

Sarae: [00:02](#) Hello, you're listening to the Clear Money program's online radio show. I'm your host, Sarae Kurth, Community Relations Coordinator at Denver Community Credit Union. Denver Community is a not-for-profit financial cooperative serving the people of Denver, Arapahoe and Adams counties. Today I'm talking with attorney Frank Danzo of Chayet & Danzo about power of attorney. Mr. Dazno has 17 years of experience in estate planning and instructs the free Wills and Trusts class we offer throughout the year. Hi, Frank.

Frank: [00:02](#) Hi, Sarae.

Sarae: [00:34](#) Could you please tell our listeners a little bit about yourself and why you decided to practice law in the area of estate planning?

Frank: [00:44](#) I would be happy too. As I got into my legal career out of law school, I discovered that this is one of the few areas of the law where you get to help people plan for things before something goes wrong as opposed to most other areas of the law where you're always fighting about something after it's already gone wrong. I really enjoy helping people plan instead of fighting all the time.

Sarae: [01:06](#) That makes sense. How does power of attorney operate exactly, and when does it take effect?

Frank: [01:12](#) Yeah, so power of attorney is just a document where you give someone else the power to act on your behalf. They become your agent and it can take effect under a couple different scenarios. The most common of which is just immediately. As soon as you signed the document, your agent has the powers that you give in that document. It can also have various triggers, sometimes called springing powers, and those would take effect upon some condition or trigger like when I become incapacitated is probably the most common a springing power of attorney.

Sarae: [01:47](#) OK, and what are different types of powers of attorney?

Frank: [01:52](#) I think powers of attorney a fall into a couple different classes. There are a specific powers of attorney where you give someone just a very specific power, like the power to sign your name and at real estate closing if you're selling your house and you're going to be out of town and there can also be general powers of attorney where you give someone the power to do pretty much anything you could do. Powers of attorney mostly fall into two main classes, though. There are medical powers of

attorney that cover all the things that can happen to you if something goes wrong, and then there are financial powers of attorney that covered all of the things that can deal with all of your assets. So most people are looking to have those two areas covered for sure. Most people want more than just a specific power. If they're doing estate planning, they want to cover all of the things they might need done.

Sarae: [02:45](#) Ok, and as far as financial power of attorney goes, would that elaborate on the conditions that you have in your trusts and wills so that if you're incapacitated, someone can deal with your finances? Is that how that works?

Frank: [03:03](#) Well, yeah. So, a power of attorney is kind of the opposite side of the coin from a will. A will not take effect until you pass away, and a power of attorney ends when you pass away. And so will do not do anything while you're alive, and powers of attorney do not do anything after you've passed away. So they're kind of covering opposite sides of that coin. What are we going to do with all of this? What are we going to do with you and what are we going to do with all your stuff if something goes wrong? One is covering while you're alive and the other is covering after you're gone.

Sarae: [03:37](#) OK, and powers of attorney, therefore, are mostly for a plan for incapacity. So as far as medical power of attorney goes, does it cover HIPAA (Health Insurance Portability and Accountability Act)?

Frank: [03:47](#) Well, you would like to think so. Most of the free ones that you get handed out around town, most of the free ones you download off the internet and most of the statutory ones do not cover HIPAA because they were all created—and the statutes were created before HIPAA was created, which is a federal statute. Most powers of attorney statutes are state statutes and so they haven't all been updated. But a good medical power of attorney will absolutely cover HIPAA, and it will designate your agent as an authorized HIPAA representative meaning that they are you for all purposes under HIPAA. Which is really what you need because we never know exactly which doctors and medical personnel you're going to need to speak with.

Sarae: [04:31](#) OK, that makes sense. So is there a difference between a living will and medical power of attorney?

Frank: [04:38](#) Yeah, that's a great question, Sarae. There's a huge difference between a living will and medical power of attorney. In theory,

a living will is a very specific document created by statute that says what to do in a very specific situation, which is if you have a terminal condition and you're never going to wake up, do we keep you on artificial machines or do we pull the plug and take you off. A medical power of attorney is going to cover not only that situation but every other situation that might involve any kind of medical issues for you. And about 99 percent of the time, it does not involve pulling the machines off or pulling the plug. It involves all of the other range of medical decisions where we might be able to save you or help you or get you back. But we have to know what to do in a crisis where you're unable to communicate for some reason. So a medical power of attorney should include what's in a living will and everything else. And it is by far the most critical document you could have.

