

The Elder Law Power of Attorney



By Attorney Robert C. Anderson

Q: Mr. Anderson, what is an *Elder Law Power of Attorney*?

Senior citizens have a unique set of legal problems. First, age-based laws involving health insurance, social security, veteran' benefits, IRA distributions and others have special application to seniors. Second, 'serious and disabling illnesses afflict senior's more than younger persons

For these reasons, legal documents, especially the Financial Durable Power of Attorney (POA), should contain clauses, which cover the specific legal problems of senior citizens. When they do, the document is an Elder Law Power of Attorney.

So what are the most important powers to be included in an Elder Law Power of Attorney when you are unable to temporarily or permanently handle your affairs, transferring the authority to your trusted agent? Based on my 20 years experience, the following powers should be included:

1. To handle social security benefits, including having them automatically deposited.
2. To handle bank, credit union assets, and money markets.
3. To handle stocks, bonds, other securities, and life insurance.
4. To deal with Medicare paperwork and other health insurers.
5. To perform active health care advocacy.
6. To handle admissions to nursing homes, hospitals, assisted living and hospice placements.
7. To take legal and ethical actions to qualify you for Medicaid assistance including the power to make gifts to loved ones in accordance with your established estate plan. **This clause should be separately signed and witnessed so that the State cannot challenge this authority.**
8. To handle minimum required distributions from an IRA, update beneficiary designations, convert an RA to a Roth IRA, accomplish spousal rollovers, and split IRAs to effect income tax savings for beneficiaries.
9. To sign deeds and retain a life estate in order to protect real estate from potential Medicaid spend down risk.
10. To purchase immediate annuities and to annuitize deferred annuities to reduce Medicaid spend down risk.
11. To handle tax returns, vehicle titles, and watercraft titles.
12. To pay all bills and handle legal claims.
13. To amend living trusts and make transfers into and out of a living trust.
14. To permit an out-of-state agent to delegate his/her duties to a trusted local person.
15. To prohibit financial abuse by the appointed agent and to prevent the upset of your estate plan by the agent.

There are many other important powers that a comprehensive Elder Law Power of Attorney should have. Remember that unless a power is specifically stated in a POA, financial and governmental institutions may refuse to recognize it to your detriment. Make sure that your choice of an agent under an Elder Law Power of Attorney is someone you have compete trust in. Be sure to appoint an alternate agent to back-up the principal agent.

Make sure that the Power of Attorney you have is called a "Durable" so that it will endure after incapacity. Finally, remember that many financial institutions will not recognize a financial power of attorney, which is more than six years old.

For a free appointment call Robert C. Anderson, PC., The Estate Planning and Elder Law Firm, 148 W. Hewitt, Marquette (906) 228-6212 or toll-free (888 304-3119 (UP Only).