

## Appendix 2

### **Why a Power of Attorney May Not Have Power**

This book is primarily about how to navigate all the choices you will face—for healthcare—while helping an aging loved one. But, unfortunately, a personal tragedy prompts me to add something regarding legal planning as we age.

One of my dear friends recently had a cardiac arrest in his home at the age of seventy-five and was resuscitated by paramedics. As the statistics showed us earlier in the book, the chance of Phil making a meaningful recovery after having an out-of-hospital cardiac arrest was very low. As it turned out, after four days of intensive care, the tests showed that he had suffered a devastating brain injury that was not survivable. We made the decision to withdraw the ventilator and allow Phil to die peacefully.

What we could not control, however, was the legal and financial planning that he had done years earlier. I am grateful that Phil gave me co-power of attorney for healthcare, along with his son. But, he clearly did not have the best or most up-to-date advice regarding financial planning.

Because he had been very successful, Phil was able to retire early and still had considerable wealth when he died. He had lived a frugal life and had invested well. Unfortunately,

the only instructions left regarding his wealth were included in a Will. It is easy to assume that a Will is sufficient to help your surviving loved ones to manage your finances and property after you die. However, this experience has demonstrated that it is not enough.

If you have only a Will, it requires all of your assets to be put into probate after you die. The details of what that means can be learned elsewhere. Suffice it to say, having all of your assets in probate court for many months prevents your loved ones from using even your checking account to pay bills or to provide for the immediate needs of your children or other dependents. This can create great stress and frustration for those you love.

A more useful document to have is a Trust. When you establish a Trust, there is no need to have a court to oversee those assets after you die. The people you name in the Trust are able to act on your stated wishes immediately to care for your dependents and manage other financial obligations, such as your burial or other final arrangements.

I cannot pretend to understand all of the details of having a Will and Trust. But, I wanted to give you this warning because, after it was determined that Phil could not survive, the primary stress I experienced was regarding how to provide for the needs of his dependents. I knew that there was nothing medically to be done, and I could make peace with that fact. But, the ill-planned financial situation created an enormous strain on us emotionally. Please, do all you can to secure your assets after you die and to make things as stress-free as possible for those you love. None of us knows when we will die.

My friend certainly did not plan to have a sudden cardiac arrest on that Sunday morning, but such a crisis could happen to anyone. We would all be wise to stop now and be sure to establish:

- **Healthcare power of attorney**, so that there is a designated person to make the decisions with your physicians. Some people advise that you have two friends or family members be “co-powers” of attorney for healthcare. They reason that having two people is a good idea so that they will help one another shoulder the stress of important decisions. I disagree with this strategy. It sounds good, in theory, but problems can arise. It requires both to be present when needed and in agreement. You cannot predict how the stress of the situation will affect others, and two people who usually are of the same opinion can suddenly have very different views on life and death decisions. This can create a stalemate that can set them up for an emotional upset, as well as leave the healthcare providers guessing as to who is making the final decisions. I think a better way is to appoint successive powers of attorney for healthcare, as well as for finances. For example, if you list your spouse as POA, but your spouse is unable or unwilling to perform the duties, he can decline, and a successor POA will step in. If the successor is unavailable or unable/unwilling to be the POA, the third successor steps in. This way, you have a contingency plan, if your original POA choice

cannot carry out the duties. You have a plan in place that allows for changing circumstances.

- **Financial power of attorney**, so that if you are incapacitated, bills can be paid and your financial affairs tended to until you are able to do so.
- **Will and Trust**, so that your loved ones will not have to endure the delays and the expenses that go with having all of your assets in probate court.

Even if you are a person with modest means, having a Will and Trust is necessary in order for your loved ones to be able to manage even a small checking or savings account, mortgage payments, electric bills, and a funeral. A financial power of attorney does not have any legal standing after the person dies. Do not think that because you have a financial POA established that will allow your loved ones to make financial decisions after you die. A power of attorney expires when you die.

## **A Caution Regarding Financial Power of Attorney**

My friend, Phil probably felt that he had diligently completed the necessary paperwork when he put together his Will and the healthcare and financial powers of attorney. Unfortunately, The financial power of attorney proved insufficient to give us immediate access to his checking account.

Even though the power of attorney was legal and proper for the state of California where he lived, his bank required more. We learned that financial institutions (such as banks,

credit unions, and investment firms) frequently would not honor the power of attorney, alone. They require that you have forms specific to their institution, in addition to the POA. It had been too late for us because Phil was already incapacitated when we learned we needed the bank forms. Essentially, the POA form was useless to help us when we needed immediate access to cash.

### **You Need These Things:**

- Healthcare power of attorney
- Advance directive, which makes your goals and values for healthcare clear (see [Prepareforyourcare.org](http://Prepareforyourcare.org) and [TheConversationProject.org](http://TheConversationProject.org))
- Financial power of attorney bank-specific forms for POA
- Social Security forms for POA
- Veterans Administration forms for POA (if applicable)
- Investment house form for POA (if applicable)

### **What is needed to prevent added expense and delays after you die:**

- Will and Trust
- A written statement telling your loved ones your preferences for and any arrangements you have made for burial or cremation.

Take time to clarify your goals and values regarding healthcare. Additionally, do all those you love a kindness by

having a POA for healthcare and for financial matters, and also you need to consider a Will and a Trust. Losing a cherished family member or friend is extremely stressful. Do all you can to help the people you love to avoid additional stress by preparing now.