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Use caution with power of attorney document

By Eric Lindquist
Leader-Telegram staff

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A seemingly simple legal document called a power of attorney offers proof that looks - and sometimes trusted friends and relatives - can be deceiving.

The durable power of attorney for finances and other property, often referred to as a POA, authorizes one person to act on another's behalf. The individual granting someone the right to act is the principal, and the one authorized to act is the agent.

When used as intended, the document can be a big help, allowing people who are too sick, too busy or too overwhelmed to handle their own finances to select someone they trust to carry out their wishes.

But when used improperly, POAs can splinter families, destroy friendships and lead to the unwanted disappearance of a principal's life savings.

The word "power" is part of the document's name for a reason, cautioned Chippewa Valley attorneys who help clients set up POAs but also warn them about the potential pitfalls.

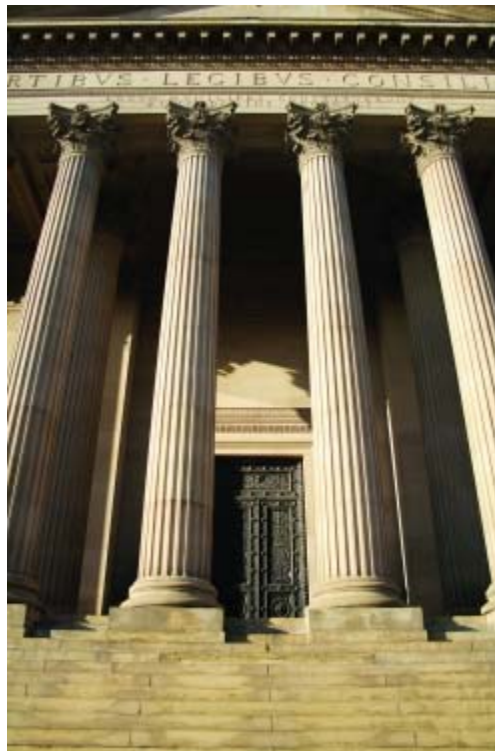
The primary concern is how much principals can trust their potential agents, said Peter Grosskopf, an attorney with the Eau Claire law firm Grosskopf and Black.

"Abuse of the power of attorney for finances is one of the most common forms of financial abuse," Grosskopf said, adding he probably hears complaints at least once a month about possible misuse of a POA. "People often assume they can trust a family member but then find out later that they can't."

In one case, Grosskopf recalled having a client whose agent took possession of about a dozen real estate parcels worth more than \$1 million. It took a lot of time and money to recover most of the assets.

Chippewa County District Attorney Jon Theisen mentioned questionable regional cases in which a housekeeper with a POA gave herself a Harley-Davidson motorcycle as a bonus and an agent withdrew hundreds of thousands of dollars from a principal's retirement account.

Criminal prosecution in such cases is rare because the burden



POA Primer

What is a durable power of attorney for finances and other property?

The POA is a document by which one person, the principal, gives an agent authority to act on his or her behalf. The authority may be general, giving broad power to make decisions, or limited, meaning the agent can do one or more specific things. Most POAs today are durable, meaning the authority continues even if the principal becomes disabled or incapacitated.

Why should I consider a durable POA?

Insurance statistics reveal that one of two Americans will suffer prolonged disability in their lifetime. If you can't manage your affairs, someone else must. A durable POA allows your agent to act even if you become incompetent, avoiding the time and expense of having the court appoint a guardian.

What may I authorize the agent to do for me?

An agent may perform various tasks, including handling bank accounts, paying bills, buying and selling real estate, handling a business, applying for public benefits, filing taxes, changing life insurance or retirement plans, hiring

of proof is difficult and the facts often are fuzzy.

"It can be a case of he said, she said," Grosskopf explained.

Still, the state Department of Justice actively investigates reports of POA abuse and pursues criminal action when applicable, said agency spokesman Kevin St. John.

Seniors account for the vast majority of POA abuse victims, said Jeff Burgfechtel of the Menomonie law firm Burgfechtel and Parent.

A typical scenario might involve an elderly parent who, after finding that medical bills and other financial forms are getting harder to read and understand, fills out a POA designating an adult child as an agent.

"Now Johnnie or Susie has this broad power of attorney, and they start falling behind on their mortgage," Burgfechtel said. "They think, 'I'll just borrow the money from Mom's account and repay it next month, and Mom will never know.' But next thing you know, Mom is out of money."

With so many military personnel deployed since the start of the Iraq war five years ago, reports also have surfaced about soldiers being the targets of POA abuse, sometimes by the spouses they left behind.

Miguel Flores, legal administrator for the state Department of Military Affairs, said the opportunity arises because many members of the military fill out POAs before beginning a deployment.

"We caution soldiers that a general power of attorney is a very powerful document," Flores said. "That's great in that it can take care of things in one fell swoop, but it needs to be given only to someone you are sure you can trust."

