

# LEGAL EASE



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## Thinking about planning ahead

It can be charming when young children fail to plan ahead when writing their names. The name can travel uphill or sometimes the end of their name winds up in front of the beginning. Eventually they learn to print smaller letters or make sure that there is sufficient room to write all of the letters easily. However, it is not so endearing when adults fail to plan ahead for life, particularly as they age and may become dependent on others, especially adult children.

Powers of Attorney, particularly financial Powers of Attorney are a vital part of planning ahead. Most people think of Wills when thinking of estate planning and many assume that the named executor can take care of financial matters when the person (testator) is still living. The executor can only function when he or she is named as such after the person who named them in a Will has passed away and the Will is presented for probate (registration). A surprising number of people do not even have a Will which is their death planning. Even more common is the failure to plan for life problems and incapacity. Powers of Attorney (financial and healthcare/living will) are necessary for planning for a time when you might not have the ability to manage or direct your life.

A Power of Attorney can only be executed when the signer (the principal) has the ability to understand what he or she is signing, what powers he or she is giving to another, and, hopefully, who he or she wants to handle finances and healthcare decisions when they no longer can do so. A crisis situation is not the time to decide that no one is appointed to take care of these decisions, and that maybe we should do something now. The person for whom the decisions must be made may no longer be able to understand enough to legitimately execute such documents. An agent and at least one alternate should be named in the event that something happens to the first named Agent. Careful consideration should be given to who should be named as agents, and also to the contents of the document. The form of the documents is also very important if the documents are to be accepted by financial institutions. A bank POA only works for the accounts they are connected with and not for other financial accounts or other situations (such as admitting someone to a facility or accessing information on life insurance policies or investment accounts) that can be so important in assisting someone. The Agent under a Power of Attorney is also afforded some protections as long as he or she is acting in the principal's best interest. Spouses may have joint accounts but there are often situations, such as retirement accounts, where a POA is the only method to access information on those accounts and to remove money needed to pay for care.

Without Powers of Attorney, the family's need to assist someone who is too incapacitated to understand may result in a guardianship proceeding. This should be the last resort but failure to plan may make it the only option. A Power of Attorney can offer the Agent the ability to act in the incapacitated person's best interest (if the document was completed before incapacity) and not be required to report to a Court.

Hopefully we have learned something about planning ahead since we were young children learning to print our names. We should apply this to our legal needs too.