

WHAT IF?

What if through a disease or accident you were unable to manage your assets, pay your bills or make decisions? Who would do that for you? Most people assume their spouse, parent or adult child has this power, but that is not necessarily true. If no one has been designated as your “attorney in fact,” a court may have to appoint a guardian for you.

An attorney in fact is appointed in a document called a Durable Power of Attorney.

A Durable Power of Attorney (DPOA) is a document which allows a person (the principal) to designate another (attorney in fact) to make decisions for them.

The attorney in fact must be either a person who is 18 years of age or older, a financial institution with trust powers, or a not-for-profit corporation, organized for religious or charitable purposes, and which is qualified to serve.

The DPOA is non-delegable. It is exercisable until the principal dies, revokes the power or a court revokes the power due to an adjudication of incapacity.

The DPOA covers all property owned by the principal unless the DPOA states otherwise.

The attorney in fact has some limitations on his or her powers. They may not make an affidavit as to the personal knowledge of the principal, they may not vote on behalf of the principal, they may not execute, revoke, create, modify or amend any document of disposition, such as a Will or Trust and they may not act as Trustee in the principal’s place.

It is advisable for spouses to have DPOA’s for each other to deal with assets which may not be in both names, such as an IRA or 401(k). It is always needed to sell or mortgage homestead property.

The DPOA is a very important document in your estate plan. Make sure you have one.