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designed solely to select someone to manage your financial affairs, especially when you are unable to do this for yourself. It usually is called a “General Durable Financial Power of Attorney”. The word “General” means that it is designed to cover all of your financial affairs. “Durable” means that even if the Principal becomes incompetent, the Agent can still continue to conduct the Principal’s financial affairs. The law of Principal and Agent has been around for hundreds of years. The concept of a Durable Power of Attorney is of recent creation. In Wisconsin, the law has allowed the creation of a “Durable” Power only since 1984. Now, almost every Power of Attorney drafted will contain the appropriate language as required by state law to make it a “durable” power. This is very important, because with this word in the will, even though the Principal becomes incompetent, the Agent can still take action. This is helpful, because the Principal will have selected an Agent who can conduct financial affairs for the Principal, and thus, the Principal’s family will not have to go to court to have the Principal declared incompetent by a judge in a costly and expensive proceeding called “Guardianship.” There would be

All Financial Power of Attorneys are not created equal. Most Financial Power of Attorney documents will allow the person selected to pay bills and change investments around. Thus, such a document may be helpful to keep a person from probate court in the event that the person becomes incompetent.

Many Powers of Attorney do not permit the Agent to do planning. They do not contain the necessary language to permit the Agent to do gifting. The ability of an Agent to gift is barred by law in many states. The document must specifically authorize gifting in order for an Agent to be able to gift. This law exists for the protection of the Principal. However, in a fire ptsetting, where a trusted loved one has been selected by the Principal, it is generally appropriate to include gifting language in the document.

Language that says, in effect, “My Agent can do anything and everything” is not sufficient under the law to allow the Agent to make gifts. In fact, if the Agent makes gifts, the law would require the Agent to return the money to the Principal. The reason for this is that the Agent exceeded his or her authority. An Agent who exceeds this authority can get into serious trouble with the law.

A better solution may be to authorize the Agent to make gifts. There may be a number of times in which gifting by the Agent of an incompetent Principal could be very important.

- One might be planning for after incompetence, where planning is being done through gifting to reduce taxes.**
- Another may be reducing the Principal’s net worth through**

gifting in order to get the Principal qualified to receive government benefits to pay for the Principal's nursing home care costs.

Thus, I would recommend reviewing your existing Power of Attorney. See if it contains express language authorizing the Agent to make gifts. See if any restrictions have been placed on the Agent's ability to make gifts.

hometown, appear in the obituaries in the participating publications.

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