A power of attorney is an important estate planning document that can be used in a variety of ways. Some uses are a matter of convenience, but others can have a huge impact on the lives of individuals and families.

Often, a power of attorney is referred to as “durable.” What does this mean? If you create a power of attorney, should it be durable, and if so, what do you have to do to give it that quality? To answer these questions, we need to explore powers of attorney and how they operate.

The Basics Regarding Powers of Attorney

When you create a power of attorney document, you authorize someone to act on your behalf. You share authority with them. The person you authorize is often referred to as your agent or attorney in fact. (That person does not need to be an actual attorney or have any legal training. They just need to be someone you can trust to act responsibly.)

Sharing your authority with a power of attorney does not reduce your power. You can still manage issues. This is different from the situation if you have a guardian appointed for you. In that case, you lose authority, and it is all given to the guardian.

Powers of attorney usually address either financial and business matters or health and medical issues. So, a comprehensive estate plan usually includes a durable financial power of attorney and durable health care power of attorney.

A Power of Attorney Helps When Someone Becomes Incapacitated

Sometimes, people will execute a short-term power of attorney to enable someone to handle a transaction for them while they are traveling or otherwise unavailable. For estate planning purposes, however, power of attorney is a protective measure to be used in case an individual becomes incapacitated and unable to make or communicate their own decisions. You have to be legally competent to create the

document, but in it, you authorize someone to act on your behalf if a doctor declares you to be incompetent. In the future, if you were in a car accident and in a coma or suffered from advanced stages of dementia, the agent you authorized could pay bills and manage your financial issues, or your healthcare agent could tell doctors the types of treatment you would and would not want.

When a Power of Attorney is Durable, it Remains in Effect in the Event of Incapacity

A traditional power of attorney would generally become null and void if the person who created it became incapacitated. This made the document ineffective at the very time it was most needed.

Attorneys started creating durable powers of attorney that especially remain effective when the person who granted the power becomes legally incompetent. If you are creating a power of attorney, you can make it durable by referring to it as a durable power of attorney, but if you want to be certain it will remain in effect, you can include language explaining the power extends to your agent even if doctor declares you to be incapacitated and unable to make or communicate decisions.

Generally, a durable power of attorney lasts until the person who creates it passes away or until they specifically revoke it. If the person who creates it becomes incapacitated, they cannot revoke the power of attorney. However, if the court appoints a guardian for the person who created the power of attorney, that action will revoke the power of the agent.

Powers of Attorney are Used to Avoid the Need for Guardianship

As discussed above, a power of attorney shares authority, while guardianship takes someone’s authority over their own affairs and gives that authority to someone else. Guardianship is considered a drastic measure, and courts are reluctant to grant it if there are alternatives available. The court will go through a lengthy

process to determine if guardianship is truly necessary, and this can be costly and invasive.

When you have powers of attorney prepared, these documents can authorize someone to help you so that guardianship will typically not be necessary. Taking this simple step can save loved ones considerable time, expense, and grief in the future.

Get the Right Powers of Attorney to Protect Yourself

At The Nordhaus Firm, we can custom tailor powers of attorney to grant just the specific authority that you intend. We can give your agent access only to limited accounts. We can set up a durable financial power of attorney that takes effect right away if you want help paying bills now, or we can create a springing power of attorney that only becomes effective if a doctor declares you to be legally incapacitated. We invite you to schedule a free consultation to learn how a durable power of attorney can protect your interests in the short and long term.