



Elder Counselor

A newsletter for professionals serving seniors and those who love them.

VOLUME 3, ISSUE 5

SEPTEMBER 2012

October is National Special Needs Law Month.

Register now for the ELET SPECIAL NEEDS TRUST SCHOOL!

October 18, 3:00 - 5:00 pm
Manorhouse Assisted Living
Northshore Dr.

In honor of National Special Needs Law Month, Elder Law of East Tennessee will offer a Special Needs Trust School. In this workshop, Amelia will cover all the special needs trust basics: defining a special needs trust, rules, and dos and don'ts. Participants will come away empowered with valuable knowledge and confident that they can serve as good trustees.

The class will be held at Manorhouse Assisted Living on Northshore Drive. Seating is limited, so call early to reserve your spot. For more information or to RSVP, contact Tammy Hill at 865-951-2410. For more information or to RSVP, contact [Tammy Hill](#) at 865-951-2410.

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The Basics and Benefits of Creating Your Powers of Attorney

A [power of attorney](#) is a critical elder law and estate planning document which names a person, called an *agent* or an *attorney-in-fact*, to act on your behalf and handle all kinds of transactions and decisions. There are numerous benefits of having a highly detailed, comprehensive power of attorney, but it is necessary to proceed with caution in creating this document. An overly general power of attorney which does not address your specific needs and wishes can actually cause more problems than it solves. In this issue of *Elder Counselor*, we will outline the basics of a power of attorney, name the primary benefits of having one, and offer some words of caution to help you avoid pitfalls as you incorporate a power of attorney into your estate plan.

What a Power of Attorney Does

The two most commonly used powers of attorney are a [general power of attorney](#) and a [health care power of attorney](#). Both of these documents are essential in efficient [estate planning](#). They allow a trusted person (the *agent* or *attorney-in-fact*) to complete transactions and make decisions for you (the *principal*). Sometimes this can be a matter of convenience, such as authorizing an adult child to pay your bills, run your business, or negotiate the terms of hiring caregivers or gaining admission to a nursing home. In other cases a power of attorney can give you an element of control over what happens to your assets or your person if you become incapacitated and cannot make or communicate decisions regarding finances and medical treatment. By using powers of attorney to name a trusted agent and making sure your other estate planning documents (will, advance directive, etc.) are in place, you can ensure that your financial and medical wishes are carried out in the best way and with as little delay and difficulty as possible.

Key Terms

The *principal* is the individual who creates a power of attorney and appoints an agent to act on his or her behalf.

The *agent* is the person who acts on behalf of the principal. The agent has traditionally been called an "**agent**" when handling health care and personal matters and an "**attorney-in-fact**" when handling financial and legal matters.

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UPCOMING EVENTS

Oct. 11-13

Life Care Planning Law
Firms Association
Annual Conference
Cleveland, OH

Oct. 18, 3 :00 p.m.

Special Needs Trust School
Manorhouse Assisted Living on
Northshore Drive
Call 951-2410 for more info.

Nov. 8, 10:15 am

"Finding Solutions to
Elder Law Problems"
28th Annual "Aging: A
Family Affair" Conference
Call 524-2786 for more info.

Nov. 15, 8:30 am

"New Challenges in Long-
Term Care & Elder Law"
Health Care
Administrator Conference
Manorhouse Assisted Living

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Important Considerations for Your Power of Attorney

Will You Give Up Your Rights? By signing a power of attorney, you do not give up your own power to perform any action. Whatever powers are granted to the agent are also retained by you, the principal. A power of attorney simply extends your legal authority to your agent or attorney-in-fact and allows him or her to perform various tasks on your behalf.

Is It Durable? The legal basis for using powers of attorney comes from the common law of agency. Under that law, an agent or attorney-in-fact can do anything the principal can do, but only so long as the principal can do it. Previously, if the principal became disabled or incapacitated, the agent's ability to act was restricted by the law of agency. To get around this problem, lawmakers developed the element of *durability*.

When a power of attorney is *durable*, that means that the agent can act on behalf of the principal even when the principal is disabled or incapacitated. For instance, if the principal falls into a coma, the agent would be authorized by a *durable* power of attorney for health care to make medical decisions on the principal's behalf. But durability is not automatic; it must be built into the document using specific legal language that states the principal's intention for the agent's powers to continue even if the principal becomes disabled or incapacitated.

When Will It Become Effective? We most commonly draft powers of attorney that are effective immediately at the time of signing. But there are also powers of attorney that only become effective upon an event that might occur in the future, such as the principal becoming ill or incapacitated. These are called "springing" powers because they spring into action at some later time.

There are pros and cons to springing powers. While there is less likelihood that a document with springing powers will be misused by the agent to take advantage of the principal, it can be harder to use that power of attorney when you need it to work. Imagine being an agent for your ailing mother and needing to write a check for her nursing home care. The bank refuses to recognize your power of attorney because it is springing and requires a written letter from a doctor stating that your mother lacks the ability to handle her own affairs. Then you have to trek back to the nursing home, track down the doctor, ask him or her to draft a letter, wait several days to pick it up, and then go back to the bank. On the other hand, while immediately effective powers of attorney make scenarios like this more manageable, they also place a great deal of power into the hands of the person named as the agent or attorney-in-fact.

Can You Trust Your Agent or Attorney-in-Fact? Another important consideration in creating a power of attorney is the trustworthiness of the agent. The proper use of a power of attorney depends on the reliability and honesty of the agent. In recent years, much has been publicized about the financial [exploitation of seniors and other vulnerable people](#) through undue influence, hidden transactions, identity theft, etc. But while empowering an agent to act on your behalf may carry some risks, there are extensive benefits that in many cases outweigh those risks. By choosing a trustworthy agent, carefully tailoring your power of attorney with the help of a qualified elder law attorney, and creating [accompanying legal documents](#) as part of your [estate plan](#), you can build in safeguards that will protect you from exploitation and guarantee your peace of mind.