Such warnings can be a sensitive subject, Flores acknowledged, because military officials don't want to be seen as telling soldiers about to go abroad that they can't trust their loved ones.

"But once somebody has access to the money, it's unfortunate that sometimes greed takes over," he said.

Earlier this year a Minnesota National Guardsman sued his wife and her boyfriend, claiming they drove him deep into debt while he was deployed in Iraq.

The suit alleged that the soldier's wife, whom he married five days before shipping out, used POA privileges to spend nearly all of his active duty pay while he was overseas and at the same time failed to make necessary payments, leading to foreclosure on their house. She served him with divorce papers upon his return from Iraq.

In another military case that made the news, a different Minnesota National Guardsman serving in Iraq in 2006 suffered the indignity of having his wife of six years use a POA to empty their savings, sell their house and move to North Dakota, all without his knowledge. She ultimately was found guilty of forgery because the

lawyers and making gifts.

What should I consider before including a gifting power?

You need to recognize how dangerous a power to make gifts can be if your agent is dishonest. If you allow your agent to make gifts, you must decide how extensive that power should be, such as limiting it to family members or charitable organizations. If you don't want to include this power, have a statement prohibiting gifting.

What characteristics should I consider in selecting my agent?

Select someone who is honest and loyal to you. Consider whether the person is available and willing to serve. Find out if he or she has the knowledge and experience required to manage your business or investments.

How can I protect myself against abuse by my agent?

The best protection is to pick an individual in whom you have total trust. Other steps include spelling out the agent's fiduciary duty in the document; requiring your agent to sign the document and thereby acknowledge acceptance of the fiduciary duty; requiring the agent be bonded; prohibiting gifts; and requiring the agent to send regular accountings to another person.

What can I do if I believe my agent stole from me?

First, seek the advice of a competent attorney. Second, immediately revoke your POA. To recover stolen assets, consult with a private attorney about civil action or report the theft to the police and see if criminal prosecution can be pursued.

- The other basic kind of power of attorney covers health care. You appoint an agent to make health care decisions for you if you lose the ability to make decisions for yourself.

so-called "springing" POA only was supposed to take effect if the husband became incapacitated.

A Menomonie man in his 40s who asked not to be identified recently reported a similar case in which he claimed he filled out a POA form downloaded from the Internet so his wife could complete a financial transaction while he was out of town on business.

With the document still in effect after he returned, she took out loans totaling nearly \$200,000 and had the statements sent to other addresses, said the man, who added he since has filed for divorce but remains saddled with the hidden debt.

"It's pretty unreal to go from doing fine to all of a sudden finding out I don't have anything," he said. "It's like I'm 18 years old and starting all over again but worse because I'm starting with \$200,000 of debt.

"It's unbelievable what can happen to you with a POA."

To limit the odds of POA pain, the local attorneys offered four major suggestions:

- Give serious thought to the selection of an agent.

People often just pick their neighbor or their oldest child because it seems like a logical thing to do, Grosskopf said, but the choice merits careful consideration because an agent exercises much control over a principal's money.

He suggested looking for agents who are trustworthy, financially savvy and don't appear to have gambling problems or financial difficulties.

- Have a lawyer draw up the agreement or at least review the document before you sign it.

Theisen, the Chippewa County district attorney, stressed that POAs shouldn't be taken lightly and said using a lawyer is one of the best ways people can protect themselves.

- Think carefully about how broad to make a POA.

In general, Burgfechtel advises clients to protect themselves - and mitigate the potential damage - by limiting the scope and time of the agreements.

"People think they don't need a lawyer, but they can run into trouble when they try to do it all on their own and download some broad POA form they find on the Internet," Burgfechtel said. "They want to keep it simple, but to keep it simple it has to be wildly inclusive."

One of the most dangerous clauses can grant the power to make gifts with the principal's money, Grosskopf added.

An unscrupulous agent could authorize gifts to himself or his family members, he noted. In that case, principals have little recourse because they've given an agent that authority.

"If they breach that, it's too bad. You chose poorly," Grosskopf said.

- Consider spelling out ways for agents to be held accountable for their actions, perhaps by naming multiple agents or by requiring them to report any transactions to the principal or someone else.

However, many people dispense with that precaution because it seems unnecessarily burdensome, Grosskopf said.

"But if you don't have any accountability, then agents have almost a free ride to do whatever they want," he

said. "The flip side, of course, is if you make it too difficult, who on earth is going to want to agree to be an agent?"

While Burgfechtel said POAs can be a prudent part of estate planning, he maintained people should be aware of the risks and use them only when necessary.

Theisen used a powerful analogy to drive home the same point.

"POAs are like a gun in a way," he said. "They're a valuable instrument if used correctly. But if not, they certainly have the potential to do a lot of harm."

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