

—| *Spotlight* |—



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# FINANCIAL ABUSE OF OUR AGING POPULATION

## *Part II*

*Editor's note: This article is Part 2 of a series of articles addressing the various facets of elder abuse as senior citizens have increasingly become targets of unscrupulous family, friends and scammers.*

### WHAT IS A DURABLE POWER OF ATTORNEY?

**W**hen most people decide to go to an attorney “to get their affairs in order” they normally think of a will and a trust, and seek advice about the best way to hold and transfer real estate. A Durable Power of Attorney (“D POA”) does not come to mind first, but it is a standard estate planning instrument that wields a great deal of power.

When used properly, a Durable Power of Attorney can spare family and friends the unpleasant task of making decisions during stressful times, but if it is not properly drafted or the powers fall into the wrong hands, it can be disastrous.

A Power of attorney for health care decisions is separate from the financial decisions. In Michigan, a medical power of attorney is called a Patient Advocate Designation and is not the subject of this article. The financial Power of Attorney can authorize someone else to act on

your behalf in a legal or business matter. When a person (“the principal”) signs a Power of Attorney, he gives another person (“the agent”) the power to act in his place to manage his assets and affairs. There are a few different types of Power of Attorney. A General Power of Attorney authorizes the agent to act on the principal's behalf in a variety of situations, whereas a Special Power of Attorney is used for only a specific circumstance, such as buying a car or selling a house. The General Power of Attorney can be made durable with certain text in the document. The Durable Power of Attorney does not lapse over time and is not affected by the subsequent disability or incapacity of the principal. The power afforded to the agent may be effective immediately or only once incapacity of the principal has been established.

### ABUSE OF THE POWER OF ATTORNEY

**T**he use of the DPOA during disability and incapacity of the principal is too often misused to the detriment of our senior citizens. Statistics on Power of Attorney abuse are hard to come by, but experts recognize it as a prevalent problem among the elderly.

A brief cautionary tale: Richard, widowed and 81 has recovered from a stroke with some lingering short-term memory loss and has one bum leg. Richard's hired caregiver, Rachel is much younger and laughs at all of his jokes. Richard and Rachel become romantically involved to the dismay of Richard's children. Rachel convinces Richard to sign a DPOA permitting her access to all of his financial accounts. Rachel gives herself a substantial raise and permits herself luxurious gifts until Richard's son catches on, but by then, thousands of dollars are gone and so is Rachel.

Richard was a victim of a “sweetheart-swindle” and if his son could find Rachel, they could pursue civil and criminal charges. The DPOA must be strictly construed. This strict construction principal is useful to an attorney with clients like Richard who have had assets stolen by his agent. Powers to borrow and gift should be particularly scrutinized. An experienced estate planner can draft language to meet the specific needs of the client.

Additionally, it is questionable whether Richard had the requisite mental capacity to sign the power of attorney due to his short-term memory loss. It is important that people have their attorney draft a DPOA when they are still