



November 28, 2007

How to Ensure Relatives Don't Rip You Off

Case of Astor's Son Highlights
Risks of Powers of Attorney;
Requiring Regular Accounts

By RACHEL EMMA SILVERMAN and ASHBY JONES
November 28, 2007; Page D1

Sadly, Brooke Astor is making headlines again. But there may be a lesson in the indictment of the late philanthropist's son and a lawyer close to the family's affairs: It can be risky to hand off financial responsibilities even to someone you think you can trust.

PROTECTING YOUR ESTATE

Even trusted agents can abuse the power of attorney. Here are ways to prevent that:

- Set up checks and balances by **naming multiple agents**.
- **Limit an agent's power** to make gifts of your property.
- Consider a **living trust** for your assets.

([See more steps](#) to safeguard your estate.)

Estate lawyers say older people are often making use of a tool known as a durable financial power of attorney. This legal document authorizes an agent -- usually a spouse, another family member, or a trusted adviser -- to make financial decisions if you become unable to make them yourself. But naming someone to take control over your money has the potential for serious abuse, and lawyers are increasingly devising strategies to help safeguard their clients.

Among the tactics: Lawyers are including provisions requiring regular accounting statements from agents. They also are naming co-agents who can serve as checks on each other, or naming a supervisor who has the power to fire an agent.

"People want to make sure when they sign the document that they do what they can to protect themselves," says Bernard A. Krooks, a lawyer with Littman Krooks in New York, who specializes in elder-law. "When the power of attorney takes over,

you're usually no longer in a position to supervise it."

According to the indictment in the Astor case, made public yesterday in Manhattan, Ms. Astor's son, Anthony Marshall, abused his power of attorney in order to "unjustly enrich" himself and others. The indictment alleges that while his mother had diminished mental capacity, Mr. Marshall took works of art from her home and used her funds in a variety of ways: among them, to increase his salary, pay expenses related to a Maine property that Ms. Astor no longer used and pay the expenses of a yacht captain.

"Tony Marshall faithfully and effectively managed his mother's affairs for more than 25 years," responded Mr. Marshall's lawyer, Kenneth Warner, in a statement. Whatever "he received was in accordance with her wishes. ... We're confident that once all the facts are known, Mr. Marshall will be exonerated."

When setting up a power of attorney, you want to name an agent while you're still in good health and can make clear decisions. Typically, such documents are included as part of a standard estate-planning package, which also includes a will and health-care proxy giving an agent the power to make health decisions when you can't. The cost can range from a few hundred to thousands of dollars, depending on what sort of extra provisions and safeguards you include.

It's important to designate someone trustworthy, since the agent has wide latitude over your finances. Because a power-of-attorney arrangement is a private agreement between you and your agent, there is no court supervision.

"What I tell people is that if you don't trust someone one-thousand percent, don't grant them power of attorney," says Ronald Fatoullah, an elder-law specialist in Great Neck, N.Y.

Lawyers say that powers of attorney are often a tough balancing act: You want them to be simple for trusted family members or friends to implement, without too many hoops each time a transaction is made. But you also want to avoid giving agents a license to steal.

"We're certainly seeing a trend in people asking about how their assets can be protected and seeing people ask more questions," says Mr. Krooks, the New York lawyer. A couple of years ago, by contrast, "people said, 'I want to make sure that my kids have the easiest time possible in managing my affairs.'"

To further protect yourself, you can require that your agent provide family members, or a third party, such as a lawyer or accountant, with regular accounting statements. Another strategy is to name co-agents. While that can be a burden -- many transactions, for instance, would need two signatures -- it can also create a system of checks and balances. In some cases, lawyers appoint an additional safeguard: a "protector," who has the power to replace the agent if there is

wrongdoing.

Another key point: Make sure to carefully lay out exactly what powers you want your agent to have. For instance, you can limit the agent's power to make gifts of your property, so they can't just give money to themselves. Spell out under what conditions gifts can be made, how much and to whom.

Frank Johns, an elder-law specialist at Booth Harrington & Johns of NC PLLC, in Charlotte and Greensboro, N.C., often asks his clients and their agents to sign "interpersonal agreements," documents that have no legal meaning but which might lay out in simple terms the importance of what's expected. "Signing that document can be a very powerful event," Mr. Johns says. "Usually, I know right away that the agent is going to live by the agreement."