Sarae: [05:38](#)

So it's a lot more inclusive.

Frank: [05:42](#)

Exactly. And I would say, you know, it's probably the most important document in your estate plan. Most people, the number one document they have as a will, which is fine, but that's going to cover what happens to your stuff after you're gone. Medical power of attorney covers what happens to you while you're still here. And to me I would think that would be pretty high on your list of things you want to plan for.

Sarae: [06:07](#)

Oh yeah. Absolutely. And so since it is more inclusive than a living will, would it cover—for example, you were incapacitated temporarily, like you were unconscious, and, I mean, you came back 20 minutes later, but—would it kick in then, or is it...?

Frank: [06:25](#)

Yeah, so medical power of attorney covers—gives your agent the power to act anytime you're unable to communicate and in theory, if you're able to communicate again, your agent doesn't need to do anything for you. So there really shouldn't be a conflict there. Your agent cannot override your wishes, and if you're able to communicate, you're free to express your wishes. So really the only time your agent's going to do anything is if you're incapable of expressing your wishes, which is exactly when you need help.

Sarae: [06:52](#)

Ok. And I know a lot of people don't want to think about something horrible happening to them and everyone, as we know, eventually passes away. But what are the odds of someone becoming incapacitated at some point during their lifetime?

Frank: [07:08](#)

Yeah, you know. It's surprisingly higher than you think. Depending upon who you talk to, it's generally estimated to be

somewhere around 40 to 45 percent chance, which is almost flip a coin—almost one in two. And so, you know, they've gotten a lot better over the years with medical technology of keeping us alive longer, but not always in tip-top shape. It used to be if you had a heart attack or stroke, most of the time you just passed away because they couldn't do anything about it. Now we've gotten to the point where they understand what's happening, the response times are much faster and they've learned ways to slow down or stop the damage. And so they can't completely eliminate it, but they can keep you from passing away. The problem is, you may become incapacitated at that point and we haven't really figured out a way to fix the damage yet. And so that's where the incapacity issue with the aging population and that ability to keep us alive longer has created this huge potential for people to be incapacitated. So it's a real issue.

- Sarae: [08:06](#) Wow. Yeah, that's a very stunning statistic and that's definitely something we're considering. I would agree with you that a medical power of attorney is very crucial document. And as far as designating multiple or backup agents in the power of attorney document, is that possible? For example, if in the event that your designated agent is deceased or incapacitated at the same time that you become incapacitated if you're in the same car accident or something like that?
- Frank: [08:35](#) Yeah. So I think that's one of the critical parts of any plan, is we always want to have a couple backups for any position that we pick. Whether it's your executor, trustee, agent under power of attorney, the idea is, if your first choice can't do it, we want to go on to the next person. Sometime people may be out of town. They may be too busy. They may sick themselves. They may have passed away. So the idea with naming multiple backups gives you a little bit more flexibility. It gives you a little bit more control as far as not having to amend your plan every time something happens with someone that you know, because stuff does happen. It's part of life.
- Sarae: [09:13](#) Absolutely. Must have power of attorney document be drawn up in conjunction with a will?
- Frank: [09:19](#) A will and a power of attorney or separate documents so you do not have to do them together. But I usually recommend that most people should have at least a basic will and a good medical power of attorney. And then probably a financial power of attorney and it usually makes sense to do them around the same time because you want to cover your plan and cover all the bases at the same time. And generally speaking it will be

less expensive if you do them all together, then it will be if you are doing them piece by piece.

Sarae: [09:53](#) Right. And then that way you have all of the conditions satisfied whether you are incapacitated or have passed away.

Frank: [09:53](#) Exactly.

Sarae: [09:59](#) Ok. Well, thank you very much for your time and expertise, Frank. could you please share your contact information so that listeners can reach out to you if they have any questions?

Frank: [10:08](#) There's a couple different ways you can reach me. Our main phone number is 303-355-8500, and you can reach me at our law firm of Chayet & Danzo that way. You can also reach us on our website, which is www.ColoradoElderLaw.com. ColoradoElderLaw.com. Or you can reach me by email at frank@coloradoelderlaw.com.

Sarae: [10:44](#) Ok, thank you. For more information about this topic, my email is education@denvercommunity.coop. I can also be contacted under the Twitter handle Denver Community. You're invited to attend any of our upcoming free classes on Wills and Trusts. Please call 303-573-1170 or visit our website to register or learn more. Our website is www.DenverCommunity.coop/education. Thanks for listening.