

Health Care Directives: Durable Power of Attorney

What Is a Power of Attorney?

A power of attorney is a written document in which one person -- the principal -- authorizes another person -- the attorney-in-fact -- to act on the principal's behalf.

What Authority Is Granted by a Power of Attorney?

The authority granted by a power of attorney depends on the type:

General Power of Attorney: The authority granted is very broad...the attorney-in-fact is granted essentially the same legal authority held by the principal. This means that the attorney-in-fact can exercise such powers as making gifts, buying and selling assets and filing tax returns on behalf of the principal.

Special Power of Attorney: The authority granted to the attorney-in-fact is limited to those powers specifically defined in the document.

The authority granted by both a general and a special power of attorney is typically limited to acts performed on behalf of the principal while the principal is competent, which brings us to a third type of power of attorney:

Durable Power of Attorney: The attorney-in-fact is authorized to act on behalf of the principal even if the principal becomes incapacitated. In fact, a durable power of attorney can become effective immediately, or it can become effective only if the principal later becomes incapacitated.

Why Should You Consider a Durable Power of Attorney?

In the event of future incapacitation, a durable power of attorney can be particularly useful in:

- **Estate Planning/Management:** The attorney-in-fact acquires the authority to implement an estate plan and manage the principal's estate during a period of incompetence.
- **Daily Living:** A durable power of attorney can give the attorney-in-fact the authority to manage such practical issues as making living arrangements for a disabled person and paying the bills.

As with any legal document, legal advice should be obtained before entering into a power of attorney.