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Who is Responsible to Take Care of an Incapacitated Trustmaker?

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1. Attorney-in-fact under Durable Power of Attorney
 1. Financial Responsibilities

(solely or principally) to address and provide for the principal (the maker of the Durable Power of Attorney.) Unless the Power of Attorney gives the attorney-in-fact authority and power to take care of the Principal's spouse, children or others the principal supports there could be problems.

1. Personal and Health Care Responsibilities

Obtain Medical information, make medical decisions, employ help, choose doctors, choose care providers, choose facilities, hospitals, nursing home, rehab etc.

1. Trust
 1. The Trust language should provide something like this
 1. A. Dispositive Provisions

The Trustee shall pay the entire net proceeds from the income of the Trust Fund to or for the benefit of the Trustmaker at least quarterly for so long as Trustmaker shall live. In addition thereto, the Trustee shall make payments from the principal of the Trust Fund to or for the benefit of the Trustmaker in such sums and at such times as the Trustmaker may request from time to time. If the Trustmaker is unable to make requests of income or instruct how to provide income or principal payments for his or her benefit, the care and benefit of the Trustmaker's spouse and children who the Trustmaker supports, the acting successor Trustee(s) shall act upon instructions of the Trustmaker's Agent under Power of Attorney. The Agent may determine the support, maintenance, health needs, emergency needs and comfort needs for the Trustmaker, spouse and child and give instructions to the acting successor Trustee(s) to pay for the provisions needed by the principal, the principal's spouse and children.

1. Generally Trusts often give the Trustee discretionary authority to provide for the support, maintenance, health needs, and emergency needs for the Trustmaker. This can work well but an Agent under Power of Attorney is often given much more specific authority to take care of a Trustmaker and provide for their specific needs and the people the Trustmaker provides for.

When the money is in a Trust the Trustee controls the money. When the Trustee is a different person than the Agent under a Power of Attorney signed by the Trustmaker it is advisable to make the Trustee respond more specifically to what the Agent may request or instruct.