Power-of-attorney laws differ from state to state, so make sure your lawyer is familiar with what your state allows. Rules also can vary by financial institution. Lawyers say banks are increasingly scrutinizing power-of-attorney documents or are reluctant to honor them, because they fear being subject to suits alleging they unwittingly helped an account be drained by an improper agent.

PLANNING AHEAD

Here are some steps you can take to help safeguard your financial power-of-attorney document:

- **Require that your agent** provide family members or a third party with regular accounting statements.
- **Name co-agents**, who can provide checks and balances, or an overseer who has the power to remove an agent.
- **Make sure to carefully lay out** exactly what powers you want your agent to have. You can also limit the agent's power to make gifts of your property.
- **If using a "springing" power-of-attorney document**, which goes into effect only when you are declared incapacitated, carefully specify how you are to be deemed incapacitated. You can require, for instance, that your agent get a second opinion.
- **Be aware that rules** regarding powers of attorney can vary by state and by financial institution.
- **Create a so-called living trust.** You can transfer your assets into the trust and designate a trustee to manage trust property if you become incapacitated.
- For more information, or to locate a lawyer who can help draft the documents, contact **AARP** (www.aarp.org¹), **American Bar Association Commission on Law and Aging** (www.abanet.org/aging²), **American College of Trust and Estate Counsel** (www.actec.org³) or the **National Academy of Elder Law Attorneys** (www.naela.org⁴).

There are two main kinds of power-of-attorney documents. If you're using a "springing" power-of-attorney document, which goes into effect only when you are

declared incapacitated, make sure to carefully specify how you are to be deemed incapacitated. You can ask, for instance, that your agent get a second opinion to make sure you really are unable to handle your own affairs.

A non-springing power-of-attorney document, meanwhile, goes into effect immediately upon signing. That can be useful in a case where an agent wants to immediately take control to stop, say, abuse by a neighbor or caregiver, without waiting for a doctor's declaration of incapacity. "You can go in and start safeguarding the assets right away," says John Pankauski, a West Palm Beach, Fla., lawyer who specializes in lawsuits involving power-of-attorney abuses. He adds that you really need to trust your agent to do a non-springing power of attorney. Mr. Krooks suggests using a non-springing document, but not handing it over to your kids. "Tell them where it is," he says, and once you lose your capacity, they can use it.

Another option is to use a so-called revocable living trust. These trusts go into effect while you're still alive, and you can name another person as trustee to manage property in the trust once you become incapacitated. Many people name institutions, such as banks or trust companies, as trustees, if they're worried a family member might loot their money. However, you should still name an agent as power of attorney to handle assets not in the trust.

There is some recourse if your agent is accused of financial impropriety. Another loved one can petition a court to name a protective guardian or conservator. Typically, court-appointed guardians can be another family member or a third party, such as a lawyer, a bank, a social worker or a specially trained professional guardian.

In the Astor case, Mr. Marshall's son asked a court in July 2006 to remove his father from Mrs. Astor's affairs, alleging that his father was neglecting Mrs. Astor and enriching himself at her expense. A judge appointed a longtime friend to oversee Mrs. Astor and J.P. Morgan Chase & Co. to serve as the guardian of her estate.

Once a guardian is appointed, he or she then has legal standing to sue the agent to try to recover funds. Jeffrey Skatoff, a probate and estate-planning lawyer in Palm Beach Gardens, Fla., says his firm recently handled a case in which a grandchild with power of attorney had "looted" an account. "We got a guardian appointed, filed a lawsuit for conversion, and were able to set things right." In Florida, he adds, treble damages often attach to lawsuits alleging elder abuse. "So a civil lawsuit can be a powerful tool."

Also, if you sense wrongdoing, contact your local district attorney's office, many of which have elder-abuse units, and let them investigate.

"Unfortunately, when people have authority over money, sometimes very bad

things happen," says Mr. Pankauski, the Florida lawyer.

Write to Rachel Emma Silverman at rachel.silverman@wsj.com⁵ and Ashby Jones at ashby.jones@wsj.com⁶