

It's Midnight: Do You Know Where Your Power of Attorney Is?

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Or remember who you named as your Agent? Is it a person under the age of 60 with no underlying health conditions who would be willing to handle financial transactions on your behalf if you are unable to do so? For your medical power of attorney, have you named a person who does not reside in your household, reducing the risk that both you and your named Agent will be sick, under quarantine, or otherwise unavailable to make healthcare decisions on your behalf at the same time?

In light of the COVID-19 outbreak, all individuals (healthy or not) should revisit plans they have made regarding medical and financial decision-making or put plans into place. Such planning often involves execution of a power of attorney that authorizes an individual or individuals (the "Agent") to make decisions on behalf of another person (the "Principal"). While many Principals appoint a spouse, adult child, or parent to act as agent, COVID-19 complicates matters because it raises the possibility of situations where the Agent cannot act. For example, entire households may face quarantine together or an Agent might be quarantined while a Principal is hospitalized.

Importantly, different Agents can be named to manage a Principal's finances and health care. While it is impossible to guess who will be infected with COVID-19 and who will not, it may be prudent to appoint as Agent someone who does not live in your household and/or a younger person who is less susceptible of becoming seriously ill. Of course, if you are quarantined or sick, the odds of your spouse also being quarantined or sick are high. For those who have concerns about naming someone else (such as a child) as their Agent, there are ways to ease those concerns, such as by naming more than one Agent and requiring concurrence, leaving executed originals of the powers of attorney with a third party, and limiting the duration of a power of attorney.

One of the more daunting questions at this juncture is how to execute powers of attorney in light of the CDC's "social distancing" recommendations and "stay at home" orders. Although powers of attorney are typically executed in front of a notary and two witnesses, the form requirements of the power of attorney can be relaxed if you have no immediate plans to sell or encumber immovable property or make gifts. It is not too late to execute a power of attorney. Additionally, existing powers of attorney should be reviewed (and possibly updated) in light of the pandemic and strategically placed with trusted individuals so that they can be easily accessed in the event they are needed.

Trusts and Estates Contacts:

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