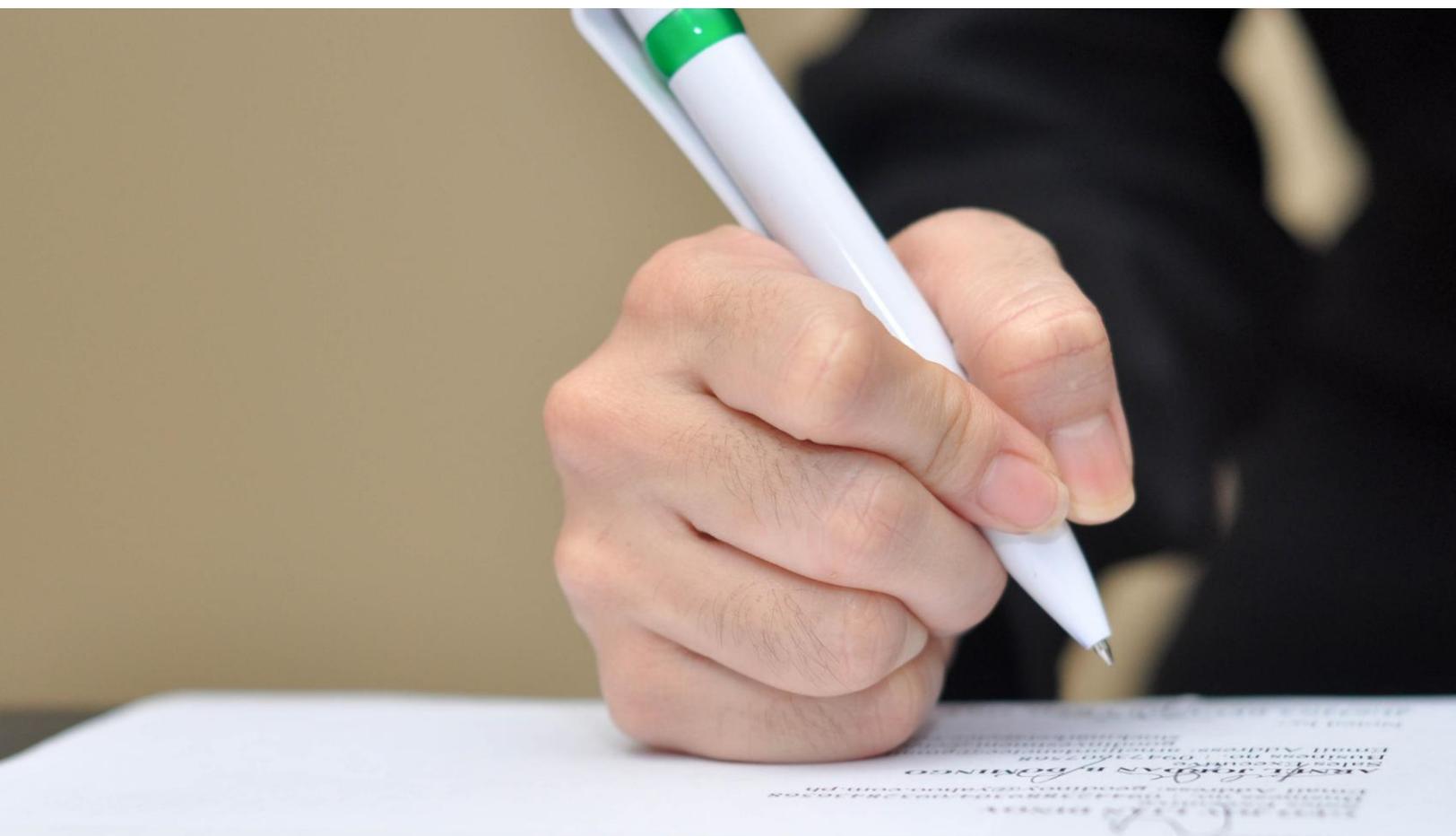


SHOULD I HAVE A DURABLE POWER OF ATTORNEY OF ATTORNEY?

A Closer Look at a Durable Power of Attorney in Oklahoma – Its Different Types, Its Purpose – and Why It Should Be a Part of Every Comprehensive Estate Plan



By Larry Parman

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When you are engaged in the process of estate planning you should see a holistic picture. Arranging for the transfer of your monetary resources is certainly part of the equation. At the same time, you should prepare in advance for contingencies that you may face during your twilight years.

INCAPACITY IS WIDESPREAD

Longevity is increasing, and this is great on the one hand. On the other hand, people often become incapacitated late in their lives.

In the United States the average life span for people of all ages is 78 years, but this expands when you are talking about a smaller sample size.



Once you reach the age of 65, it is likely that you will live into your 80s.

