Do I Need a Lawyer to Write a Durable Power of Attorney?

Drafting a durable power of attorney is an act of love: By detailing how you want matters regarding your health and finances handled in the event of an emergency, you are sparing your family and friends the unpleasant task of making such decisions in a stressful time.

Two of the most common subjects for a durable power of attorney are finances and healthcare. While you may choose to hire a lawyer to assist you with these documents, you are not required to do so.

Power of Attorney for Finances

The financial power of attorney is a document that grants your chosen representative legal authority to act on your behalf for financial issues. This person’s official title depends on the state you live in, but is often referred to as your agent or as an attorney-in-fact. The person is required to act in your best interests.

Most states offer simple forms to help you create a power of attorney for finances. Generally, the document must be signed, witnessed and notarized by an adult. If your agent will have to deal with real estate assets, some states require you to put the document on file in the local land records office.

The power of attorney for finances is typically extinguished upon death, revocation, or divorce.

Power of Attorney for Healthcare

The power of attorney for healthcare designates the person who will make medical decisions for you in an emergency. Even though you may have set out your wishes in your living will, such documents cannot cover every circumstance. The person who has a durable power of attorney for healthcare is the person who will make decisions not covered by your healthcare directive.

You should still make your healthcare directive as detailed as possible: The person you charge with making your healthcare decisions can never contradict the terms of your healthcare declaration.

In order to create a power of attorney for healthcare, most states only require that you be an adult (typically 18) and be competent when you create the document. This document takes effect when your doctor declares that you lack the "capacity" to make your own health care decisions. The power of attorney for healthcare is generally only extinguished upon your death, revocation by you or a court, or upon divorce if the power of attorney was granted to the ex-spouse.

Seeking Help

The process of creating a legal document can be a daunting task. That’s why many people turn to attorneys for assistance with these important documents.

Again, you do not have to hire a lawyer to draft a durable power of attorney, but a legal professional can simplify the process.
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