

CHEAP TRICKS

Power of attorney— your most important legal document

by Martin M. Shenkman, CPA, MBA, PFS, JD

What is a power of attorney, anyway?

A power of attorney is a legal document in which you (called **grantor**) authorize another person (called **agent** or **attorney in fact**) to take legal, tax or other actions for you.

- **Example:** You're going for surgery and the recovery could be 6–8 weeks. You sign a legal document naming Uncle Joe as your **agent**. The document, your **power of attorney**, authorizes him to sign checks, file tax returns, pay bills, and other essentials that you'll need done while you recuperate.

Why is it so important to sign a power of attorney?

If you don't and you become unable to make decisions, or incapable of taking actions, the only way someone will be able to act for you legally will be to have a formal court proceeding in which the court appoints someone to act on your behalf (a **guardian** or **committee**). This is an expensive, time-consuming and avoidable. Take the step of signing a power while you are in charge and you can protect yourself.

First: the jargon

There are a couple of additional terms you need to understand to help you plan. Here they are:

1. **Durable Power:** A power of attorney can only be effective if you become "disabled" (meaning unable to manage responsibilities) if it is a "durable" power. Generally, the document must state, "this power of attorney will not be affected by my subsequent disability," to be durable. State

law varies, and will provide the specific language to include.

But you may not want every power to be durable.

- **Example:** You're going for surgery and your house is under contract to be sold. You may want to grant a limited power for Uncle Joe to sell the house over the next two months. After that you may not need or want Uncle Joe to have authority over your assets.

2. **Springing Power:** A power can be effective immediately. That means your agent can sign checks or take other actions as soon as you've signed. Or a power can be written so it only becomes effective at a later date when you have become too disabled to act for yourself. That's the "spring." It springs into effect when you need it.

3. **Limited Power:** This is a document that grants your agent specific rights only. For example, Uncle Joe can write checks to pay your bills, but he can't change the charitable gifts you have pledged.

4. **General Power:** This is a document that gives your agent the right to do anything you could do yourself if you could act.

5. **Flower Power:** No, that's passé.

Now that you're a power of attorney jargon expert there are some special steps you need to consider if you're living with MS.

Choosing agents

Before you sign a power of attorney you need to choose an initial agent and several replacements (called **successor** agents). If MS should result in the need for an agent for a long period, you should name at least some successor agents young enough to serve over time. You must name people you can fully trust with the amount of authority you will be giving them. And the people you name also have to have the ability to serve. They don't have to be tax or financial experts; they can always hire advisers. But, if your trusted Uncle Joe has family or health issues, will he really have the time to help you? You don't want to give someone the authority to sign

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your checks if you aren't 100% sure they are appropriate for the job.

While it's easier for an agent to work alone, naming two agents to serve jointly may solve the problem if you have doubts about a prospective agent's time, ability, or judgment.

What type of power should you sign?

To protect yourself, you probably need to sign a couple of types of powers. Consider signing a power that is effective immediately (not a springing power). That would be practical for an MS exacerbation. They are always unpredictable. However, if your exacerbations are likely to remit so that you can again resume control over your financial and legal affairs, consider making that immediate power a limited power.

- **Example:** If you have an exacerbation, your agent might need to pay bills and file a tax return within days, but the agent doesn't need the authority to sell your house.

You should also consider signing a broad general power that authorizes your agents to handle anything. If you should become permanently unable to handle financial and legal affairs, the agents you have chosen will do so for you. That broad power might be springing, since you may not want it to be effective unless a time comes when you are not able to handle these matters on your own.

Some additional modification for those with MS

Most powers ignore the issue of compensation—but a friend or family member could wind up managing your legal and financial matters for many years. If possible, give some thought to providing some type of pay in the power of attorney document. And be practical. Signing a power of attorney but maintaining accounts at every bank that gives out a free toaster for a new account makes for a lot of extra work. Consolidate and simplify your accounts, and organize your records. Write a letter of instruction indicating key contact people, account numbers, and other practical information. The best legal document won't be particularly efficient if your agent can't figure out what bills to pay or from which accounts to pay them.

Conclusion

Powers of attorney are among the most important documents anyone can sign. However, signing a form without understanding what you really need to protect yourself can be detrimental, not helpful. Your documents should reflect potential courses your MS might take so you can live your life to the fullest, but have the safety net that powers can provide.

Martin M. Shenkman, CPA, MBA, PFS, JD, an attorney in practice in Teaneck, New Jersey, is author of 35 books including **Funding the Cure**, published by Demos Medical Publishers in 2007. For more information on financial, estate, and charitable planning for MS, and a complimentary planning newsletter, the **Practical Planner**, see Martin's Web site, laweasy.com.