

Call Your Lawyer

Don't Put Off Estate Planning for Your College-aged Children

By LISA L. HALBERT, Esq.

Summer is here, and your college-aged kids (or grandkids) are on break, or home from school, if only for a short period of time. While these technically 'legal' adults are likely trying to work, catch-up on Zs, and reluctantly make the rounds for various doctor and dentist appointments, it's a good idea to add an appointment with a lawyer to the list.

Everyone over the age of 18 — including college- or post-college-aged individuals — should consider the prudence of executing a healthcare proxy and a durable power of attorney.

Healthcare Proxy

A healthcare proxy (HCP) is a document by which a legally competent person over the age of 18 (usually referred to as the 'principal') appoints another adult (the 'agent') to help make healthcare decisions for the principal, but only if the principal is unable to either make or communicate their own healthcare decisions.

Signing an HCP does not allow an agent unfettered access to the principal's healthcare information. So long as a principal has the requisite capacity, an agent cannot access the principal's medical information unless or until a medical release (and not just the HCP) is signed by the principal.

Durable Power of Attorney

Conceptually, a durable power of attorney (POA, or sometimes referred to as a DPA) is similar to an HCP in that the principal (in this case the college-aged student) nominates another adult (usually referred to as an attorney-in-fact) to step into the shoes of the principal and act on his or her behalf for almost any financial transaction. The proposed attorney-in-fact needs to be trustworthy, in an almost blind-faith sort of way. The attorney-in-fact may be a parent, trusted friend, sibling, or other advisor. Authority granted under a POA is typically quite comprehensive, with college-aged adults frequently concerned about the following:

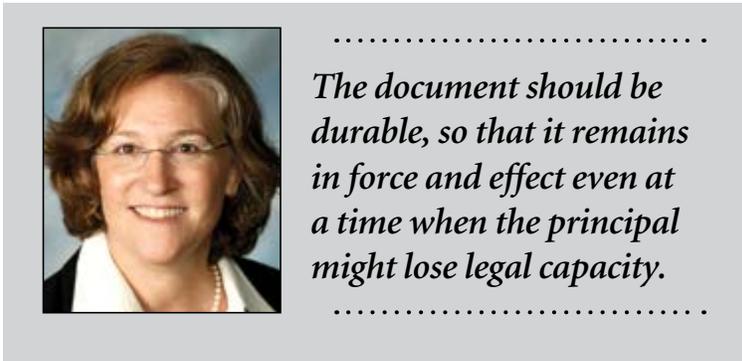
- Banking, including online accounts, check writing, opening and closing accounts, and transferring funds between accounts

(especially where money is coming from parents);

- Entering into or changing contracts, i.e. for rental agreements, airline flights, cell-phone and Internet access, student loans, and credit cards;

- Changing beneficiaries on contracts, including creating and funding of individual retirement accounts; and

- Buying and selling cars, securities, or real estate, although these are less-often needed by college students.



As a general statement, if the principal does not (almost) blindly trust the appointee with access to his or her finances, then do not appoint that person. And if you do have that kind of trust, then it is likely administratively easiest to have the document in full force and effect from the original date of signing, as opposed to a later date. If you decide to make the POA invoked upon injury or illness, it may not be easy to get you to agree to see a doctor, or it may take time to get an appointment, both of which can delay the process during a pivotal time.

The principal may want to consider appointing not just one person, but likely up to three individuals to serve consecutively under both the HCP and POA. Therefore, if the first person becomes unable or unavailable, there is a second person to act, etc. If the principal does not change his or her mind about appointing these same people, then by naming individuals to serve consecutively, the document should remain viable and valid for a longer period of time.

Good Reasons

Why should you encourage your son, daughter, or grandchild to meet with an attorney and sign a healthcare proxy and separate durable power of attorney?

Many 18- to 25-year-olds do not live at home. They are at college, or beginning to branch out and live far away from home. Many want their independence but have not yet really learned to plan for the unexpected, at least in terms of legal documents. Your adult child could have a medical emergency, perhaps due to being hit by a drunk driver, a fall down stairs, an emotional issue that severely impacts thought processes, or a financial situation that needs prompt or urgent action (such as limited access to bank funds while traveling in a foreign country).

With a healthcare proxy and durable POA in place, these and many more issues can be addressed quickly and in a cost-effective manner by someone whom your child has chosen.

The ramifications of not having the documents in place could mean that court action may be necessary in order to have someone

The document should be durable, so that it remains in force and effect even at a time when the principal might lose legal capacity, whether due to periods of serious mental or physical illness or injury resulting from a fall, car accident, alcohol, or drugs, which leaves the principal alive, but unable to think or reason clearly.

If the POA does not reference that it is durable, then if the principal becomes incapacitated or incompetent, and unable to think or express thoughts clearly, the authority of the attorney-in-fact terminates. And whether the document is durable or not, upon the death of the principal, all authority terminates, and the attorney-in-fact is no longer authorized to act.

While an HCP can be used or invoked only where the principal is not able to make certain decisions (and therefore cannot be used when the principal is fully able to think and reason), a POA can be crafted to allow the attorney-in-fact access to financial affairs at the same time as the principal, or to take effect at a later time, whether based on the principal's losing capacity or upon certain events (such as a trip out of the country).

appointed to make medical decisions, or to help access accounts and/or address various financial issues. The cost associated with a court action, in terms of time, emotions, and money, can be problematic.

Further, if court action is necessitated because the person did not have a POA or HCP, then it is someone around the principal who initiates the request for court assistance or intervention. In effect, the principal loses control of choosing who makes certain decisions (whether medical or financial) and whether they will be made consistent with the principal's approach.

This summer, consider a unique way to

express your love and caring to your independent-minded 18- to 25-year-old. Gently suggest that he or she take an hour or so to talk to an attorney about these documents. You can even make a present to your child or grandchild that covers the cost of having the work done. In the long run, having an HCP and POA is a great investment in your child or grandchild by encouraging their independence and sense of responsibility to self. It shows that someone cares enough to help them plan for the unexpected. The documents are valid for years into the future, with originals being kept safely at the law firm or in a safe. If properly authorized, copies can be

provided to medical professionals, financial institutions, and the named appointees, or provided via computer, as well as kept with passports or travel itineraries. ■

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