

FINANCIAL POWERS OF ATTORNEY

by J. Ray Deal, Attorney at Law

I believe everyone is pretty aware of the purpose for having a financial power of attorney but some folks think they don't need one because of their particular circumstance. My general rule regarding powers of attorney - everyone over the age of eighteen needs one!

The power of attorney appoints your agent (sometimes referred to as "attorney-in-fact") to act on your behalf for basically all financial matters. A "general" power of attorney allows your Agent to pretty much do anything you can do regarding financial matters. A "durable" power of attorney just means that it is effective even in the event of your incompetency. You can name two individuals if you wish so that whoever is available can serve. It is also recommended that a successor agent be named in the event the initial agent(s) cannot serve for some reason.

The arguments I hear most for not needing a power of attorney are that, "I don't need one because I am married, all accounts are joint, the house is joint, my spouse is beneficiary on my IRA and my life insurance". Well that sure makes it easy if you die but not if you are alive and are incapacitated. What if a car needs to be sold? What if the spouse needs to communicate with the doctor or insurance company about a problem or bill? What if your spouse needs emergency funds from your retirement account because you are not working? Get the picture? In all of those events ONLY YOU can sign unless you have appointed someone as your agent under a financial power of attorney.

If you are incapacitated and do not have a power of attorney in effect then a guardianship proceeding must be filed with the Court and a guardian appointed who then must account to the Clerk of Court for your property/money. This can be a hardship and a delay when your loved ones are already facing devastating circumstances because of your illness/accident.

Beware! Not all powers of attorney are the same. In some cases you would not want your Agent to be able to make gifts to themselves. However, in a lot of cases in dealing with seniors assets cannot be protected for someone facing a nursing home situation if there is no authority to gift. In these situations having the power to gift is essential. Also, specific powers are necessary to create trusts if those might be needed for planning.

It's a good time to review those estate planning documents. Are they current? Do you have a power of attorney and is it up to date? If not, maybe this year give peace of mind instead of candy and flowers for Valentine's Day to express your true love!