



Ask the Experts: Powers of attorney come in two types

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Questions about common-law marriages and "power of attorney" documents are this week's topics for "Ask the Experts." Providing advice is Roseville attorney Lynn Dean, a local financial expert for sacbee.com.

Q: Can you explain what "power of attorney" means? For example, if one has power of attorney for a parent, can you sell a parent's house if they are deemed incompetent from Alzheimer's or dementia? Does power of attorney allow someone to make decisions and sign papers while the parent is alive, as well as after death?

Lynn Dean: There are two different kinds of powers of attorney. One is for financial matters and the other is for health care decisions.

attorney. It may allow the agent (also referred to as attorney-in-fact) to sign documents, withdraw funds from a bank account, sell real estate, create a trust, or gift assets belonging to the parent. The specific powers of the agent are spelled out in the document.

If the financial power of attorney is designated as a "springing" document, it cannot be used unless the parent is mentally incapacitated. For example, it might state that the agent must have letters from two doctors stating mom or dad is no longer able to manage their own personal and financial affairs.

If the power of attorney is not set up as a "springing" document, it is typically effective immediately and can be used even if the individual or mom or dad is still able to make their own decisions.

Generally, a durable power of attorney terminates upon death of the principal or parent.

The other power of attorney document is called an advance health care directive. It appoints a person (or "agent") to make health care decisions on behalf of an individual who becomes incapacitated. This agent is also allowed to make funeral arrangements and handle disposition of the person's remains after death.

(Another good use of an advance health care directive is for a child who turns 18, the age when parents can no longer legally make medical decisions on the child's behalf. Many young adults do an advance health care directive that lets their parents be involved in medical

decisions, in the event of an accident or serious illness.)

Those who act on behalf of an individual under a financial or health care power of attorney are considered to be a fiduciary and must act in the person's best interests. They are prohibited from using the power of attorney to benefit themselves, unless the document specifically allows them to do so.

People tend to procrastinate about designating someone for financial or health care powers of attorney. Or they are so fearful about giving up control that they don't name anyone. But if you suffer a stroke or become ill and go into a facility, there may be no one who has power to pay your medical bills or handle your care. It's important to create these powers of attorney documents while you're competent. Keep in mind: If you change your mind about who you've designated, you can always redo the documents.

Q: Although we lived together as a married couple for many years, my "husband" and I never married. We paid our taxes separately, but our house is listed in both our names as joint tenants. Sadly, he died last month. As a common-law wife, I am not entitled to his pension or Social Security, but I was a beneficiary on his life insurance policy. Regarding the deed to our house: Do I need to submit any paperwork to be sure it stays in my name?

Lynn Dean: I am so sorry for your loss. In order to transfer the house into your name, you need to prepare an "affidavit of death of joint tenant," which states that the person named in the deed has

passed away. The affidavit needs to be recorded in the county where the property is located, along with a certified death certificate (not a copy).

You must also fill out a "preliminary change of ownership" form, which accompanies documents that are being recorded. The form tells the county assessor that there has been no sale of the property but there's been a change between two joint tenants. This prevents the assessor's office from reassessing your property. It may be wise to have a professional help you prepare the forms to ensure there are no title problems later.