

The importance of power of attorney

How are personal and financial care decisions made if one is incapacitated or under a physical or mental disability? This is a serious question that everyone must face. The answer is that as part of your estate planning, you can appoint a decision-maker called an "attorney" who has legal authority to make decisions on your behalf by virtue of a power of attorney document. A power of attorney is a legal document whereby the grantor authorizes the attorney to do legal acts that he or she could not do for himself or herself due to being under an incapacity or disability. By granting authority to an attorney to make decisions, the grantor continues to exercise control over his or her personal and financial affairs even though he or she is incapable of doing so. Power of attorney documents deal with two basic issues – property and personal care. The first type of power of attorney document appoints an attorney to manage the property of an incapable person. This document is called a Continuing Power of Attorney for Property. The attorney has the power to do, on the incapable person's behalf, anything in respect to property that the person could do if capable,

except make a will. Generally, incapacity is defined as not being able to understand information that is relevant to making a decision in the management of property or finances, or not being able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

The second type of power of attorney document appoints an attorney to manage the personal care of an individual. This document is called a Power of Attorney for Personal Care. Again the attorney has the power to make decisions if the person is unable to understand information that is relevant to his health care, nutrition, shelter, clothing, hygiene or safety, or consent to medical treatment, or is unable to appreciate the reasonably foreseeable consequences of a decision or lack of decision with respect to his personal care. Other considerations may come into play such as expressed wishes or instructions, best interests of the incapable person, values and beliefs, the necessity to prevent the quality of life from deteriorating, and weighing the benefits to the risks from alternate courses of action.

See ENSURE, pg.10