

We have all seen the heartbreaking stories about people dying in hospitals from Covid-19 without family present. And, we've heard about the tragic decisions healthcare workers must make when time and resources are spread thin. Compounding these sad situations is that often the person who can speak for the individual suffering from Covid-19 is not present because of hospital procedures designed to prevent contagion.

On the legal front, these situations call for medically related documents such as living wills and medical powers of appointment. If you're worried about the consequences of catching Covid-19, you would typically create an advanced directive, a medical Power of Attorney, and HIPAA releases to those you want to have access to your medical information. These documents are intended to both state your medical care wishes and indicate who can make medical decisions for you if you're not able to.

While this covers medical issues related to contracting the virus, for many, there is more to worry about than just health.

### **What About The Money?**

Sometimes the mundane issue of money is lost in the shuffle. If you are in the hospital or otherwise unavailable, who do you want to handle any immediate financial issues? If you can't speak for yourself about pressing financial matters, who can and who should?

People sometimes associate this issue with writing checks. They think, "who pays the mortgage if I'm in the hospital and not available?" and they assume they're covered because most of their monthly expenses are deducted automatically – and the rest can wait until they recover. However, some financial issues are planning-related, and those can't wait. For example, it is late December and you are intending to make a Roth IRA conversion, but suddenly you find yourself in a hospital. Or, perhaps you want to make a contribution to your favorite charity while the CARES Act provides a \$300 non-itemized charitable deduction. More than an assistant to handle your checking account, you need a trusted advisor and agent who can make important financial decisions for you *and* execute them on your behalf.

A *financial* Power of Attorney (POA) is often the solution. It is separate from a medical POA but just as important. Without a binding financial POA, your impairment will not only cost you physically, but also financially. A creature of state law, the financial POA gives you the power to designate an agent to act on your behalf if you lose the physical or mental capacity to handle your own finances.

While there are a myriad of POA structures, if your concern is the financial risk related to a sudden impairment from an event such as Covid-19, consider creating a springing and durable Power of Appointment. In simple terms, "springing" means the power doesn't kick in until you've lost legal capacity to handle your own finances, and "durable" means that your agent continues to retain the power to act on your behalf until you either recover or die. This is the preferred approach for many because they retain control until something bad happens (causing it to "spring" into action) and then their agent maintains control even if some unscrupulous relative, neighbor, or representative tries to hijack the process (proving the power is "durable").

Setting up a financial POA has its complications. Primary among these is determining who you trust to handle your wealth and finances – i.e., who should be your agent? In the wrong hands, a financial POA is a license to steal. Another issue is who determines if you've lost legal capacity to handle your finances? Does your doctor make the call, or will it involve a competency hearing before a judge? The person setting up the POA has control over these issues through the drafting of the document itself.

A complication that is not within the person's control is whether the POA will be honored when it is proffered to an individual or company. Historically, financial institutions were reluctant to accept a financial POA submitted to them by the principal's agent. They are concerned about liability if the POA turns out to be bogus or the agent acts contrary to the account holder's desires. And, without the institution's agreement, the incapacitated person's plans are foiled. Thinking of the example above, the Roth IRA conversion opportunity is lost if the custodian of the IRA account either refuses to accept the agent's direction to execute the change, drags their feet demanding proof of the validity of the POA, or attempts to require execution of their own POA form. By the time the issue is resolved, it may be the next year – and the conversion opportunity is lost.

Over the years, the various states have worked to address this complication. It varies among jurisdictions, but in general, state laws have been able to make the financial POA process workable with these steps:

- Creating standardized language that can be used in POAs
- Providing protection from liability to parties who accept these POAs
- Establishing penalties for those who refuse to accept the POA without good cause



Woman Helping Senior Neighbor With Paperwork – GETTY

## A Financial POA In Times Of Covid-19

Many people are creating “just in case” estate planning documents to deal with the possibility of contracting Covid-19. A financial POA should be one of those documents. Below are some of the considerations to include in building this document into your planning:

1. Most attorneys include medical and financial POAs in their suite of estate planning documents for individual clients. Accordingly, the best approach is to have your attorney deal with the complexities of drafting your POA. They can spot specialized issues in your estate plan and make sure your financial POA coordinates with the other documents.
2. Fill-in-the-blank financial POAs are available in most states. They are often provided by their state bar associations, public universities, or governmental agencies. These can be a no-cost alternative that offer the likelihood of acceptance by recipients because they are standardized. The risk, of course, is that the form may not address a specific legal issue related to your personal situation.
3. Seek agreement from your proposed POA agent in advance and let them know where the document is located. It should be easily accessible. A safety deposit box is generally not a good idea.
4. While you can only have a will in one state – your domicile – it may sometimes be appropriate to have a financial POA in multiple states. For example, if you have residences in two different states and you are worried about a surprise trip to the hospital, it might make things easier to have a state-specific financial POA on-hand in each residence.
5. If you become incapacitated, your agent should consider submitting your financial POA to the appropriate financial institutions in advance of making a transaction. This may avoid delays associated with any challenges to the POA.
6. POAs can be revoked. If you no longer want an individual to serve as your agent or your POA has otherwise outlived its purpose, you should destroy the document. To avoid confusion and conflict, notify your proposed agent in writing of your decision. You don’t want a battle of dueling documents when you’re hospitalized.
7. Consider creating a Covid-19 package that is available to loved ones or emergency personnel. For example, you could place your advanced directive and medical and financial POAs in a marked envelope, making it easily identifiable and accessible in your home. This package should include emergency contacts, relevant medical data, and, if applicable, information about pets on your premises. The more information you provide, the less you have to worry.

*The stories about individuals suddenly confined to Covid-19 wards are terrible. This possibility should be a wake-up call to get your estate planning documents in order. A financial POA should be one of those key documents. If you lose it, you don’t want to lose it – your wealth, that is.* By Steve Parrish