



POWERS OF ATTORNEY AND GUARDIANSHIPS/CONSERVATORSHIPS

Powers of Attorney, Guardianships/Conservatorships are legal mechanisms describing the appointment of another person to take over decision making for someone else. These are **not licenses to steal**.

Power of Attorney (POA): An instrument by which one person (the principal) transfers authority to make decisions such as medical care, end of life decisions, or financial management to another (the attorney in fact). The authority must be created while the principal has mental capacity and can be revoked at any time while having capacity. There is no court oversight of POAs.

Guardianship/Conservatorship: A mechanism by which a court grants certain powers to a family member, other individual, governmental agency, or institution to control the affairs of a person (ward) who is incapable of managing for him or herself. Courts generally require medical reports about the mental capacity of the proposed ward before appointing a guardian.

In evaluating any legal instrument, investigators should consider:

- What does this document authorize?
 - What are the limitations on authority?
 - When does it become effective?
 - Who has the authority to act?
 - Does it authorize gifts or loans to the person with decision making authority?
- When it was created,
 - Who created it?
 - What was the older adult's cognitive function?
 - If created by the older adult,
 - What was the older adult's understanding of what s/he was doing?
 - What were the surrounding circumstances?

National Clearinghouse on Abuse in Later Life (NCALL)

A Project of Wisconsin Coalition Against Domestic Violence

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Problems with Powers of Attorney (POA) or Guardianships that Investigators May Encounter in Elder Abuse Cases

- The requirements for signing are not met (e.g. victim's lack sufficient mental capacity, state requirements for witnesses are not met, etc.).
- Victims are coerced or tricked into signing.
- Legal powers used after they have terminated.
- Legal powers used for purposes other than those for which they were intended.
- Property transferred to guardian or person with POA without authorization to do so.
- POAs or guardians use powers to give themselves gifts.
- POAs or guardians fail to carry out responsibilities (e.g. pay bills).

Investigating Financial Exploitation by Powers of Attorney and Guardianships/Conservatorships

- While most guardians and attorneys in fact carefully and properly execute their responsibilities, some are abusers.
- Presence of such instruments as Powers of Attorney or Guardianships/Conservatorships does not make the activity merely civil.
- Investigators should conduct an investigation to determine if criminal financial exploitation has occurred.
- An elder law attorney or accountant may be able to review the documents and help law enforcement understand what can and cannot be done.

In mandatory reporting states, it is likely that APS must be notified. Even if you are not mandated, consider making a voluntary report to APS – staff may be able to assist with the investigation or have expertise in understanding various documents.