

Power of attorney abuse: What you can do about it

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A financial power of attorney — sometimes called a “power of attorney for property” or a “general power of attorney” — can be a valuable estate planning tool. The main disadvantage is that it’s susceptible to abuse by scam artists, dishonest caretakers or greedy relatives.

Help or harm

The most common type is the durable power of attorney, which allows someone (the agent) to act on 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, advancing age or other circumstances.

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.

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.
- Use a “special” or “limited” power of attorney that details the agent’s specific powers.
- 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 have elderly parents who've signed powers of attorney, keep an eye on their agents' activities. When dealing with powers of attorney, the sooner you act, the better. 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 for additional details.

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