

Understanding Powers of Attorney



What We'll Discuss

- What is a power of attorney (POA)?
- How does a POA work?
- Why do you need one or more POAs?
- When is the right time to create POAs?
- Whom should you choose?



Power of Attorney

- The phrase “power of attorney” has two meanings
 - A legal **document** naming an **agent** to act on **grantor’s** behalf
 - The **authority** granted to the agent
- Grantor determines scope of agent’s power
 - Agent has fiduciary duty to act in grantor’s best interest



Types of Power of Attorney

- Two categories of power of attorney
 - Authority for financial and legal matters
 - Authority for healthcare decisions
- Granted separately
- Share certain similarities
 - Governed by state law
 - End at grantor's death
 - Important to name alternate(s)



How a POA is Created

- Grantor must be of sound mind
- POA always written, usually notarized
- Online forms available BUT preferable to use an attorney
 - Can be handled in conjunction with your will
 - Can be customized to meet your wishes
 - Can advise on powers automatically included



Who Should Serve?

- Choose an agent who is
 - Trustworthy
 - Familiar with your wishes
 - Confident and knowledgeable decision maker
 - Able to withstand criticism, potential conflict
 - Clear communicator
- One agent only
- Family member, close friend, or professional



Financial Powers and Limitations

- You, as grantor, decide on powers to give
 - Can be anything you can do yourself
 - Can be limited by task, time period
- What your agent **CANNOT** do in most cases
 - Make decisions for you while you are capable and willing to make them yourself
 - Change your will or beneficiary designations
 - Select a replacement agent with POA
 - Violate fiduciary duty to act in your best interest



Financial POA

- Types of powers of attorney
 - Limited
 - General
 - Durable
 - Springing, sometimes called Conditional
- POA enables agent to act for you using the powers you grant



Durable or Springing?

Durable Power

- Lasts until grantor's death
- Becomes effective when signed
- Grantor continues to manage affairs while able
- Agent can assume control when grantor no longer able

Springing Power

- Lasts until grantor's death
- Becomes effective only after event such as incapacitation
- Document should detail how event or incapacitation will be verified
- Agent's ability to act contingent on verification



Typical Financial Responsibilities

- Manage day-to-day finances
- Buy and sell investments
- Handle real estate or vehicle transactions
- File taxes
- Apply for grantor's government benefits



Bank POAs

- Investigate your bank's POA requirements
- Bank POA must be signed by grantor and agent
- Bank POA allows your agent to handle bank transactions
- Some states require banks to accept valid POAs that meet state standards
- Resolving potential problems



Compensation

- If agent will be paid, details should be in POA
 - Individuals may or may not be
 - Professionals typically are
- Can be specific amount or annual percentage
- Bonding of agent may be required
- Compensation rules vary by state



Changing Your Mind

- Mechanism for canceling financial POA
 - Sign revocation form and have it notarized
 - Notify agent in writing and request document back
 - Notify third parties relying on POA of revocation
- Newer POA usually states it supersedes prior ones
- Legal help important, sometimes essential
- State law may terminate POA after divorce if spouse is agent



Healthcare Power of Attorney (HCPA)

- Healthcare power of attorney (HCPA) and living will also known as advance directives
- **HCPA** authorizes agent to make healthcare decisions for you when you cannot
- **Living will** states your healthcare wishes
- Agent has fiduciary duty to act in your best interest and in keeping with your wishes



Typical HCPA Responsibilities

- Authorize medical treatment
- Make medical decisions if grantor lacks capacity to choose
- Interact with medical providers and family
- Choose extended-care facility



HCPA Essentials

- Except in an emergency, medical providers need permission to treat you
- Existence of HCPA should be known
 - Agent should have signed and notarized copy
 - Provide physician(s) and hospital with copy
 - Keep copy with insurance documents
- Family should know who HCPA agent is



Things to Keep in Mind

- Agent should understand and agree with your medical preferences
- Agent should be willing and able to act on your behalf and follow your wishes
- Your medical providers cannot serve as agents
- Medical providers may object based on conscience, policy, or standards



Avoiding Potential Problems

- Be as explicit as possible about medical preferences in living will
- Communicate wishes to agent and family members to avoid disagreements
- Consider durable HCPA to avoid potential delays in verification of event such as incapacitation
- Name alternate or successor agent



Changing Your Mind

- While you have the capacity, you can cancel HCPA
 - Notify current agent in writing and request document back
 - Alert all medical providers who have a copy
 - Destroy all copies of revoked document
- Ensure new HCPA has language to revoke older versions



POA Recap

- Recognize potential for inability to act on your own at some point
- Granting financial POA and HCPA allows you to prepare for that possibility
- You retain right to make decisions as long as you are able
- You can change your mind while able to do so



Your Responsibilities

- Choose an agent who will best represent you
- Ensuring the POA documents represent your wishes and are legally sound
- Share copies of your documents with those who need to know





Choosing an Agent

When you grant a power of attorney, you want to name the right agent. But you may not be certain how to identify that person. One approach is to set some basic criteria focusing on essential characteristics. Then ask yourself a series of questions that help you determine if a prospective agent meets those criteria.

1. Most important, do you trust the person to always act in your best interest? Can past experiences back that up?
2. Does the person live fairly close by or is he or she able to travel quickly if needed?
3. Is the person in good health?
4. Is the person confident in his or her own judgment?
5. Does this person make an effort to evaluate a situation before making a decision?
6. Will the person respond effectively to criticism about his or her decisions or to potential conflict?
7. Does the person communicate well with many different types of people?
8. Will you be comfortable sharing the details of your financial situation with this person?
9. Will you be comfortable having a serious discussion with the person about your wishes for end-of-life care? How will you react if he or she disagrees with your views?
10. Can you think of any reason that naming this person might not be a good idea?

It may be that you already have a person in mind to name as your agent. But before you make a final decision, you should probably see how he or she scores on this list of questions. Or, if there are two well-qualified candidates with different strengths, you may want to grant one power of attorney for finance and the other power of attorney for healthcare.



Summary of Financial Accounts

Once you've granted an agent a power of attorney for finance, you'll need to provide that person with the information he or she will need to handle your financial affairs effectively at whatever point that may become necessary.

Using the format below, provide the information indicated. There may be more than one entry in each category, especially if you have both checking and savings accounts at your bank, use more than one bank, or have more than one insurance policy.

Bank accounts

BANK NAME _____ BRANCH ADDRESS _____ ACCOUNT NUMBERS _____ LOGIN _____

Brokerage accounts

FIRM NAME _____ ADDRESS _____ ACCOUNT NUMBERS _____ LOGIN _____

Mutual Fund accounts

COMPANY NAME _____ ADDRESS _____ FUND NAMES/NUMBERS _____ LOGIN _____

COMPANY NAME _____ ADDRESS _____ FUND NAMES/NUMBERS _____ LOGIN _____

Insurance companies

Company name	Address	Contract numbers	Login
--------------	---------	------------------	-------

LIFE _____

HOMEOWNERS _____

AUTOMOBILE _____

HEALTH _____

Utility, phone, and Internet providers

COMPANY NAME _____ ADDRESS _____ ACCOUNT NUMBERS _____ LOGIN _____

COMPANY NAME _____ ADDRESS _____ ACCOUNT NUMBERS _____ LOGIN _____

COMPANY NAME _____ ADDRESS _____ ACCOUNT NUMBERS _____ LOGIN _____