

Your Power of Attorney By Gary Case

Late last year there was a high profile lawsuit involving Anthony Marshall, the son of Brooke Astor, a wealthy New Yorker. Mr. Marshall was accused of misappropriating his mother's money. Ms. Astor had appointed her son as her power of attorney. Among those most concerned with the son's behavior were other family members, which often occurs in this type of situation.

You may not be as wealthy as the Astors, but you could be equally vulnerable to exploitation by a family member attempting to use your money or possessions for their own purposes when you trust them to look after you as your power of attorney. Here are measures you can take to help curb the potential for the misuse of your power of attorney.

- Use a "springing" power of attorney, which requires the person attempting to use your power of attorney to present documents to the court stating that you no longer have the capacity to manage your own affairs. Alternatively, you can provide written permission for your power of attorney to "spring" into activity. You should state how you are to be deemed incapacitated (such as two letters qualified medical professionals)
- Require that the agent you name provide family members or a third party with regular accounting statements
- Name co-agents who can provide checks and balances, or name an overseer who has the power to remove an agent
- Specify exactly what powers you want your agent to have under your power of attorney. For instance, you can limit the powers extended to give your property away

It can be tough to balance giving your agent sufficient power to manage your affairs without too many encumbrances without giving them a license to steal. You should trust your agent implicitly, and they should be capable of administering your affairs in a manner consistent with your wishes. It does not hurt to have a conversation with your prospective agent prior to naming them in your power of attorney. While not a legal document, you could have your agent sign a letter or other document that explains in simple terms the importance of what is expected.

You may find it helpful to review your estate planning documents with your financial planner as well as with an attorney to assure that your wills and trusts are properly coordinated with your power of attorney and other facets of your financial plan.

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