

## Farm Management

# The ins and outs of powers of attorney

**M**ANY of you have at some point been appointed by an elderly parent to serve as a power of attorney. What exactly what does that entail? How do you know when it is time for you to step in?

A financial durable power of attorney is a document that allows a person, the principal, to appoint one or more persons, the agent(s), to act on his or her behalf with regard to property and financial affairs, and the power continues to be valid after the principal's incapacity.

The power can be limited to a certain activity, such as selling property, or it can apply broadly to all transactions such as handling banking transactions, transferring money between accounts and entering into contracts. The principal has the ability to designate over which activities the agent may act and how much authority the agent will have.

Powers of attorney can be effective immediately or they can become effective upon a future event, such as upon au-



**Farm & Family**  
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thorization by the principal or when the principal is determined to be unable to manage his or her own affairs according to his or her revocable living trust. Typically, incapacity is determined by the spouse plus attending physician.

For those who do not have a trust, a physician may make the determination. Individuals who do not have a validly executed power of attorney may need a court to appoint an agent to act on their behalf. The power of attorney can give authority to act for a limited period of time, such as for the duration of a vacation or a winter down south, or permanently.

Typically, the agent will need to present the power of attorney to prove their au-

thority to act prior to transacting business, such as opening or closing bank accounts.

## Approaching the subject

Having the discussion with an aging parent about taking over his or her finances can be a difficult one. However, not having the discussion will only make things more difficult in the future. There may never be a "right" time to have the conversation, so talk early and approach the subject with your parents well before they have any diminished capacity. One means may be to bring up your own estate plan and the documents you have prepared. This can serve as a subtle reminder to your parents to make sure they have their own documents in place. A more transparent way to approach the issue might be to present them with a statutory short form to complete or schedule an appointment to meet with an attorney.

It is important to pay attention to warning signs that may suggest you need

to step in to act. Talk to your aging parents often so you notice if their behavior has changed. For example, maybe you notice your mother is forgetting to pay her bills or abruptly starts giving large sums of money to suspicious charities. Maybe you notice your father has been incurring numerous overdraft charges because he has not remembered to balance his checkbook.

Begin by asking if your parents would like your help. Oftentimes in these situations, being ashamed is the main reason for not asking for assistance. Consider getting the family together for a meeting and discuss your concerns in an open environment. It is important to remind your parents that it is not about taking away their power to act, but rather about letting you help them manage their affairs. Lastly, discuss your concerns with your parent's physician, who will be better able to discern the extent of impairment and make a recommendation.

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