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## Putting Your Faith in a Power of Attorney



Stuart Isett for The New York Times

**AN ELECTRONIC KEY** Wendy Goffe, a Seattle lawyer, and her husband, Scott Schrum, with their daughter, Maya, 7. Because Ms. Goffe had her husband's power of attorney, she had access to his electronic records while he was disabled with cancer.

By DEBORAH L. JACOBS  
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TRUST and estate lawyers routinely tell their clients about the importance of signing a durable power of attorney. Often written at the same time as a will, it appoints a family member, friend or adviser as an agent to act on your behalf in financial and legal matters — even if you become incompetent.

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But as essential as these documents are, they face new — and continuing — obstacles. One is using them amid the disruptions in the financial services

industry. Another is an old problem that may have grown more acute after recent scams and frauds: Many people mistrust these documents, which give unbridled power to your agent. So some people sign them to appease their lawyers but never give them to the person designated to handle their affairs.

“A power of attorney is a license to steal,” said [Bernard A. Krooks](#), a specialist in elder law at Littman Krooks in New York who nonetheless encourages clients to sign a power of attorney. “You have to be careful who you appoint as your agent.”

Some states have tried to reduce abuses. In New York, for example, a new law requires that as of Sept. 1 all new powers of attorney be signed not only by the principal (the person granting the power) but also by the agent — a reminder of his or her obligation to

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put the principal's welfare first.

In addition, if the power of attorney includes the authority to make total annual gifts of more than \$500 to one person or charity, that power must be included in a separate rider that, like a will, must be signed in the presence of two witnesses.

The law, enacted Jan. 27, may deter some people from signing a power of attorney, Mr. Krooks said.

He and other lawyers remind their clients that even if signing a power of attorney makes the client feel vulnerable, it's far better than living without one. If you become incompetent, you lack the capacity to make legally binding commitments. Without a power of attorney, your family might have no choice but to ask a court to appoint a guardian to oversee your finances. This can be an expensive and sometimes embarrassing ordeal and can involve unpleasant, even acrimonious, exchanges.

Although the two are sometimes confused, a durable power of attorney, which deals only with financial matters, and a health-care proxy, which authorizes an agent to make medical decisions on your behalf, are distinctly different. And when thinking about signing a durable power of attorney, it is important to consider the following issues:

**WHOM CAN YOU TRUST?** The best person to put in charge, lawyers say, is a close family member — preferably one who lives nearby. Most [financial advisers](#) do not want this responsibility, nor is it cost effective to pay their hourly fee to handle routine tasks like paying bills.

Naming joint agents, which is allowed only in some states, is one way to provide checks and balances. Or you can appoint another person, like an attorney, an accountant or a family friend, to supervise the arrangement.

Before appointing an agent, it is important to determine whether that person is willing to take on the duties. If you're nervous about giving the signed document to your designated agent right away, you could leave it with your lawyer with instructions on when to turn it over, said [Gloria S. Neuwirth](#), a lawyer with Davidson, Dawson & Clark in New York. In that case, remember to tell your agent whom to contact.

**WHAT POWERS SHOULD BE INCLUDED?** You ought to authorize your agent to take any financial action you could take yourself, said [Lawrence P. Katzenstein](#), a lawyer with Thompson Coburn in St. Louis. This could include estate-planning strategies like financing college savings plans for children or grandchildren, prepaying charitable bequests and converting traditional I.R.A.'s to Roth I.R.A.'s.

If you have set up a living trust — a way to provide for yourself financially and to transfer assets to friends or family after your death instead of having them distributed under the terms of a will — you should carefully distinguish between the responsibilities of the trustee and those of the agent, Mr. Katzenstein said. He recommends that you indicate whether the agent may take money out of the trust, and that you give the agent the authority to transfer assets into it if you become incompetent.

Even if most assets are ultimately held by the trust, you still need the agent to perform quasi-personal functions like signing a nursing home contract or tax return and accessing a safe-deposit box.

This is not always easy, and the digital world has made it harder, in some ways.

[Wendy S. Goffe](#), a lawyer with Graham & Dunn in Seattle, relied on a power of attorney that her husband, Scott Schrum, had given her to piece together his paperless financial life after it was found that he had cancer. While he was disabled, the form gave Ms. Goffe access to electronic records, including those for her husband's rollover I.R.A. and 401(k) and the 529 college savings plan he had managed for their daughter Maya, 7.

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