

Durable Power of Attorney for Property

CANHR is a private, nonprofit 501(c)(3) organization dedicated to improving the quality of care and the quality of life for long term care consumers in California.

Planning to Manage Property in the Event of Incapacity

Incapacity means the inability to make sound decisions regarding one's financial affairs and personal care. It can befall anyone who enters a coma or suffers from a mentally debilitating illness, but it largely affects seniors coping with dementia. When not planned for in advance, incapacity can create severe problems for seniors and their loved ones. For example, if a person who has lost capacity never appointed anyone to make legal decisions on his or her behalf, family members may have trouble paying that person's bills or managing resources or property. The best way to deal with incapacity is to plan for it while one is still of sound mind. By creating a durable power of attorney for finances, a senior can appoint a trusted agent to manage his or her finances in the event that he or she becomes incapacitated.

Durable Power of Attorney (DPA)

A Power of Attorney is a legal document that allows you (the principal) to give authority to another person (the agent) to make legal decisions and financial transactions on your behalf. The agent does not have to be an attorney; it can be any trusted adult, or even a nonprofit agency.

A Durable Power of Attorney (DPA) indicates in the document that the agent will retain legal authority even if the principal becomes mentally incompetent. A Springing DPA becomes effective only upon a designated time, such as when a physician certifies that the principal has lost capacity.

Advantages and Disadvantages of a DPA

A DPA is a relatively easy, inexpensive way to give someone the ability to manage your financial affairs. Unlike a joint bank account, a DPA does not give the agent legal access to the principal's assets for the agent's own use, and DPAs terminate upon the principal's death. Thus, your assets will remain with your estate. A DPA can also help a caregiver plan for government benefits such as Medi-Cal by allowing the agent to transfer the principal's property.

The main disadvantage of the DPA is that it can be subject to abuse because the court does not actively supervise the agent. This is why it is extremely important to choose an agent you trust to capably handle your affairs.

Living Trusts and Other Management Devices

Even if you get a living trust, you should still get a DPA and AHCD (Advance Health Care Directive, see *Durable Power of Attorney for Health Care/Advance Directives* fact sheet at www.canhr.org), since a trustee does not have the power to make some financial decisions, or any medical decisions, on your behalf. You can also obtain a "pour-over will," which arranges for any assets that were not transferred into the trust during your life to be "poured over" into the trust upon your death.

How to Execute a DPA

To execute a valid DPA, the principal must be mentally competent. Once an adult has lost mental capacity, he or she can no longer give someone legal authority to be his or her agent. Most states require only the presence of qualified witnesses or a notary to execute a DPA, but it is advisable to have it done by an attorney.

For more information on planning for incapacity, contact **CANHR's Lawyer Referral Service (LRS)**. CANHR can answer questions and refer you to a competent estate planning attorney in your county.

