

The Mildly Snarky
but
Honest
Guide to the Financial
Power of Attorney
for
Chronically Ill Young
Adults and Adults-To-Be

by

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Why, you wonder, should you execute a Financial Power of Attorney?

Afterall. you are young and don't really have much money and maybe you've never used the word finance in a written sentence because autocorrect constantly transforms "finance" into "fiancé" and that fact has never mattered because you don't really do financial stuff.

Guess what? If you have ever applied for a school loan or a car loan or paid a dental bill on a payment plan or opened a savings or checking account or applied for a credit card, you are already "doing financial stuff."

And this may come as a surprise to you, but even if you are not “doing financial stuff” right now you still have the POWER to do financial stuff. What is more, lots of people who lack money do financial stuff, because not having money is as good a reason for doing financial stuff as having money is.

Think about whether you should execute¹ a Financial Power of Attorney!²

¹ Execute is a word with many meanings One such meaning is to put to death. Executing a document means to perform the document in a way that makes it legally binding. Just writing the document is not enough to make it legal. You must perform or execute the document which in this case means signing and dating it in front of two witnesses who are 18 or older and not your Agent and in front of a notary who will also sign and date it.

² A person 18 years or older may enter into a contract in Pennsylvania, but there is still debate about whether a Financial Power of Attorney is a contract.

PA Consolidated Statutes Title 23 Domestic Relations: Children and Minors § 5101(a).

What is a Financial Power of Attorney?

If you have been avoiding creating one because you thought the Powers in a Financial Power of Attorney might involve a superhero cape and tights, it will come as a relief to learn that a Financial Power of Attorney is a document in either paper or digital form in which you give another person, your Agent, the ability to do all the things that you could legally do. You give your chosen Agent the Powers you might have just now realized you possessed. (If you were hoping for the tights and a superhero cape, there is nothing to stop you from donning the outfit when you execute this document.)

PA Consolidated Statutes Title 20 Decedents, Estates and Fiduciaries: Powers of Attorney § 5601.4 (c) and § 5607.

It is with regret that I inform you that your Powers do not include invisibility or reading minds. Instead, you have the Power to do many financial and legal acts. Any of these acts that you can do, the person you name as Agent can do in your name, on your behalf.

PA Consolidated Statutes Title 20 Decedents, Estates and Fiduciaries: Powers of Attorney § 5602(a) and § 5603.

You may be thinking that you just learned you have these Powers and now you're going to share them with another person? No way! As someone who has been or is chronically ill, you may have had less power in your life than some other people your age.

Maybe you cannot run at all, let alone run a marathon. Maybe you cannot eat food and you watch full of envy, instead of disgust, as the kids in the hospital cafeteria chew with open mouths. Maybe you can no longer pee and you listen with nostalgia in public restrooms to others excreting toxins and extra water effortlessly. Maybe you stopped growing hair on your head, and you braid the other kids' hair at sleepovers, and everyone tells you that your head is such a beautiful shape. Who cares about invisibility or mind reading or financial Powers when the Super-Power you really want is something seemingly ordinary, like running, or digesting, or peeing, or growing hair on your head?

Here is why you should care and why you should consider giving someone else the Power to do financial and legal things when you cannot.

- If you are in the hospital and your rent is due, your Agent could pay your rent from your checking account for you and prevent you from being evicted.
- If your school loans need consolidated, and you are undergoing treatment and when you are not throwing up you are sleeping, then your Agent could deal with the loan company for you.

- If you are hit by a truck when the walk light is not long enough to completely cross the street, and you will not be driving your own car for months and months, your Agent could sell your car to pay your medical expenses.
- If your health takes a turn for the worse (it happens) and you cannot work, your Agent can apply for government benefits on your behalf.

“On no,” you say, “I have so little Power I am not sharing any of it with another person. I will do everything myself.”

Firstly, doing everything yourself is both overrated and exaggerated. Healthy people get help all the time, maybe not the same help you need, maybe not as much help as you may need at times, but they are still getting it. Healthy people may pretend they are independent, self-made, parentless humans who hatched from eggs, but that's not true. Healthy people need other people as much as you do.

Secondly, most people will be ill at some time in their life, often when they are much older than you. Healthy or ill, young or old, a Financial Power of Attorney will help keep your financial life going if you are not well enough to take care of things.

Having a Financial Power of Attorney has the potential to prevent you from owing late fees and penalties, ruining your credit score, raising your interest rates, or being evicted. Sharing your Powers with your Agent may enable you to retain control over your life in the long run.

Maybe the Financial and Legal Powers you have are not as great as the Powers a healthy body may have, but they still are kind of amazing. A few are listed below:

"To create a trust for my benefit."

"To make additions to an existing trust for my benefit."

"To claim an elective share of the estate of my deceased spouse."

"To renounce fiduciary positions."

