

Powers of Attorney: the Good, the Bad and the Cure

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Every professional knows the value of a power of attorney for an elder even if not by name. The “advance directive” or “living will” is widely recognized as the legal remedy for control over one’s destiny in the face of terminal illness. The patient’s instructions are carried out by the “patient advocate” who is acting under a “power of attorney.” The vast majority of people who use powers of attorney for elders are loving, caring family members who without the authority could not assist. Powers of attorney are indispensable, but are they also dangerous? In the wrong hands perhaps, but that is a risk with a cure.

Essentially a power of attorney is a simple document granting another person the power to act as the first person’s agent or “attorney in

fact.” The “attorney at law” is a person who acts as the agent in a court of law. The powers granted may be as broad or as narrow as the “principal” chooses. The agent acts only so long as the principal approves and the agent’s authority may be terminated at any time. The agent never “takes over” without principal permission. Where the power of attorney is “durable” the agent may continue even if the principal is not competent. In this instance the agent is required by law to strictly and dutifully perform only those powers granted. More later on what happens if the agent violated this duty.

The power of attorney is *indispensable* for family members who come to the aid of an elder in time of need. Sorting out insurance denials is impossible with authority.

A “No” answer to “Are you the insured?” will quickly terminate a call if the child has no authority.

Probate court an alternative, but what does it cost?

Where the elder lacks the simple capacity to name the person who will assist in their affairs, the probate court is available to appoint a guardian or conservator. This formal court proceeding will cost in time and money but is sometimes the only solution. A person may have minimal capacity, but may have no trustworthy person to act. The court will appoint a person who will be supervised and answerable to the probate court.

The probate court is to be considered only after the alternatives are not available.

Probate Court form 666 advises the following options be considered first:

- Do not resuscitate order
- Healthcare power of attorney
- Durable power of attorney
- Representative payee.

The protection of the court does not come without a price. One Westland wife found out the hard way. She wanted to sell her home and move to a condo now that her husband, who used to take care of the house, was in a nursing home. The problem was that she was his court appointed conservator. She had to “petition” the court for permission to sell the house. After eight weeks and almost losing her sale to an eager young family she got court approval and a bill for over \$4,000 in court and legal costs. Single people are especially vulnerable to having large sums of their own money spent on court ordered proceedings. One 85 year old Detroit, who had frugally saved all his life, was billed over \$10,000 in court approved conservator fees to manage and organize his affairs. He had a nephew who was a retired physician who offered to assist but was turned down by the court. Many seniors had their homes sold to pay for court appointed guardian and conservator fees. One wife was informed by the court appointed conservator that she had to spend two thirds of her

and her husband’s life-savings on his nursing home bills. The conservator never thought of petitioning the same court for an increase in the wife’s asset allowance.

But, what about elder abuse?

What of the power for *abuse*? We hear of concerns that children may get a power of attorney from parents and then subject them to elder abuse. There are a number of legal points to consider. First, if the elder is not competent when the document is signed then it is of no effect. A court in a guardian or conservator proceeding may find that the elder did not know what the elder was signing and void the document as well as appoint a guardian. Second, the power of attorney is not often needed for abuse since these children have access to bank accounts of the parent by being joint on the bank account. Third there are criminal laws against abuse.

A person who uses a power of attorney is a “person in relationship of trust.” If the agent uses the power of attorney to exploit a vulnerable adult, Michigan law provides for punishment up to 10 years in jail and a fine 3 times the value of the money or property obtained.

In addition the agent who abuses the authority granted may be charged with embezzlement and forgery and

receive up to 14 years in jail.

Elder exploitation is the misuse of an adult's funds, property or personal dignity by another person. If you suspect Elder abuse, neglect, or exploitation in a private home or unlicensed facility, notify Family Independence Agency (FIA) Protective Services for Adults. Statewide 24 hour Hotline:

1-800-99NOABUSE/

1-800 996-6228

In short the power of attorney is a simple, affordable wonderful tool for family members to come to the aid of a person in need. If that power is abused there are powerful remedies against those who would try to take advantage of a vulnerable adult.