

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.

Durable Power of Attorney for Property

Who will manage your property if you become incapacitated?

Incapacity means the inability to make rational decisions regarding one's financial affairs and personal care. Incapacity can befall anyone who suffers from a mentally debilitating illness or enters into a coma, but it largely affects seniors coping with dementia. If not planned for in advance, incapacity will create a myriad of problems for the incapacitated individual and their loved ones. For example, if a person who has lost capacity never bothered to appoint someone to make legal decisions on his or her behalf, their family members may have trouble paying that person's bills or managing his or her resources or property. The best way to deal with incapacity is to plan for it in advance while one is still of sound mind. By preparing a durable power of attorney for finances, a prudent senior creates a document that will give a trusted person the ability to manage finances in the event that the senior 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 a lawyer; 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 if the principal becomes mentally incompetent. A Springing DPA becomes effective only upon a time dictated in advance by the principal, 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 or when the principal regains capacity. With a DPA, 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 or other transaction.

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 a competent and honest person you trust to 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](#)), since with a DPA and AHCD, a trustee does not have the power to make certain financial decisions, or any medical decisions on your behalf.

How to Execute a DPA

To execute a valid DPA, the principal must be over eighteen years of age and mentally competent. Once an adult has lost mental capacity, they can no longer change the DPA to give someone else the legal authority to be their agent. Before a DPA can become valid, it must be witnessed. Most states require only the presence of one or two qualified witnesses or, but it is advisable to have it done by an attorney. Each state has its own format for their DPAs, however if the DPA is valid in the state where it was signed, it will be honored in all other states as well.

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.