"To withdraw and receive the income or corpus of a trust."

"To engage in real property transactions."

(Your Agent can buy and sell land or houses in your name.)

"To engage in tangible personal property transactions."

(Your Agent can buy and sell objects for you such as cars, phones, jewelry, washing machines, troll dolls, and so on . . .)

"To engage in stock, bond and other securities transactions."

"To engage in commodity and option transactions."

"To engage in banking and financial transactions."

(Your Agent could pay your rent or utilities out of your checking account on your behalf.)

"To borrow money."

(Your Agent could open a credit card or take out a loan that you would have to repay. I bet you have questions about these powers. More later.)

"To enter safe deposit boxes."

"To engage in insurance and annuity transactions."

"To engage in retirement plan transactions."

"To handle interests in estates and trusts."

"To pursue claims and litigation."

"To receive government benefits."

(Your Agent could receive or even apply for government benefits for you if you were in a car crash and could not apply yourself.)

"To pursue tax matters."

(Your Agent could file your taxes or communicate with the IRS on your behalf if you didn't file your taxes.)

"To operate a business or entity."

"To provide for personal and family maintenance."

PA Consolidated Statutes Title 20 Decedents, Estates and Fiduciaries: Powers of Attorney § 5602(a) and § 5603.

Hmm, you are probably wondering when this Financial Power of Attorney starts working and when

your Agent can begin doing things in your name, on your behalf.

Okay, you've thought about and agreed to accept the needing help part of sharing your Powers with your Agent, but now you are wondering, what if my Agent makes bad decisions in my name and messes up my life instead of helping? Good point!

A Power of Attorney could go into effect once you have executed it, and your Agent has signed it. Can your Agent use your Financial Power of Attorney while you are well and active and competent? Yes, they could.³

³ A Financial Power of Attorney that works when you are both competent and incompetent is called **Durable**. Unless your financial power of attorney states that it is **Non-durable**, it is automatically durable. A **Non-durable** Financial Power of Attorney only works when you are competent, so it's not very useful for most people.

There is such a thing as a Springing Power of Attorney in which you may say, for example, that the Agent may only act when you are incompetent. This sounds like a great idea, and it can be sometimes, depending on the specific situation but like many great ideas, it is not always so great in the world outside the mind. (Remember when 3-year-old you (or was it your cousin?) decorated the cupcakes with toothpaste? Great idea in the mind, not so good in the world or the mouth.) It may be difficult to find a doctor willing to declare you incompetent, and in the meantime, while you are waiting to find a doctor, time is passing and your bills are not being paid and late fees and penalties are growing.

PA Consolidated Statutes Title 20 Decedents, Estates and Fiduciaries: Powers of Attorney § 5601.1 and § 5604.

So, you are scared by the thought of giving your Powers to your Agent? That is a normal fear! Your Agent could exercise the Powers in Bad Faith.⁴ Your Agent could buy herself a diamond ring from your checking account, take out a mortgage in your name to buy himself a dream home, or sell your car to go on vacation in Costa Rica.

You of course can sue your Agent who has gone rogue (that is one of your Powers), but often when the money is gone, it's gone.

Don't panic! You can probably avoid this problem by choosing the

⁴ To act in Bad Faith means the Agent acts dishonestly and does things that are not good for you.

right person to hold your Financial Power of Attorney.

- Someone you know and trust. (Not that nice person who just friended you online or the love of your life you met last Thursday on a dating app.)
- Someone who has a history of managing their own finances responsibly. (Not that friend who is constantly asking to borrow bus fare.)
- Someone who is organized and capable of handling the paperwork involved in being an Agent. (Not sure? Ask how they organize their email, pay their bills, if they can locate the warranties on their

appliances, if they know when their car needs inspected.)

- Someone who does **not** have a problem with substance abuse or gambling. (Seems obvious but must be said.)
- Someone who does **not** have a spouse or partner who is controlling or has a substance abuse or gambling problem and could talk your Agent into doing bad things with your Financial Power of Attorney. (Don't trust your mom's new husband? Maybe she shouldn't be your Agent.)

What happens if you do not have someone trustworthy?

It's okay if you don't have someone trustworthy in your life right now because you will someday. When that someday happens, you can execute a Financial Power of Attorney then. In the meantime, if other people think you are unable to deal with your financial and legal matters, they can ask the court for a hearing. Evidence is presented and a judge decides if you need a guardian. There are two kinds of guardians: the Guardian of the Person and the Guardian of the Estate. The Guardian of the Estate takes care of your property and finances. The Financial Power of Attorney is one tool that may help to avoid guardianship. In addition to the Financial Power of Attorney, there may be some other alternatives to guardianship, like trusts, representative

payees, or Pennsylvania Achieving a Better Life Experience (ABLE) accounts.

