

POWERS OF ATTORNEY What Do I Need to Know?

What is a "Power of Attorney"?

It is a document that you sign to give someone else the power or authority to handle your personal affairs. A medical power of attorney allows you to appoint someone to make medical decisions for you in the event you can not make them for yourself. A financial power of attorney allows you to appoint someone who can have access to your money and financial records and handle your money for you when you cannot.

Can I have the same person serve as my medical power of attorney representative and as my financial power of attorney representative?

Yes. You may appoint the same person to be both your medical and financial power of attorney representative or you may appoint different persons.

(NOTE: This leaflet primarily answers questions related to financial powers of attorney. For specific questions dealing with medical powers of attorney, see, *MEDICAL POWERS OF ATTORNEY: What Do I Need to Know?*)

Can I have both my son and daughter to serve as my power of attorney representative?

Yes. You can appoint more than one person to serve as your power of attorney representative. However, you should be sure to specify whether they can act individually or whether they must act jointly. For example, Is the signature of either your son or daughter sufficient or do you want the signatures of both your son and daughter to convey your consent?

What can my power of attorney representative do?

Your representative can do anything you give him or her the power to do. You decide what powers you want to give your power of attorney. You can give the person you appoint very specific and narrow powers: for example, "the power to deposit my pension check in my bank account." Or you can give the person you appoint very broad authority: for example, "the power to do anything I could do if I were present."

How Long Does a Power of Attorney Last?

A simple power of attorney is valid only as long as you have the capacity to handle your own affairs. As long as you have capacity, you can review the actions of your power of attorney at any time. You can tell him or her what you want and do not want. After you lose this ability, in other words, after you become incapacitated, a simple power of attorney is no longer valid and the person you appointed loses the power to act for you. Someone will have to go through the

court to have a guardian and / or conservator appointed for you.

I want to make a Power of Attorney so that someone will be able to take care of my money and pay my bills if I cannot. Is there a way to accomplish this?

Yes, you need a “Durable” Power of Attorney. A durable power of attorney remains in effect even after you lose the capacity to handle your own affairs. This power of attorney is said to “survive throughout your incapacity.” Now instead of having to go the court to have the judge appoint someone to take care of your property, the person you have already appointed to do this keeps this power.

I executed a Power of Attorney last year. How do I tell if it is a durable power of attorney?

Look for these words: “This Power of Attorney shall not be affected by subsequent disability or incapacity of the principal” or “This power of attorney shall become effective upon the disability or incapacity of the principal.” The law requires the use of these words, or similar words that show your intent to have the power continue even after you are incapacitated, in every durable power of attorney. If your power of attorney uses these words, it is a durable power of attorney.

What are the advantages to having a durable power of attorney?

There are two primary advantages to using a durable power of attorney.

1. If you become mentally or physically incapacitated, a durable power of attorney will make sure that the person handling your affairs will be someone you know and trust.
2. If you become mentally or physically incapacitated, a durable power of attorney will make it much easier for your family and friends to handle your affairs.

If you do not have durable power of attorney and you become incapacitated, many difficult, time-consuming and expensive problems can arise. Who can authorize the medical care you need? Who will decide whether you should live in a nursing home? Who can use your money to pay your bills? Without a durable power of attorney, someone will have to go to court to have a guardian / conservator appointed for you who can take care of all these problems. This process can be difficult, time-consuming, and traumatic for you and your family.

Do I lose control over my affairs if I give someone my durable power of attorney?

Not necessarily. While you have capacity, you can have as little or as much control as you like. Think of it as sharing control over your affairs with the person you appoint as your power of attorney representative. Later, when you become incapacitated, your representative will assume full control.

This sounds like it could be dangerous. Shouldn't I be Careful with a Durable Power of Attorney?

Yes. Most Durable Power of Attorney forms give extremely broad power to your representative. A wrongdoer can do a lot of damage in a short amount of time. You must be sure that the person you name as your representative will live up to their duty to act in your best interests and not waste or deplete your finances.

What is a "Springing" Power of Attorney?

A "Springing" Power of Attorney is one that does not confer any power or authority on your representative until you become incapacitated or disabled. Instead of sharing the authority with your representative while you have capacity, you have sole control over your affairs until you lose capacity, then your representative is authorized to act. A springing power of attorney contains words like this: "This power of attorney shall become effective upon the disability or incapacity of the principal."

Are there any problems associated with springing powers of attorney?

Yes. There are two major problems with springing powers of attorney.

1. How will your bank, or any other institution, know that you are incapacitated? Unlike a durable power of attorney, you must be incapacitated before your "Springing" Power of Attorney representative can act. Your incapacity is the trigger that makes the springing power of attorney effective. One of the advantages of using a power of attorney is to avoid a court determination that you are incapacitated. However, it is unlikely that banks and other institutions will recognize your springing power of attorney until they get some official notification that you have been determined to be incapacitated. You will end up right in the middle of the court system you were trying to avoid. Meanwhile, no one has the ability to pay your bills and manage your property.
2. You choose a springing power of attorney instead of a durable power of attorney because you want to put off the time that your representative will have access to your affairs for as long as possible. If this is the case, you may need to reconsider your choice of representatives. If you do not trust your representative to act appropriately while you are able to look over their shoulder, you should appoint someone else. Once you lose the capacity to oversee their actions, the person you appoint will not suddenly become more trustworthy.

