

As a parent of a minor and newly “major” child (just turned 18), I wanted to talk this month about powers of attorney and your children. While I’ve discussed powers of attorney (POA’s) many times in the context of elderly parents or spouses, their application is just as important with children.

First, to recap on the two common types of powers of attorney: One is the durable POA, which is used largely for financial matters. The other is the health care POA, which is used to direct end of life planning as well as empowering another to make health care decisions if you cannot do so.

For a child that is just now an adult, a health care POA is something to consider. While the child was a minor, a parent had the responsibility and right to make decisions about that child’s health care. Now that the child is an adult, the parent has no legal right or responsibility to make such decisions if the child cannot do so. When that child gets on with his or her life by marrying and starting a family, the spouse should eventually take on that role. However, in the intervening years of the late teens and twenties, there is no one to make such decision. A health care power of attorney creates the ability of the parents to step back in and make such decisions for an adult child.

On a related note, the flurry of legislative activity earlier this year also created a new type of POA for minor children. In some circumstances a parent may want to transfer (temporarily) parental rights to a third party (neighbor, sibling, or grandparent for example). The reasons may be that the parent is leaving the country for an extended period of time, there’s an informal shared parenting situation already existing, or the parent is simply absent for long stretches of time. In the past, the parent could transfer parental rights on a temporary basis, but the process was cumbersome. Under the new legislation, a parent can use a special POA to transfer parental authority to another in a fairly simple manner.

There are some restrictions on this transfer. The transfer cannot be longer than one year. Some rights cannot be delegated, such as the right to consent to marriage, abortion or enlistment in the armed forces. The third party, to whom the rights are being transferred, cannot be a foster or group home. Both parents must sign (at least if both parents have legal custody). The parent or parents can revoke the transfer at any time.

This new POA power will be a useful tool for various families. A parent who is undergoing a rough stretch because of medical or addiction issues may easily transfer their parental rights for a short time until the parent is better able to care for a child.