

LEGAL DOCUMENTS & MORE

By Nick Halbur, J.D.



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ELDER LAW OF OMAHA Nick Halbur, J.D.

- Graduated from University of St. Thomas School of Law in 2006
- Member of the Nebraska & Iowa Bar Associations
- Member of the Editorial Board and Author for the Nebraska Elder Law Handbook

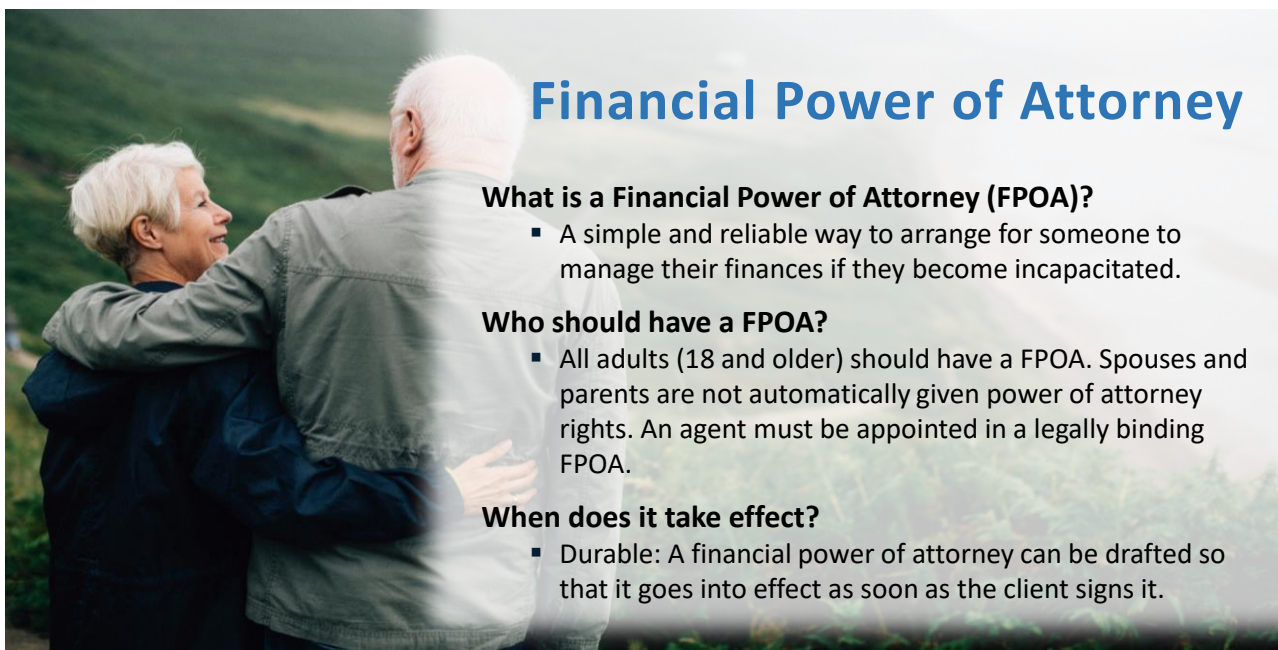
WHAT DOES AN ELDER LAW ATTORNEY DO?

- Estate planning so wishes are carried out (Wills & Trusts)
- Medicaid Qualification strategies
- Planning strategies to obtain VA Benefits
- Asset protection strategies to protect and extend assets for lifetime of client and spouse
- Medicaid and VA Benefits Application assistance
- Drafting of necessary Trusts
- Guardianship and Conservatorship Proceedings



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A photograph of an elderly couple embracing each other from behind, set against a soft-focus background of green hills and a sunset or sunrise sky. The woman is on the left, wearing a dark jacket, and the man is on the right, wearing a light-colored jacket.

Financial Power of Attorney

What is a Financial Power of Attorney (FPOA)?

- A simple and reliable way to arrange for someone to manage their finances if they become incapacitated.

Who should have a FPOA?

- All adults (18 and older) should have a FPOA. Spouses and parents are not automatically given power of attorney rights. An agent must be appointed in a legally binding FPOA.

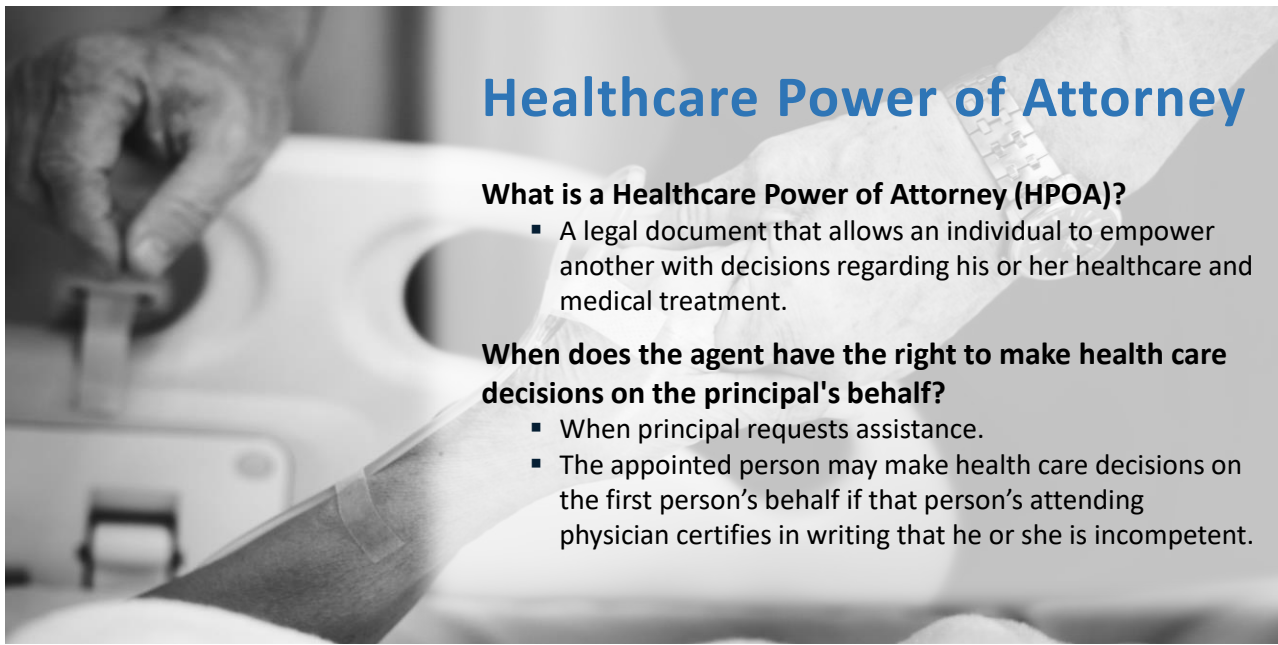
When does it take effect?

