Last time we discussed estate planning on our blog, we talked about the importance of incorporating various types of health care directives into your estate plan. One of these directives was the medical power of attorney, a document which is used to appoint someone else to make health care-related decisions for you should the need arise. When preparing an estate plan, there is another type of power of attorney you will likely want to incorporate as well. This is what is commonly referred to as a durable power of attorney.

What is a Durable Power of Attorney?

A durable power of attorney is a legal instrument used to appoint someone to manage your financial affairs in the event of incapacity. Similar to the medical power of attorney, the durable power of attorney is a document that can potentially (but will not necessarily) come into play during your lifetime. If you become unable to manage your finances due to an injury or illness and you have a durable power of attorney in place, the person you designate (referred to as your “agent”) will take responsibility for paying your bills and managing your real property and personal assets in accordance with the terms and restrictions you put in place.

The Texas Department of Health and Human Services (HHS) offers a free Statutory Durable Power of Attorney form on its website. While this form may be useful for reference, we do not recommend executing a power of attorney without first consulting a lawyer. The form is somewhat confusing, and it may or may not provide options that are best for your individual circumstances. While a durable power of attorney is freely revocable until you become incapacitated, you do not want to sign a document that does not reflect your true intentions.

If I Sign a Durable Power of Attorney, What Will My Agent Be Able to Do?

The powers you grant under your durable power of attorney are up to you. Some of the most-common options include the power to:

- Pay bills for monthly expenses and health care
- Manage checking and savings account funds
- Manage retirement accounts and investment portfolios
- Manage Social Security, Medicare, Medicaid and other government program benefits
- Buy, modify or terminate insurance coverage
- Buy and sell real estate and items of personal property
- Make tax-related decisions

Your durable power of attorney can be as general or specific as you want it to be. For example, you could include specific parameters around assets that may (or may not) be sold, and you can direct how certain funds should be used. You can also establish controls designed to ensure that any transactions conducted on your behalf do not have undesirable implications for the rest of your estate plan. Of course, you have the right to choose who will serve as your agent (and it is generally a good idea to designate a backup agent) as well, and you will want to choose someone who you trust to effectively manage your affairs with your best interests in mind.

Schedule a Free Initial Consultation at The

Nordhaus Firm

If you would like more information about durable powers of attorney or any of the other documents used for estate planning purposes in Texas, you can schedule a free, no-obligation consultation at The Nordhaus Firm. To speak with one of our experienced McKinney estate planning lawyers in confidence, please call (214) 726-1450 or inquire online today.