

# Take steps to curb power of attorney abuse

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A financial power of attorney can be a valuable planning tool. The most common type is the durable power of attorney, which allows someone (the agent) to act on the behalf of another person (the principal) even if the person becomes mentally incompetent or otherwise incapacitated. It authorizes the agent to manage the principal's investments, pay bills, file tax returns and handle other financial matters if the principal is unable to do so as a result of illness, injury, advancing age or other circumstances.

However, a disadvantage of a power of attorney is that it may be susceptible to abuse by scam artists, dishonest caretakers or greedy relatives.

## Watch out for your loved ones

A broadly written power of attorney gives an agent unfettered access to the principal's bank and brokerage accounts, real estate, and other assets. In the right hands, this can be a huge help in managing a person's financial affairs when the person isn't able to do so him- or herself. But in the wrong hands, it provides an ample opportunity for financial harm.

Many people believe that, once an agent has been given a power of attorney, there's little that can be done to stop the agent from misappropriating money or property. Fortunately, that's not the case.

If you suspect that an elderly family member is a victim of financial abuse by the holder of a power of attorney, contact an attorney as soon as possible. An agent has a fiduciary duty to the principal, requiring him or her to act with the utmost good faith and loyalty when acting on the principal's behalf. So your relative may be able to sue the agent for breach of fiduciary duty and obtain injunctive relief, damages (including punitive damages) and attorneys' fees.

## Take steps to prevent abuse

If you or a family member plans to execute a power of attorney, there are steps you can take to minimize the risk of abuse:

- Make sure the agent is someone you know and trust.
- Consider using a "springing" power of attorney, which doesn't take effect until certain conditions are met, such as a physician's certification that the principal has become incapacitated.
- Use a "special" or "limited" power of attorney that details the agent's specific powers. (The drawback of this approach is that it limits the agent's ability to deal with unanticipated circumstances.)
- Appoint a "monitor" or other third party to review transactions executed by the agent and require the monitor's approval of transactions over a certain dollar amount.
- Provide that the appointment of a guardian automatically revokes the power of attorney.

Some state laws contain special requirements, such as a separate rider, to authorize an agent to make large gifts or conduct other major transactions.

**Act now**

If you're pursuing legal remedies against an agent, the sooner you proceed, the greater your chances of recovery. And if you wish to execute or revoke a power of attorney for yourself, you need to do so while you're mentally competent. Please contact us with questions.

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