Business & Health Care
Powers of Attorney (POA) in Nebraska

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issue

- covid pandemic has raised concerns about what happens when you are incapacitated—who makes medical and business decisions for you when you cannot?
- medical decisions: living will & health care POA
- business decisions: business POA
- these documents are typically prepared by your lawyer as part of developing your estate plan
- however many farm/ranch families may not have these documents yet so we will take a quick look at what they are today.
business POAs

- structured businesses typically have a built-in chain of command, so if the business owner/leader is unable to make a needed business decision, the business structure identifies who is the “next person up.”

- e.g. corporations, partnerships or LLCs with detailed written operating agreements, etc.

- visit with your attorney to find out what would happen to the business if you became incapacitated.
unstructured businesses

- many family farms and ranches have no formal business structure, including sole proprietorships, joint ownership, and handshake partnerships.
- if business owner/leader becomes incapacitated and an important business decision is needed, may need to go to court & have conservator appointed.
- or have a business POA in place
- do it yourself business POAs are available online, but I don’t recommend them.
what is a POA?

- it is an agency agreement, where the **principal** (business owner) gives the **agent**, the person receiving the POA the authority to act for the principal in specified circumstances
- e.g. to make business decisions for the principal when the principal is incapacitated, out of the country, etc.
what type of POA authorities?

- the fill in the blank forms have broad categories, like “make business decisions” or “make real estate decisions,” etc.

- my recommendation is to work with your attorney to develop a POA appropriate to your family and your business

- my fear is that broad grants of POA legal authority may lead to misuse of that authority
  - e.g. joint checking accounts
checkbox POA authorities

(1) real estate (2) tangible personal property (such as crops, livestock, machinery, etc.) (3) stocks & bonds (4) commodities and options, (5) [accounts at] banks & financial institutions (6) operation of entity or business (7) insurance and annuities (8) estates, trusts & other beneficial interests (9) claims & litigation (10) personal & family maintenance (11) benefits from governmental programs or civil or military service (12) retirement plans, (13) taxes & (14) all of the above

- for real estate—very broad authorities to buy, sell, pledge as collateral
- for business—very broad authorities to buy, sell, renegotiate & terminate contracts, full authorities over employees including hiring & firing, changing compensation, etc.
- can also be authorized to modify estate plan, make gifts, etc.
even if you have absolute trust in the person you want to be your business POA agent, your attorney can help you tailor the POA to your specific circumstances

if family, etc., believe the agent has misused POA authority, they can take agent to court for abuse of trust.

friend or family are often business POA agents
(1) health care POAs and (2) living wills

Health care POAs deal with who will make medical care decisions for you if you are unable to make or communicate them yourself.

You can also identify medical procedures that you would refuse, such as life support if you are brain dead, etc. Or you can leave that decision to your health care POA agent.

Work with your doctor in developing a health care POA.
sample health care choices

1. I want to have my life sustained as long as possible by any medical means.

2. I want treatment to sustain my life only if I will:
   (a) be able to communicate with friends and family
   (b) be able to care for myself
   [c] live without incapacitating pain, and/or
   (d) be conscious & aware of my surroundings

3. I only want treatment directed towards my comfort
living wills & DNR orders

- living wills are a legal document where you can give instructions for life sustaining treatment and end of life care when you are in a terminal condition, persistent vegetative state, or persistent unconsciousness from which you are unlikely to recover.

- a DNR order is a “do not resuscitate” order: you can specify if you do or do not want to be revived by CPR. Must be signed by MD to be effective.
  - also may be called POLST, Provider Order for Life Sustaining Treatment
advanced directives

- organ donations—discuss with physician
- health care POAs and living wills must be properly witnessed or notarized. Forms from Nebraska health care providers should spell this out properly
  - online forms not specific to Nebraska law could turn out to be ineffective in Nebraska.
- important to discuss your options with your doctor so that you understand your choices
- family should be aware of your wishes