

CANHR is a private, nonprofit 501(c)(3) organization dedicated to improving the quality of care and the quality of life for long term care consumers in California.

Durable Power of Attorney for Financial Management

Who will manage your property if you become incapacitated?

Incapacity means the inability to make rational decisions regarding one's financial affairs and personal care. Incapacity can befall anyone who suffers from a mentally debilitating illness or enters into a coma, but it largely affects seniors coping with dementia. If not planned for in advance, incapacity will create a myriad of problems for the incapacitated individual and their loved ones. For example, if a person who has lost capacity never bothered to appoint someone to make legal decisions on his or her behalf, their family members may have trouble paying that person's bills or managing his or her resources or property. The best way to deal with incapacity is to plan for it in advance while one is still of sound mind. By preparing a durable power of attorney for finances, a prudent senior creates a document that will give a trusted person the ability to manage finances in the event that the senior becomes incapacitated.

Durable Power of Attorney (DPA)

A Power of Attorney is a legal document that allows you (the principal) to give authority to another person (the agent) to make legal decisions and financial transactions on your behalf. The agent does not have to be a lawyer; it can be any trusted adult, a professional fiduciary, or even a nonprofit agency.

A [Durable Power of Attorney \(DPA\)](#) indicates in the document that the agent will retain legal authority if the principal becomes mentally incompetent. A DPA can either be effective immediately or upon a principal's dictated time (this is called a Springing DPA). In a Springing DPA, the principal can designate a future time when he/she becomes incapacitated upon which physician must certify that the principal has lost capacity. The principal can also indicate when the DPA expires. A DPA can be updated as long as you have capacity by executing a new DPA. If you do not have a DPA and you lose capacity, your loved one or a family member must file a Petition for Conservatorship in court in order for them to help manage your financial affairs and personal care. This court process can be expensive and time-consuming.

Advantages and Disadvantages of a DPA

A DPA is a relatively easy, inexpensive way to give someone the ability to manage your financial affairs. Unlike a joint bank account, a DPA does not give the agent legal access to the principal's assets for the agent's own use; rather, the agent must use the principal's assets for the principal's benefit. An agent is considered a fiduciary and must act in the best interest of the principal. DPAs terminate upon the principal's death or when the principal regains capacity. The DPA does not have the legal authority to handle your assets after you die. Absent a living trust, your assets will remain with your estate and may be subject to probate. Other benefits of a DPA include appointing a caregiver plan for government benefits such as Medi-Cal by allowing the agent to transfer the principal's property or other transaction.

The main disadvantage of the DPA is that it can be subject to abuse because the court does not actively supervise the agent. This is why it is extremely important to choose a competent and honest person you trust to handle your affairs.

Living Trusts and Other Management Devices

Even if you get a living trust, you should still get a DPA and AHCD ([Advance Health Care Directive](#)), since with a DPA and AHCD, a trustee does not have the power to make certain financial decisions, or any medical decisions on your behalf.

How to Execute a DPA

To execute a valid DPA, the principal must be over eighteen years of age and mentally competent. Once an adult has lost mental capacity, they can no longer change the DPA to give someone else the legal authority to be their agent. A DPA must be signed by the principal and either can be signed by two qualified witnesses or notarized. It is advisable to hire an attorney to prepare the DPA. Each state has its own format for their DPAs, however if the DPA is valid in the state where it was signed, it will be honored in all other states as well.

For more information on planning for incapacity, contact CANHR's [Lawyer Referral Service \(LRS\)](#). CANHR can answer questions and refer you to a competent estate planning attorney in your county.