

# Legal Connections



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## DIVERSIFICATION IN ESTATE PLANNING

With mental health on many minds, it's an excellent time to talk about choosing the right person to be your Agent for two crucial roles: Health Care Power of Attorney (HCPOA) and General Durable Power of Attorney (GDPOA). These roles come into play if you cannot make decisions for yourself, either mentally or physically. Both play a significant role, many times when you least expect it.

When we meet with clients to discuss their estate planning, we must also discuss the importance of naming an "Agent" who can make health care and financial decisions on their behalf in case they experience mental or physical incapacity.

We have the right to choose who will make these decisions if we become incapacitated. Ohio law allows us to name the primary decision-maker and one or more alternate individuals with the authority to make medical and financial decisions on our behalf. But these two different Powers of Attorney may not be combined in one document. That is probably for the best, as sometimes the person we choose to make our health care decisions might not be the best choice to make our financial decisions.

### Location, Location, Location

Strong preference should be given to naming an Agent living in relatively close proximity to you for obvious, practical reasons: medical decisions are often best made only after face-to-face meetings, not just with you, but with the physicians and any others involved in the day-to-day care of you. Though they may be your preferred choice, there might be a better choice



**GEORGE HOFFMAN**

than naming your only child living overseas or two states away as Agent under the HCPOA. Similarly, handling your financial matters (paying bills, filing tax returns, managing or selling real estate) under a GDPOA may be impractical at a distance, even with the ability to handle many matters online.

### Family Considerations

Some clients choose Agents by simply following the birth order of the children. Clients find this method of choosing to be more logical and, in some cases, to better preserve harmony among the family. Still, those factors should be weighed against the overriding need to pick the person best suited to act in your best interests.

### Areas of Expertise

With family in mind and consideration for all things being equal, one critical skill set for an Agent to efficiently carry out their duties under the HCPOA and GDPOA could be their organizational skills. Many parents will intuitively know which of their children are best suited to make medical decisions (the child working in the medical field, for example) or to make financial decisions (the child with an accounting background, for example), but the child who competently take notes at meetings

with the doctor, and who organizes their own financial and tax records, balances their checkbook, etc., may be the best choice as Agent.

Remember that while the Agent will ultimately make decisions for you when the time comes, the decisions are not made in a vacuum. Instead, the Agent's informed medical and/or financial decision-making is often made only after meetings with the doctor, the accountant, the financial advisor, the real estate broker, the attorney, etc., as required under the circumstances, and then often only after discussion by the Agent with the other family members.

### Are Two Heads Always Better Than One?

Probably not in this case. Most attorneys who have practiced for several years agree that jointly naming Co-Agents to exercise the authority under either HCPOA or GDPOA is to be avoided if possible. The practical difficulties in ensuring all Co-Agents are (a) always available and (b) constantly, or at least usually able to agree, can be insurmountable. Similarly, giving different Agents separate and equal authority to act under either or both types of Power of Attorney can lead to confusion, and thus refusal, by doctors or financial institutions, to honor the Power of Attorney.

### Things Change.

As with a Last Will and Testament and Trust, the HCPOA and GDPOA can be replaced as circumstances change; for example, children who were too young to serve as Agent are now of an appropriate age to serve as Agent, or those named in previous documents

as Agent have moved or otherwise become unavailable to serve. A change in the name of an Agent (because of marriage, for instance) or a change in phone number or address does not, in and of itself, require that a new document be prepared, so long as the Agent can satisfactorily explain the change in name or address to the necessary parties.

Life is ever-changing, and your estate plan should reflect those changes. We can assist you in updating your HCPOA and GDPOA documents when circumstances evolve, ensuring that your wishes remain intact and legally binding.

### About George Hoffman

George M. "Bud" Hoffman joined the law firm of Carlile Patchen & Murphy on January 1, 2020, after 40 years in the private practice of law in the Central Ohio area. Bud focuses on estate planning, business succession planning, planning for charitable giving, and trust and estate administration services for multiple generations of his clients.

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