



Senior Law

**Legal News and Views
For Professionals
Who Serve Seniors
and the Disabled**

A RAINY DAY FORM

Ms. April Day noticed that she had been quite forgetful about things, such as paying her utilities and her car insurance. She also got lost driving home from a friend's house one day. It was extremely sobering for her to realize and then admit to herself and to her son, Sonny Day, and her daughter, Holly Day, that she was, in fact, getting forgetful. Her daughter, Holly, had not been around very much. In the past, she had only come around when she needed money, and over the years, Ms. Day had "loaned" money to her. Holly always promised to pay back the loans but never did. Holly would spend her money frivolously on day spas and vacations, instead of paying back her mother. She also had some other issues that caused conflict within the family, such as her choice of men to date and her decision to disregard her family's morals and the conservative way that she had been raised. Needless to say, she liked the "good life," which her mother's money helped provide, and as she saw it, every day was a "holiday."

Because of April Day's recent decline and concerns over her daughter's ever increasing requests for funds, Ms. Day decided that she needed to have some documents authorizing her son, Sonny, to help her with matters. She had heard about a Power of Attorney document that could satisfy her legal needs.

Ms. Day insisted that Sonny get on the internet and get a Power of Attorney form, which would not cost anything. She thought she did not need a lawyer since her estate planning would only involve her immediate family. Sonny got on the internet and found some legal forms including a "Uniform Durable Power of Attorney". The "form" was four pages long, so Sonny assumed that it covered everything that was needed. He downloaded the form and got it signed by Mom and notarized by a notary public. The form said it was legal in all states, so Sonny knew that it must be okay.

Two years later, Mom had a stroke and mentally declined to an even greater extent. Physically, she could live a long time, but she no longer could understand what was happening. The doctor insisted on Mom going directly from the hospital to a nursing home. Unfortunately, when Sonny talked to the nursing home, he found out that it would cost \$40,000 a year, and that Mom's Medicare would not pay for it. Sonny thought that the state should pay for Mom's nursing home care since all she had was a small house, a \$30,000 CD and \$800 per month in social security benefits.

To his dismay, the nursing home intake worker informed Sonny that Mom had too many assets to qualify for Medicaid.

Sonny decided that the best thing to do would be to sign documents conveying his mother's assets to himself using his mother's Power of Attorney. This is what Mom would want

done. But, before doing that, he thought he probably should visit with an attorney that knew something about Medicaid. Upon consulting with an elder law attorney, he found out that some gifting could be a way of preserving some assets.

The Power of Attorney documents that Mom had signed had a provision that said, "My agent may make gifts of my property for estate planning purposes and to continue my lifetime gifting pattern." However, it also had a specific clause that said, "This Power of Attorney may not be used to make gifts or transfers to my agent, his issue or his creditors."

Well, as our narrative above states, there has not been any intentional lifetime gifting to Holly. Those gifts were un-repaid loans. Mom had always told Sonny that Holly had already received her inheritance, and he would get what was left. But now, the document that he has prevents him from making gifts to himself.

How much does it cost to get good Power of Attorney documents? In this case, it cost about \$20,000 to have a BAD Power of Attorney document, plus Sonny's frustrations. Power of Attorney documents are not just forms. There are thousands of forms, and knowing what provisions to have in a Power of Attorney document is extremely important! It is also critical to know what authority your agents should have and what limitations should be placed upon your agents. No Power of Attorney should be prepared except by an attorney who has full knowledge of the family situation, the principal's wishes, and the alternate provisions that could be applicable to the family's specific situation. How much do they "cost"? Nothing! They are an investment, a good investment.

Not one of us can anticipate the storms that we will have to endure throughout our lifetimes. Just like an umbrella is our protection for a rainy day, our Power of Attorney documents are our protection against financial storms caused by disability. Just like we will not be aware of holes in the umbrella until we open it in the midst of a storm, hoping for, but not finding a shield from the pouring rain, we will not be aware of the inadequacies and "holes" in our legal documents until we are forced to use them. Each of us needs a good, complete set of Power of Attorney documents, just like we need insurance. Don't wait until a "rainy day" to We should ALL be prepared, because the storms WILL come.

WORDS OF WISDOM:

If you can smile when things go wrong, you have someone in mind to blame.

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HOLMES, HOLMES & NEISENT, P.L.L.C.

LEE M. HOLMES, MARK L. HOLMES & TRACY SPECK NEISENT, ATTORNEYS

501 N.W. 13TH STREET, OKLAHOMA CITY, OKLAHOMA 73103

phone: (405) 235-8455 fax: (405) 235-8454

www.medicaidoklahoma.com

Providing Legal Services for Seniors, the Disabled and Medicaid Advocacy