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ELDER LAW OF EAST TENNESSEE

Elder Law of East Tennessee uses a unique approach to Elder Law called Life Care Planning. Attorney Amelia Crotwell and Elder Care Coordinator Connie Taylor, LCSW, work as a team to address legal issues while designing a comprehensive long-term care plan that maximizes quality of life and independence for the older adult.

Caring and planning for the future can be burdensome and overwhelming, but Elder Law of East Tennessee can help in many ways. A consultation with Elder Law of East Tennessee is your first step toward the assurance that only a specialized Life Care Plan can provide.

Call 865-951-2410 or visit our [website](#) to get started today. Elder Law of East Tennessee is conveniently located at 428 E. Scott Avenue, Knoxville, TN 37917.

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Top Five Benefits of a Power of Attorney

1. *Choose who will make decisions for you if you become unable to do so.*

If someone has signed a power of attorney and later becomes incapacitated and unable to make decisions, the designated agent can step into the shoes of the incapacitated person and make important financial and/or medical decisions on the principal's behalf. Without a power of attorney, a court-ordered guardianship or [conservatorship](#) may become necessary. This can be very expensive, and the court-appointed guardian or conservator may not make the same decisions you would wish to make for yourself. Without a power of attorney, you have no ability to determine who will serve on your behalf should it become necessary.

2. *Ensure that your family members know and will carry out your wishes and desires.*

Much thought and consideration goes into the creation of a comprehensive power of attorney, but you do not have to do it alone. When you make the decision to sign a power of attorney, it is a good opportunity to discuss your wishes and expectations with your family and, in particular, the person who is named as your agent in the power of attorney. Through the power of attorney and accompanying legal documents, you can outline your exact wishes and ensure that they will be carried out accordingly. Discussing these issues with your family will give them peace of mind because if they are put in the position of taking critical actions on your behalf, they will know that they are acting in accordance with your desires.

We have all heard about grueling court battles over a person's intent once that person has become incapacitated. A well-drafted power of attorney, along with other health care directives, can eliminate the need for family members to argue or disagree over your wishes. Once written down, this document is excellent evidence of your intentions and is difficult to dispute.

3. *Save time and money and preserve health by delegating urgent tasks.*

As people age, their needs may change suddenly, and they may become less able to do the footwork associated with managing assets, planning long term care, applying for government benefits, and choosing the proper care providers. Delays in carrying out these tasks may result in stress, financial loss, and preventable declines in health and autonomy. But if you authorize an agent to perform these tasks on your behalf, you can save precious time and money and preserve your quality of life to the fullest extent.

Other Crucial Estate Planning Documents

Powers of attorney for finances and healthcare are just pieces of the [estate planning puzzle](#). To create a strong, comprehensive estate plan to suit your needs, you may also need to write a [Last Will and Testament](#), [Living Will](#), and [Advance Directive](#). You may also want to create one or more [Trusts](#). For more information about these documents and how they can help you carry out your medical and financial wishes, follow the links above or visit the [Services](#) page of our website.

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Elder Counselor is a bi-monthly publication serving professionals in elder law, senior service providers, and caregivers and families of the elderly and disabled.

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View other archived issues on our website: www.elderlawetn.com/newsletter.

To comply with the U.S. Treasury regulations, we must inform you that (i) any U.S. federal tax advice contained in this newsletter was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax advisor based on the taxpayer's particular circumstances.

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A comprehensive power of attorney should include all of the powers the agent requires to do effective asset protection planning. If the power of attorney does not include a specific power, it can greatly dampen the agent's ability to complete the planning and could result in thousands of dollars lost. An agent under a power of attorney is often in the position of trying to reconcile bank charges, make arrangements for health care, engage professionals for services to be provided to the principal, and much more. Without a comprehensive power of attorney giving authority to the agent, many companies will refuse to disclose any information or provide services to an incapacitated person. This can result in a great deal of frustration on the part of the family, as well as lost time and money and decline in health.

4. Allow transactions that will preserve assets and improve eligibility for public benefits.

Some powers of attorney grant the agent authority to make substantial gifts to him or herself or others in order to carry out the principal's [asset protection planning](#) objectives. On the surface, these transactions may appear to benefit the agent or others rather than serving the principal's interests, and without specific authorization via a power of attorney, such transactions might lead to accusations of financial abuse.

However, sometimes these transactions are in fact in the interest of the principal, allowing him or her to qualify for [public benefits](#) while distributing assets to his or her loved ones. A court-appointed guardian or conservator might not be willing to carry out such transactions, but an agent named by a power of attorney can be specifically authorized to do so.

5. Provide peace of mind for everyone involved.

Taking the time to create and sign a power of attorney reduces the burden on family members who would otherwise have to go to court to get authority for performing basic tasks, like writing a check or arranging for home health services. Knowing that this has been taken care of in advance is of great comfort to families. It is also a great personal comfort to know that no matter what happens to you, your medical and financial wishes will be upheld.

Conclusion

Powers of attorney are powerful legal documents which ensure that your wishes are carried out throughout your lifetime. They can be tailored to suit a variety of needs and wishes and to allow or disallow specific powers to an agent. Creating a detailed, comprehensive power of attorney is essential because nobody can predict exactly what will happen in the future and which powers your agent will require in order to act on your behalf.

For more information about powers of attorney, or for assistance in creating your own estate planning documents, visit our webpages for [general powers of attorney](#) and [health care powers of attorney](#), send an e-mail to info@elderlawetn.org, or give us a call at (865) 951-2410. We will be more than happy to help answer your questions and guide you through the [estate planning](#) process.