- Durable: A financial power of attorney can be drafted so that it goes into effect as soon as the client signs it.



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Healthcare Power of Attorney

What is a Healthcare Power of Attorney (HPOA)?

- A legal document that allows an individual to empower another with decisions regarding his or her healthcare and medical treatment.

When does the agent have the right to make health care decisions on the principal's behalf?

- When principal requests assistance.
- The appointed person may make health care decisions on the first person's behalf if that person's attending physician certifies in writing that he or she is incompetent.

WHAT TO LOOK FOR IN A VALID POWER OF ATTORNEY

- Recent
Significant changes have occurred in the law since January 2013. Financial Powers of Attorney should have been updated since then.
- Legible and not written-on by the client
- Signed, dated, notarized
- A copy is as good as an original.

ADVANCE DIRECTIVES / LIVING WILLS

- “Living Will” and “Advance Directive” are both terms for the same document.
- Usually provides specific directives about the course of treatment that is to be followed by health care providers and caregivers.
- May forbid the use of various kinds of burdensome medical treatment.
- May also be used to express wishes about the use or foregoing of food and water, if supplied via tubes or other medical devices.
- Document used only if the individual has become unable to give informed consent or refusal due to incapacity.



LAST WILL AND TESTAMENT

What can you do in a last will and testament?

- Name an executor
- Pay debts
- Give charitable donations
- Give items, property, or funds to beneficiaries
- List powers of the executor
- Signed by the maker or testator plus 2 competent witnesses. Add a notary and you have a self-proving Will.



TRUSTS



- Legal vehicle for safely holding assets, or distributing them in a controlled way
- Can be Revocable (Living Trust) or Irrevocable.
- Special Needs Trust (SNT)
Particularly useful for people that receive funds but also need to safeguard Public Benefits.
- MAPT (Medicaid Asset Protection Trust) and VAPT (Veterans Asset Protection Trust)
Useful in Medicaid and VA planning.
- Testamentary Trust within a Will

WHEN SHOULD A DOCUMENT BE UPDATED OR REVIEWED?

Remember the Four D's

Death

Divorce

Diagnosis

Decade

PROBATE / ESTATE ADMINISTRATION

- Legal process for paying off a person's debts/liabilities and transferring legal ownership of their assets to heirs
- Smallest Estates – require only collection affidavits (NE \$50k of land and \$100k of other property and 30+ days; IA \$50k with no real property and 40+ days)
- Uncontested Matters – are an informal proceeding where court supervises but typically doesn't require a live hearing. Iowa allows a simpler procedure for "Small Estates" under \$200k, which can include real property.
- Formal or Contested Matters – require court hearing(s) and more intensive document preparation and filings with the court



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VETERAN'S DISABILITY PLANNING

Assisting with a new claim: no fee

- It is good to have an experienced attorney help you from the start. We can think of claims to file that a Veterans Service Office (VSO) may not think of.

Appealing a denied claim

- If claims are denied or given a low rating, our attorney will make legal arguments as to why the VA erred in denying the claim.
- No fee unless the veteran is granted a monetary award from the VA.
- The VA pays the fee directly to the attorney.
- We handle claims nationally at the Regional Office (RO), the Board of Veterans' Appeals (BVA), and the Court of Appeals for Veterans Claims (CAVC).



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MEDICAID PLANNING



- Medicaid planning can help to preserve a family's assets.
- Medicaid eligibility is extremely complicated and even simple errors can result in a denial.
- The application and review process is very time-consuming.
- Working with an experienced Medicaid planner can accelerate this process.



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THE ROAD TO MEDICAID

Step One: Initial Consultation Appointment

Meet with attorney to discuss options available for your specific situation. Take home the planning form and complete it to the best of your ability.

Step Two: Return Planning Form and Make Plan Review Appointment

Return the completed planning form with the retainer and/or meet with Public Benefits Specialist for assistance in completing the form.

Step Three: Plan Review Appointment

Discuss the recommended plan and decide if you wish to proceed with the plan.

Step Four: Update Legal Documents (If Necessary)

Our team will update any estate documents that the attorneys decides are necessary.



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THE ROAD TO MEDICAID

Step Five: Implement the Plan

Liquidate the necessary assets and gather the needed information and documentation for the Medicaid application.

Step Six: Complete Final Planning Steps

Turn in final bank statements for the application and other requested documentation.

Step Seven: Submission of Application

Public Benefit Specialist submits the Medicaid Application with the Department of Health and Human Services (DHHS/DHS).

Step Eight: Follow-Up

Public Benefits Specialist remains in contact with DHHS/DHS through application process and keeps you apprised of the progress.



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