PA Consolidated Statutes Title 20 Decedents, Estates and Fiduciaries: Incapacitated Persons §§ 5501 to 5555.

Even more reason not to panic is that your Agent is legally required to act in ways that are best for you.

Your Agent is not allowed to spend your money on themselves.⁵ No diamond rings or

⁵ To be clear, your Agent will get paid from your money a reasonable amount for the work they do for you based on the actual responsibilities assumed and performed as well as for any expenses they paid acting as your Agent (for example photocopying or postage). If you do not want your Agent to get paid, you can state in the document that you do not want your Agent to be paid for the work of being your Agent.
PA Consolidated Statutes Title 20 Decedents, Estates and Fiduciaries: Powers of Attorney § 5609.

vacations of a lifetime for your Agent with your money.

Your Agent must act the way you would want them to act or the way they would guess you want them to act.

The Agent must act in Good Faith, which the law defines as “Honesty in fact.”

PA Consolidated Statutes Title 20 Decedents, Estates and Fiduciaries: Powers of Attorney § 5601(f).

You decide which Powers to share with your Agent and which Powers your Agent cannot have. Your Agent can only use the Powers listed in the document.

PA Consolidated Statutes Title 20 Decedents, Estates and Fiduciaries: Powers of Attorney § 5601.3(a) and § 5601.3(b).

What if you think your Agent has gone rogue?

If you think your Agent has gone rogue or a bank has done something wrong, you can always contact a lawyer to see what your legal rights might be. Abuse of an adult living with a disability should be reported to the Pennsylvania Department of Human Services Adult Protective Services hotline. **PA Consolidated Statutes Title 20 Decedents, Estates and Fiduciaries: Powers of Attorney § 5601.3 and § 5608.**

There are acts your Agent must do and not do to help ensure they are helping you.

Among the many duties an Agent has to fulfill are keeping accurate records of all

transactions and not co-mingling their money with your money.

PA Consolidated Statutes Title 20 Decedents, Estates and Fiduciaries: Powers of Attorney § 5601.3(a) and § 5601.1(b).

When does your Financial Power of Attorney end? Does it expire like a bottle of orange juice?

- It ends when you die (unless you revoke it). Your Agent may have gotten used to acting on your behalf when you were alive, but ill, and may find it confusing that they cannot pay the rent on your apartment from your checking account in order to have

time to clean out your apartment. But they can't.

- If you get divorced and your ex-spouse had been named your Agent.
- At a time that the Financial Power of Attorney document states it ends. When, you wonder, might that be? Imagine you planned a vacation or surgery, and it turns out that the closing date of a house you are buying is scheduled to occur while you are visiting the NFL Hall of Fame, or gawking at the Mona Lisa in the Louvre, or having that tumor shrunk, or a chunk of your intestines removed, you could execute a Financial Power of Attorney that begins and ends on

the date of the house closing. Your Agent could close the house on your behalf, in your name, with your money and credit.

PA Consolidated Statutes Title 20 Decedents, Estates and Fiduciaries: Powers of Attorney § 5605.

How do you create the document and execute a Power of Attorney?

You should consult a lawyer who will talk to you about what Powers you want to give your Agent before drafting the document.

It's up to you, but the more Powers you give your Agent, the more likely your Agent can do what needs to be done.

When is your Financial Power of Attorney used?

When you give your Agent the document or a copy, the Agent can then begin to act as if they were you in handling your financial matter, based on the powers that you gave them.

If a bank or business or company refuses to accept a valid Financial Power of Attorney, they could get in trouble. (By trouble, they could be sued in civil court)

PA Consolidated Statutes Title 20 Decedents, Estates and Fiduciaries: Powers of Attorney § 5602(d) and § 5608.1.

You, as an adult in the Commonwealth of Pennsylvania, have Powers you did not have as kid. Now these Powers may not turn you invisible or make you really strong, these Powers may not be as exciting as the

ordinary Powers a healthy human body may have, but they are still pretty amazing.

You may not have had a lot of Power in your own life. Maybe parents and doctors and nurses are still telling you what to eat, how much to eat, and when to eat it. Maybe your own body is stopping you from playing baseball, salsa dancing, or traveling by yourself. Maybe realizing that you have these Financial Powers makes you reluctant to share and entrust them to another.

Completely understandable!

And yet, naming an Agent to act when you are too sick to do financial and legal things yourself gives you more Power in the long run. If your Agent has the Power to keep your financial life going while you are not able to cope, then you will have a nicer life

when you return to coping: a better credit score, fewer extra fees, no increased interest rates for missed payments, among other benefits. Executing a Financial Power of Attorney is one of your Powers.

A Financial Power of Attorney is not for everyone, but it is helpful for many people. You need to consider whether executing a Financial Power of Attorney is best for you. Wearing tights and a cape? That is your decision, too.

End



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