time come when they are unable to make the choices for themselves.

