

Kathleen Martin is an attorney with O'Donnell, Weiss & Mattei, P.C., and a newspaper columnist for The Mercury, which gave permission for this article to be reprinted.

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Powers of attorney, co-agents and conflict

Powers of Attorney are planning for life, whatever it might throw at us. Having a Power of Attorney which names a trusted Agent to handle your finances if you are not able to do so should be a vital part of anyone's estate planning. A Healthcare Power of Attorney with a Living Will is designed to allow someone to speak for you when you cannot direct your own healthcare or make known your final wishes.

Choosing an Agent is an important task, and often is a source of stress for many people. For financial matters, the Agent "steps into your shoes" and handles your finances just as you would. Parents of more than one child are often faced with dilemma of which of their children to name as an Agent. Sometimes the choice is clear, as one adult child lives close by, or has particular skill handling money, or is involved in healthcare. Other times, the choice is not as clear cut, and a parent might be concerned about choosing one child over another, particularly if there has been conflict between the children for many years. The parent might wish to name their two adult children as Co-Agents, thinking to avoid conflict between them. Unfortunately, although there are instances where Co-Agents work well together, there are often other situations where conflict arises between the Agents, or among other family members.

Being an Agent can be a big task, and sharing the responsibility is seen as sensible by most. However, Co-Agents, depending on how the document is written, may need to act together in every instance, such as signing checks, and dealing with financial institutions. That may become burdensome for the Agents, especially if they do not live in close proximity, or share the same flexibility in their lifestyles. Agents can disagree on a course of action, or one Agent can just stop participating in the process for some reason, despite the requests of the other Agent. Conflicts can escalate, and it may become necessary to have a court get involved.

Sometimes it appears that two people are named as Co-Agents, but they are each actually permitted to act separately. Hopefully, the Agents are communicating with each other, but if they are not, one Agent could be acting on behalf of the principal in a way that the other Agent would not agree with had she or he known. This can happen when the financial Power of Attorney document says "Agent A *or* Agent B." The principal might think that they are giving the Agents the maximum flexibility, but in reality may be giving one Agent a license to act independently that principal may have been concerned about, and thus named Co-Agents.

The decision to name Co-Agents is a topic that should be carefully considered, and discussed with your attorney. The possibility of conflict, or simply difficulty in coordinating schedules between Agents should be taken into account. Naming Co-Agents may actually cause more problems than it solves. Another solution is to name Agents in sequence, so that if the first Agent cannot serve for any reason, the next Agent can step in. If family situations change, or an Agent moves out of the area, or any other scenario that can arise, the potential for conflict has been reduced, and perhaps a court appearance has been avoided, simply by considering an alternative to Co-Agents.