



ELDER LAW AND ESTATE PLANNING

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Financial institutions may not honor older Durable Power of Attorney

Question: My Durable Power of Attorney was written and signed by me in 2009. My late husband was my agent, and my son, thankfully still around, is backup. Should I redo it? Is it too old to be valid? Maybe I need a backup to my son? I've never had to use it. It's been tucked away in my file cabinet all these years. I'm in great health at 78.

Answer: You're wise to think about this issue now. As many people note when writing to this column for advice, financial institutions can be notoriously picky about honoring a Durable Power of Attorney (DPOA). Financial institutions are not legally obligated to honor your DPOA. They are obligated only to inform you of the reason(s) they choose not to honor it.

It would not be particularly surprising if your financial institutions reject your DPOA, based on its age. However, you have nothing to lose by giving it a try. Go ahead and submit the document to them and see if they will honor it. As far as designating a backup to your son, that would be wise in the event he cannot serve.

Recognize that if your DPOA does need to be replaced and updated, you should do that now. If the time arises that you lack capacity, it will be too late and a court

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guardianship might be necessary. That is a court process that can be long and expensive, and you and your son most certainly would want to avoid it.

The most prudent course of action at this juncture would be for you to have an estate planning/elder law attorney prepare an updated DPOA. Once that's done, give a copy to your son. Then provide copies to your financial institutions, in advance, so you know they will honor it if your agent needs to use it.

Joseph Karp and Jonathan Karp are Florida Elder Law and Estate Planning Attorneys. The Karp Law Firm is located in Palm Beach and St. Lucie counties. It assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration, estate litigation, and probate and elder law mediation.