What Is a Power of Attorney?

As a Texas estate planning attorney, one of the most common questions I get is: "What exactly is a Power of Attorney, and do I need one?" A power of attorney (often called a "POA") is one of the most practical and important tools in your estate planning toolbox, and the short answer is "Yes," you do need one. Let's break it down in simple terms.

The Basics of a Power of Attorney

A Power of Attorney is a legal document where you give someone you trust the ability to act for you. Think of it like handing them your keys — they can drive on your behalf when you can't.

There are two main types people use in estate planning:

- Financial Power of Attorney – lets someone manage your money and property. They can pay your bills, handle your bank accounts, or even sell property if needed. These documents work for most items, but do not include health decisions.

- Medical Power of Attorney – lets someone make health care decisions for you if you can't speak for yourself.

When Does a Power of Attorney Start?

Some Powers of Attorney are “springing” — meaning they only kick in if you become incapacitated (a doctor usually has to confirm that).

Others are “immediate” — they start the moment you sign, even if you’re healthy and capable.

How is a POA Different from a Will?

A will only works after you die. A Power of Attorney only works while you’re alive. Once you pass away, your executor takes over under your will, and your POA is no longer valid.

Why Would I Want a Power of Attorney?

Life happens. A car accident, sudden illness, or simply being out of the country can make it impossible to handle your own affairs. With a POA, your trusted person can step in and keep things running. Living without a POA is dangerous.

Imagine you’re in the hospital recovering from surgery. Your mortgage is due and your utilities need to be paid. If you have a financial POA, your spouse, child, or friend can pay your bills and sign checks for you without a hitch. Or, Let’s say you’re traveling overseas and can’t make it back in time for a real estate closing. Your agent under a POA can sign the papers so you don’t lose the deal.

Often parents are shocked when they learn that they can’t get information about their college-aged children after an event, like a car accident. A medical and financial POA solves this problem instantly.

The Dangers of Not Having a Power of Attorney

Some people think, “I don’t need a POA. My spouse/kids can just handle things if something happens.” Unfortunately, that’s not how the law works. If you don’t have a POA and you become incapacitated, your loved ones may be forced to go through guardianship court to be appointed as your legal decision-maker. Guardianship is:

- Expensive: Court costs, attorney's fees, and ongoing reporting requirements.
- Time-Consuming: It can take weeks or months before your family is legally able to act; and
- Stressful: Your family will already be dealing with your illness or accident, and now they'll also have to fight through court red tape.

By signing a POA now, you can save your family from this unnecessary burden..

Who Should You Choose?

This is the most important part. You're giving someone serious authority, so pick a person who:

- You trust completely;
- Is responsible with money;
- Will follow your wishes (not their own); and
- Can handle pressure in tough situations.

Usually, I recommend a spouse, adult child, or close relative. Also, it's worth noting that you can change your mind and revoke or change the power at any time, as long as you have the mental capacity to do so.

Hazards to Watch Out For

A Power of Attorney is powerful. If you choose the wrong person, they could misuse your money or make decisions you don't agree with. Sadly, financial abuse by family members is one of the most common elder law problems. I see it all the time in the families I serve. That's why it's wise to:

- Only give the powers your agent truly needs;
- Talk openly with your family so there are no surprises;
- Consider naming a backup agent; and
- Review your POA every few years as relationships and circumstances change

Bottom Line: Powers of Attorney

A Power of Attorney is like an insurance policy for your independence. It gives you peace of mind that someone you trust can step in and help when you can't act for yourself. The key is choosing wisely and putting the right protections in place.

If you don't have one yet, it's one of the simplest but most important steps in a solid estate plan. As an experienced estate planning attorney, I am here to assist you. If you need a Power of Attorney, an estate plan, or would like to update your plan with a Power of Attorney, call me at 281-425-1300 to schedule your planning session today.

—By Marc Pinney