

# ELDER LAW TODAY

Adrian & Pankratz, P.A.

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## *Durable Powers of Attorney*

**W**hat is a durable general power of attorney? A durable general power of attorney is a legal document where one person (the principal) authorizes another (the agent) to act on the principal's behalf regarding financial decisions. It is an estate planning document which allows a person to plan for care and control of property in the event he or she becomes incapacitated.

**Powers of attorney are the single most important documents to put in place so that a family member or trusted friend will have the legal authority to carry out your wishes if you can no longer speak or act for yourself. Without a power of attorney, if something happens to you that results in your inability to make decisions, your family may later face court proceedings and court supervised guardianship and/or conservatorship.**

**Do I need a lawyer to draft my power of attorney?** No. However, please see the case below as an example of what can happen when you do not have the proper wording in your document. Without proper, specific wording, your agent may not be able to deal with some of the issues that are important to you.

We have had clients come to our office with "form document" powers of attorney they purchased at an office supply store or downloaded off the Internet. While these documents legally authorize persons to act on another's behalf, there are certain things a traditional or standard power of attorney may not address. The Kansas legislature enacted the new Kansas Power of Attorney Act in 2003 (and amended several times since then) which sets out a whole list of actions which your agent cannot handle unless there is specific wording in the documents which expressly authorizes them to do so. Such matters include the power to make or revoke gifts; to consent to the sale, gift, transfer or mortgage of the principal's homestead; to pay reasonable funeral and burial expenses; and to designate successor agents. In addition, many powers of attorney do not include specific language authorizing medical providers to release any health information to the agent-important information the agent needs to make health decisions on your behalf if you are unable to do so!

Many people feel their power of attorney allows their agent to do anything and everything. Had clients come into our office (or that of another elder law attorney familiar with Medicaid and estate planning) while they are still competent to sign a power of attorney, they will have had a power of attorney in place that will allow their agent to act with the specific powers that they intend their agents to have.

**Bottom line:** Regardless of your age, if you want to include language in your power of attorney which would empower your agent to deal with your business affairs, you should consult with an experienced elder law attorney for assistance in drafting your durable general power of attorney.

### *Services Available*

Adrian & Pankratz, P.A. offers the following Elder Law services:

Division of Assets	Long Term Care Planning
Guardianship	Powers of Attorney
Estate Planning	Wills
Living Trusts	Special Needs Trusts



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