

Catholic Estate Planning: Power of Attorney

This article is the second in a series about estate planning, stewardship, and end of life decisions from a Catholic point of view. The goal of this series is to highlight some of the important documents typically found in a good estate plan and to outline some of the Catholic teachings to consider when meeting with legal and financial advisors.

In the first article, I reviewed the importance of a validly-drafted North Carolina will and how it can be used to pass on your temporary material possessions to your family, to your friends, to the Church, or some combination of the above. In this article, I will focus on the need for a general, durable power of attorney and how this document is an additional tool to help you take care of our possessions as stewards of Providence.

A general, durable power of attorney is a document in which you can appoint someone to make a variety of financial and other decisions for you if you are unable to make those decisions yourself. It is similar to appointing someone as an agent, with limited or broad authority depending on how the document is drafted. The term "durable" in this instance means that the power of attorney is valid and enforceable even if the person signing the document is later determined

to be incapacitated. This makes the general, durable power of attorney more flexible and usable in a variety of circumstances. However, granting someone this authority also means the person appointed will have a significant amount of power and responsibility if and when the document is used. As with the other documents in an estate plan, it is therefore critical to pick the right person to serve in this role.

From a practical standpoint, one issue that I have seen in my many years of practice is people using power of attorney forms that are inadequate or insufficient to deal with the wide variety of transactions and financial matters that often must be addressed.

For example, it is often critical for many of my clients to include a provision that allows the attorney-in-fact broad discretion to make gifts or transfers of assets. There are a variety of reasons to include a broad gifting provision, including the ability to continue an established charitable plan for the benefit of one's parish, the Diocese, the Bishop's Annual Appeal, or the Cathedral campaign. A broad gifting provision also might be needed to help qualify for Medicaid or VA benefits or reduce a potential tax liability. Additionally, it is important to include the power to make or change life insurance or 401(k)/IRA beneficiary forms in the event the beneficiary designations are incorrect or incomplete or do not tie in with an established estate plan, such as to fund a trust for children. Lastly, the general, durable power of attorney should include provisions giving the attorney-in-fact broad authority to obtain health records and medical information when dealing with Medicare or health insurance companies because such information might otherwise be subject to various privacy laws.

I will conclude with a few final

points about general, durable powers of attorney and why they are critical documents in a complete estate plan. Without a general, durable power of attorney, one might need a court to appoint an individual as legal guardian for an incapacitated family member, which can be an expensive and time-consuming process. If one has executed a general, durable power of attorney, then in most cases a guardianship hearing will not be needed. In addition, with a general, durable power of attorney in place, one might not need to add children or other family members as joint owners of real estate or bank accounts, which can have significant unintended

tax and Medicaid consequences, because the attorney-in-fact can generally access and manage those assets without being named a joint owner.

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by your attorney-in-fact to deal with just about any asset or financial matter that may arise. It can be a great benefit knowing that others are in place to manage your possessions as stewards of Providence during difficult times. In the next article, I will review the importance of a well-drafted health care power of attorney or advance medical directive, a document of extreme importance to ensure that your wishes regarding health care decisions and end-of-life matters are carried out, especially when those wishes are intended to follow Catholic teaching on the sanctity and dignity of human life at natural death.

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