There are different causes of incapacity. Sometimes people become completely unable to communicate due to catastrophic illnesses. There is also the matter of mental

incapacity.

Alzheimer's disease is a huge threat to our nation's elders. As you get older, the likelihood of contracting Alzheimer's increases. Upwards of 45 percent of people who are at least 85 years old have been diagnosed with Alzheimer's disease.

Those who are suffering from Alzheimer's typically experience dementia. If you were to experience Alzheimer's induced dementia, you may find it difficult to

grasp concepts and make decisions.

When you add the Alzheimer's statistics to the other causes of incapacity, you can see that incapacity is quite common among elder Americans.

GUARDIANSHIP OR CONSERVATORSHIP

Who would make decisions on your behalf if you were unable to make them for yourself due to incapacitation? The answer is that it is up to you.

If you do nothing, the state could be petitioned to appoint a guardian or conservator to manage your affairs in the event of your incapacitation. The court could choose a representative that you would not have chosen when you were of sound mind.

In addition to this, family members can disagree with regard to the appropriate course of action. This can create an acrimonious family dynamic during a difficult time when your loved ones should be pulling together to support one another.

You can prevent a guardianship or conservatorship and take the matter into your own hands by creating an incapacity plan.

DURABLE POWERS OF ATTORNEY

An incapacity plan will typically include a document called a durable power of attorney. With a durable power of attorney you name an agent or attorney-in-fact to act on your behalf in the event of your incapacitation.

A power of attorney that is not designated as durable would not remain effective if the grantor was to become incapacitated. Durable powers of attorney do remain active upon the incapacitation of the grantor. This is why durable powers of attorney are used for incapacity planning purposes.



The person who is empowered to act on your behalf is called an agent or attorney-in-fact. You may want a particular person to handle your financial affairs, but you may not want this individual to make your health care decisions.

Many people execute two different durable powers of attorney: one for health care matters, and one for financial matters. If you go this route, you could name two different respective attorneys-in-fact.

It should be noted that a durable power of attorney for health care is called a health care proxy in some jurisdictions.

When you create a durable power of attorney, it is typically going to go into effect immediately. You may not want to give decision-making power to your agent right away.

If you feel this way, you could potentially create a springing durable power of attorney. A springing durable power of attorney does not go into effect until and unless the grantor becomes incapacitated.

CHOOSING AN AGENT

You should be very discerning when choosing an agent or attorney-in-fact. Consider the age of the person that you choose, because he or she may not be called upon to act until many years in the future.

There is also the matter of geography. If you live in Oklahoma City and your health care agent lives in Hawaii, there is a distance problem. Quick action may be necessary, and the agent may have to make a series of decisions over an extended period of time.

CONCLUSION

Incapacity is common among people who have reached an advanced age. You must be proactive about naming your own representatives to act on your behalf in the event of your incapacitation.

This is done through the execution of durable powers of attorney. If you do not have these important incapacity planning documents in place, consult with a licensed estate planning attorney.

Your lawyer will assist you as you create an effective plan that comprehensively prepares you for the eventualities of aging.

REFERENCES

American Bar Association

http://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/power_of_attorney.html

Alzheimer's Association

<http://alz.org>

About the Author

Larry Parman



After helping his own family deal with a lengthy probate and a battle with the IRS following his father's death in a farm accident, Larry made a decision to help families create effective estate plans designed to reduce taxes, and minimize legal interference with the transfer of assets to one's heirs, and protect his clients' assets from predators and creditors. Following a dozen years in the investment banking and financial services business, in the mid-1980s Mr. Parman formed a law firm that gives families the peace of mind that comes from having created a premier estate and financial plan.

After forming his law firm in 1984, he offered a series of public and private seminars to inform the public about using a Living Trust as the foundation of a family's estate plan. Today, Parman & Easterday is one of the leading business and estate planning law firms in the Midwest. The firm's primary focus is on business and estate planning, elder law, asset protection, and providing effective estate planning solutions for clients. Today, the firm's premier estate plan design is referred to as a Legacy Wealth Plan.

Mr. Parman is a frequent guest on the radio and can be seen on television talk shows explaining the importance of proper estate planning. Prosperity Productions selected Mr. Parman as a featured speaker in a nationally-recognized educational video on Living Trusts. He is the author of numerous published articles on financial and estate planning matters and the co-author of two books, *Estate Planning Basics: A Crash Course in Safeguarding Your Legacy* and *Guiding Those Left Behind in Oklahoma: Settling the Affairs of Your Loved Ones*.

Mr. Parman is a member and Fellow of the American Academy of Estate Planning Attorneys. He is also a member of the Oklahoma and Missouri Bar Associations, the American Bar Association, and the Oklahoma City Estate Planning Council.



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