

COURT OF APPEALS DECISION AFFECTING YOUR EXISTING FINANCIAL POWER OF ATTORNEY

By Attorney Timothy P. Crawford, CPA, CELA*, CAP**

Greater Milwaukee Area Offices in Brookfield, Glendale, Milwaukee & Racine

Your Asset Protection Law Firm
840 Lake Avenue, Suite 200
Racine, WI 53403
Toll Free: (888) 634-6675
(262) 634-6659

E-mail: tpc@tpcelderlaw.com

Website: www.TpcLaw.com

This is One Reason Why You May Need a Level III™ Financial Power of Attorney

A Wisconsin Court of Appeals decision issued August 14, 2002 makes your existing Financial Power of Attorney out of date. Your Agent (your son) is extremely restricted under your current Financial Power of Attorney on what your son can do to help you protect your home and other assets from the high cost of nursing home care.

Most Financial Powers of Attorney do not authorize gifting. If they do authorize gifting, very little gifting is permitted. However, when you are incompetent, you may want your son to be able to gift nearly all of your assets to reduce the amount of assets you need to spend on nursing home care.

Because of the recent Court decision which reversed a son's previous actions in making gifts, the Court made it clear that a Financial Power of Attorney needs special language inside it to permit your son to gift away your assets to protect your assets. Attorney Timothy P. Crawford's new language can protect your son from being challenged by the government for trying to protect your assets.

**THE IMPACT OF THE APPEALS COURT DECISION
ON THE ABILITY OF YOUR SON TO USE YOUR EXISTING
FINANCIAL POWER OF ATTORNEY TO DO GIFTING.**

WHAT WAS THE PROBLEM?

- 1. THE FINANCIAL POWER OF ATTORNEY DID NOT PERMIT GIFTING THUS, THE SON COULD NOT GIFT.**
- 2. IF THE FINANCIAL POWER OF ATTORNEY HAD PROVIDED FOR GIFTING, THE SON STILL COULD NOT HAVE GIFTED BECAUSE THE FINANCIAL POWER OF ATTORNEY WAS NOT SPECIFIC ABOUT GIFTING.**
- 3. IF THE FINANCIAL POWER OF ATTORNEY HAD PROVIDED FOR GIFTING TO THE SON, THEN THE SON STILL COULD NOT HAVE GIFTED TO HIMSELF BECAUSE THAT WOULD BE SELF-DEALING AND SELF-DEALING WAS NOT AUTHORIZED BY THE FINANCIAL POWER OF ATTORNEY.**
- 4. IF THE FINANCIAL POWER OF ATTORNEY WOULD HAVE AUTHORIZED SELF-DEALING, THE SON STILL COULD NOT HAVE GIFTED TO HIMSELF AS THE SON WOULD BE BREACHING HIS OBLIGATION TO DO WHAT IS IN DAD'S BEST INTEREST INSTEAD OF DOING WHAT IS IN THE FAMILY'S BEST INTEREST.**
- 5. IF THE FINANCIAL POWER OF ATTORNEY WOULD HAVE PROVIDED FOR WAIVING THIS FIDUCIARY DUTY, THEN THE SON COULD HAVE GIFTED AS PART OF A PLAN TO PROTECT THE ASSETS. THE SON COULD HAVE GIFTED TO HIMSELF. THUS, THE SON COULD HAVE SHARED IN THE GIFTS THAT DAD WANTED TO MAKE EQUALLY TO ALL THREE KIDS. THE SON COULD HAVE DONE THIS WITHOUT GETTING INTO TROUBLE AND WITHOUT REQUIRING HIM TO REPAY THE GIFTED AMOUNT TO DAD, AND THUS, REQUIRE DAD TO SPEND THE MONEY ON DAD'S NURSING HOME CARE COSTS.**

**“Those Who Plan Ahead Win.
Those Who Don't Plan Ahead Lose.”**

This article is not intended as legal advice. It is basic information. I would recommend that you call Attorney Timothy P. Crawford for a free conference to discuss your situation in more detail. Attorney Timothy P. Crawford can be reached toll-free at 1-888-634-6675. When you call in, please mention the fact that you have read this article.

*Attorney Timothy P. Crawford is a Board Certified Elder Law Attorney(CELA). He has been Board Certified by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association.

**Timothy P. Crawford was invited to join the Council of Advanced Practitioners of the National Academy of Elder Law Attorneys (NAELA) in August of 2005. The Council of Advanced Practitioners (CAP) is a small group of premier elder law attorneys, all of whom have been members of NAELA for at least 10 years, are certified as elder law attorneys by the National Elder Law Foundation, and are AV rated the top in the nation by Martindale Hubbell. A Service that provides an independent rating of the quality of attorneys.

GREATER MILWAUKEE AREA OFFICES IN BROOKFIELD, GLENDALE, MILWAUKEE & RACINE

“Helping Families in Wisconsin for Over 40 Years to Protect Their Assets from Nursing Home Care Costs”

© Copyright by Attorney Timothy P. Crawford. This document can be used without the advance written permission of Attorney Timothy P. Crawford however you must disclose the fact that Attorney Timothy P. Crawford is the author.