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Do you need a durable power of attorney?

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What would happen if you suddenly became seriously ill or incapacitated? Who would take care of your finances? Are you sure they could legally do it? If you don't have a durable power of attorney, no one—not even your spouse—will be able to manage your finances on your behalf.

A durable power of attorney is a legal document authorizing another person (an agent), or financial institution, to step in and execute certain financial transactions on your behalf if you are incapacitated. These transactions range from paying bills to selling real estate, thus allowing your financial matters to be handled even if you cannot manage them yourself. The power is “durable” because the documentation specifically states that the power of attorney remains in force even if you are disabled or incapacitated.

Most financial planners recommend a durable power of attorney for financial matters. This goes into effect upon signing and remains in effect through any incapacity until your death, unless you revoke it. This power of attorney typically allows the agent to perform a broad range of financial transactions on behalf of the person.

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In Wisconsin, you may combine a power of attorney for finances with a power of attorney for health care. However, most health care providers and financial institutions prefer the documents to be separate. If you do combine the two, be aware that a power of attorney for health care (which is always durable, but is not referred to as such) includes a number of requirements that must be followed to be valid.

Drafting Your Power of Attorney

Most financial planners agree that it is in your best interest to have an attorney draft the power of attorney. It costs more than buying a standardized version, but to be fully effective it needs to meet Wisconsin laws. The document also will likely require specific language not found in off-the-shelf documents.

In addition, experts commonly recommend that the document grant powers as broad as possible so the agent has maximum flexibility. It's difficult to anticipate what might need to be done financially on your behalf. Beyond granting broad powers, the document will need to be specific about certain rights granted to the agent. For example, the IRS has ruled that the grantor must explicitly give an agent the right to make gifts on behalf of the grantor in order for those gifts to qualify as gifts for estate tax purposes. You must also specify the right for your agent to complete and sign your tax

returns, exercise stock options, or sue a third party.

At the same time, you may want to incorporate certain restrictions in the document, such as how your retirement plan accounts are drawn down or under what conditions an asset might be bought or sold. Perhaps you want to require a second signature on checks above a certain amount.

As with all estate planning documents, a durable power of attorney should be reviewed and updated periodically so that it reflects your current needs and desires. If you experience a significant life change—divorce, death of a spouse, birth of a child—you will probably need to revoke your current power of attorney and draft a new one. You should also be aware that third-party financial institutions prefer seeing current powers of attorney and having copies in advance (be sure to get rid of copies of previous versions). If a power of attorney is presented to an institution somewhat out of the blue, they can get sticky about accepting it.

Some form of a durable power of attorney for finances and a power of attorney for health care is available throughout the United States. However, state laws and required forms are not identical. No matter what state you reside in, you should consult with your legal advisor before proceeding.

(SVA Planners, Inc., Registered Investment Advisor, does not provide legal advice. Individuals should have an attorney draft all legal documents, including a durable power of attorney.)