

## Powers of Attorney

In video three, we talked about the advance planning documents you can put in place to help avoid needing a court-appointed guardian or conservator. Powers of attorney are one of those tools. If you complete powers of attorney, you will choose an agent to handle your affairs, both financial and medical. And by having an agent in place, you shouldn't need a court-appointed guardian or conservator if you become incapacitated. You've already taken care of it. Sounds great, doesn't it? Yes. But . . . my guess is you may be concerned about giving someone else the ability to handle your money. You may have heard about, or even experienced yourself, someone who has been taken advantage of by a power of attorney. Instead of using your money for your benefit, your agent takes your money for themselves. That's called financial exploitation, and your concern is real. So how do you balance these things up? Planning ahead to avoid court involvement in your affairs *and* reduce the risk of financial exploitation? In this video, we will go over four tips on how to complete a financial power of attorney.

First, remember that you are in charge. In a power of attorney, the person signing the document is called the principal. The principal appoints an agent, decides how much power to give them, and under what conditions. Let's say Mom hasn't done a power of attorney. Daughter has been told she needs to get a power of attorney for Mom. Who's in charge, here? Mom. Mom decides if she wants a power of attorney, who she wants as her agent, and how she wants to set it up. Mom is the principal. Mom will sign the power of attorney. Mom must have the legal capacity to sign a power of attorney. In Alabama, if Mom can understand what she is signing, what a power of attorney is, what it means to give someone else the ability to handle her money, and make a reasoned choice of agent, Mom can do a power of attorney. If Mom has been diagnosed with a cognitive impairment such as dementia, it's imperative that she see an attorney to assess her legal capacity to sign a power of attorney.

The second tip may be the most important -- pick someone you trust to be your agent. Easy enough, right? Unfortunately, it can often be difficult to find someone you trust to handle your money. Ask yourself these questions. Who do I trust with the keys to my bank account? My car? My house? Who is good at taking care of their own finances? Being an agent in a power of attorney is like having a job. Your job is to take care of someone else's money. Picking an agent for your power of attorney is not about picking favorites, it's about picking the best person for the job. Your agent does not have to be a family member. Find the one or two people you trust the most, and who are willing to do the job, to be your agent.

Third, know your options. Powers of attorney are not simple documents. In fact, a financial power of attorney can be a pretty risky legal document. Did you know in Alabama that a financial power of attorney can be effective *immediately*? In other words, when you sign the power of attorney, your agent has the immediate authority to access your accounts and start acting on your behalf? That may be what you want. But maybe not. There is another way to do it -- what's called a springing power of attorney. In a springing power of attorney, your agent can act only if and when you become incapacitated. One of the other options is how you appoint your agents. You can put them in order with a primary and backup agent. You can appoint two people as joint agents and require them to agree to everything. And, you have to decide how much power you want to give to your agent. You can limit your agent's authority to only certain

things. On the other end of the scale, you can give your agent a broad range of authority including the ability to sell your house.

These are just some of the options, and like any other legal document, powers of attorney can be tailored to fit your circumstances. That's why our fourth tip is this: get a lawyer to help complete your powers of attorney. Your lawyer can help you weigh the options and decide what is best for you. Lawyers also have ethical duties of confidentiality and loyalty. They will meet with you privately, without interference from others, to make sure any documents you put in place honor your wishes. And if you are concerned about financial exploitation, your lawyer can go over the options to reduce the risk.

As we mentioned in video three, the Alabama State Bar has a lawyer referral service if you don't have an attorney. They can also connect you with a volunteer lawyer if you qualify. The Area Agencies on Aging provide some legal services to individuals 60 years of age and older. The Alabama Disabilities Advocacy Program provides legal services to Alabamians with disabilities. There are pro bono Elder Law Clinics at both the University of Alabama and Faulkner University. And, Legal Services Alabama provides civil legal aid to low-income individuals.

In our next video, we will talk about alternatives to guardianship for adults with intellectual disabilities.