

GUEST COLUMNIST

# The Imperfect Power of a Power of Attorney

*Granting someone the power to act on your behalf is only the first step.*

**A**S MY WIFE AND I did extensive estate planning recently, we went through the time, trouble and expense of creating a revocable trust. Although such “living trusts” aren’t for everyone, one reason we chose this route was to provide a solid plan for our assets should we become incapacitated. Our successor trustees will handle the money in the way we have spelled out.

I researched trusts before we started and was surprised at some of the advice I read—especially advice related to durable powers of attorney. A number of Web sites explain that such powers are widely accepted tools for having the person you name as your agent handle your finances. A site co-sponsored by the Maryland State Bar Association was blunt, noting, “A power of attorney generally is less expensive and more efficient than a living trust.”

I’m not qualified to argue with the Maryland bar. But one factor that pushed me toward a trust is that I know anecdotally that using a power of attorney can be a hit-or-miss affair. Sometimes they work fine, but many financial institutions are leery of them, fearing lawsuits if they wrongly give away someone’s assets.

Case in point: A few years ago, a lifelong friend of mine took over his mother’s affairs because of her health. She moved in with him and signed a comprehensive power of attorney. All of her financial institutions were properly notified. Everything worked fine until the worst possible time: when his mother needed to enter a nursing home.

That was tough enough for the family. Then, when my friend contacted his mother’s mutual fund to make a withdrawal, he was told it would no longer honor the power of attorney. The company had changed its policy and now required its own form. And the power of attorney had to be reauthorized every six months. But his mother was now incapable of signing a new form. And the nursing home wanted its monthly \$8,000. The more he tried to explain his Catch-22 situation, the more frustrated he became. “It got stupid,” he says. “I had to deal with four different people and every one added a new level of fog to the picture.”

After a month of arguing and swapping documents,



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*Make sure financial institutions will let your agent act on your behalf when necessary.*

the mutual fund finally relented and let my friend tap his mother’s account. But it was a strain he didn’t need at a very difficult time. “It was flat-out silly,” he said. Unfortunately, it’s not uncommon.

“Our experience is that powers of attorney are rejected at least half the time,” notes attorney Michael Collins, whose firm put together my trust. “People who think that because they have a power of attorney they are covered are probably deluding themselves.”

He tells of an elderly, hospitalized priest who wanted to give some money to charity but couldn’t recall how much was in his checking account. Collins had the priest sign a power of attorney naming another priest as his agent. The lawyer then accompanied the second priest to the bank, where they were told the document had to be approved by the legal department. That might take as long as a month. And the sick priest would have to sign more papers. “All we wanted to know was the balance,” Collins says.

Still, banks and brokers have good reason to be cautious when someone arrives with a power of attorney. “The financial institution doesn’t know who they are and is very concerned about fraud, notes Sarah Bulgatz, a spokeswoman for my broker, Charles Schwab & Co.

She says Schwab will accept an outside power of attorney, but only after a close review. It prefers that its own form be used because it knows it covers all details and conforms to various state requirements.

So what do you do if you want to rely on a power of attorney? No solution is perfect, but common sense says to keep in close contact with your financial institutions. Try to anticipate problems. Do they require specific forms? Do they have to be updated? How often?

After all, you want to make it easy for someone to handle your affairs, not add to their troubles.

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