Should I limit the Powers and Authority My Representative Will Have as a Way of Safeguarding My Affairs?

Not necessarily. A Durable Power of Attorney needs to give broad and general powers in order to be useful if you become incapacitated. There is simply no way for you, or your attorney, to think of every specific situation that could arise and provide your representative with only the authority to deal with only those specific situations. On the other hand, if you do not have a lot of property or financial assets or you have engaged in other methods of financial planning, you may only need to give your representative a few, very specific, powers. The most important consideration is that you give someone you trust the power to see that your affairs will be taken care of in appropriate ways.

Is there any other way to keep my representative in line?

Yes. In the power of attorney, you can appoint someone to monitor your representative. This person can look over the shoulder of your representative, just like you would, and keep him or her from doing something wrong.

What if I change my mind. Can I revoke a durable power of attorney?

Yes, as long as you still have capacity. Basically, all you need to do is to tell the person that you appointed that you are revoking the power of attorney and tear up the document. However, the law states that if another party relies on your power of attorney and takes an action, that action is binding unless that party knew that you revoked your power of attorney. For example, On December 1, you tell your power of attorney representative that you are revoking your power of attorney. You do not tell anyone else. On December 2, your old power of attorney representative goes to the bank, presents your old power of attorney, and withdraws money from your checking account. When you discover this, you cannot make a claim against the bank to recover your money. The law says that the bank can rely on your power of attorney document unless they know you have revoked it.

Therefore, if you want to revoke your power of attorney, you should:

1. Sign a written statement that you are revoking your Durable Power of Attorney. Your statement should refer to the date of your power of attorney and the name of the person you appointed as your representative.
2. Give a copy of your written revocation to the person you appointed as your representative.
3. Give copies of your written revocation to any institution or person that you know that also has copies of the durable power of attorney you are revoking.
4. If you recorded (filed in the courthouse or some other official place) your durable power of attorney, you should also record your written revocation in the same place.

Is it okay to use a form Durable Power of Attorney like the one attached to this leaflet?

It depends. The form durable power of attorney that is attached to this leaflet gives virtually

total authority to the person named as representative. If you do not have a lot of property or other financial assets and you want to give extremely broad powers to your representative, you can use the attached form.

If you do not want to give total authority to one person, DO NOT USE THIS FORM. If you have substantial property and assets, talk with a lawyer or other professional advisor about which type of power of attorney you need. Be sure to talk with the person you name as your representative about all the financial and estate planning that you do. This will help to ensure that any actions he or she takes will be in keeping with the plans you have already made for yourself.

Always talk with a qualified professional before doing anything you have question or doubts about.

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DURABLE POWER OF ATTORNEY

This Power of Attorney is executed on the _____ day of _____, _____.

I, _____, as principal in this Durable Power of Attorney, hereby appoint,

_____, whose address is _____

_____, as my true and lawful agent and

Attorney- in-Fact, to act in my behalf and in my name for the following purposes and with the following powers.

I give my appointed Attorney- in-Fact full authority to perform any acts as fully as I might or could do if I were personally present and acting, with power and authority to perform any acts necessary or incident to the execution of the powers expressly granted in this document.

I grant my Attorney- in-Fact broad authority so that he/she can deal with whatever circumstances may arise. Authorizing my Attorney- in-Fact to do all acts which I could do if personally present, I include the following specific powers. However, the following list of powers is not intended to limit any other of the general powers I grant to my Attorney- in-Fact:

A. Powers of Property Management

1. Deposit and withdraw form bank accounts
2. File tax returns
3. Initiate or defend lawsuits
4. Receive funds of any type
5. Endorse and write checks
6. Sign contracts, notes, assignments, etc.
7. Invest assets
8. Votes shares of stock
9. Sell real or personal property
10. Execute and deliver deeds and leases
11. Access to safety-deposit boxes
12. Demand, compromise and receive claims of money owing

13. Conduct general business activities.

B. Powers of Custody and Management of the Principal

1. Nominate guardian or conservator
2. Care and disposition of pets and animals
3. Arrange funeral and burial
4. Make or prohibit anatomical gifts
5. Employ nonmedical personnel such as domestics
6. Store and insure real and personal property
7. Renounce or resign from fiduciary positions
8. Provide for recreation, travel, religious needs or companionship

C. Powers to Make Health Care Decisions for the Principal

1. Request, receive and review all medical records
2. Employ and discharge medical personnel
3. Consent or revoke, withdraw or modify medical care
4. Grant releases to medical personnel
5. Authorization for nursing homes

D. Powers of Estate Planning for the Principal

1. Make gifts of charitable and non-charitable nature
2. Create, fund, mend, and terminate trusts, including those solely for the benefit of the principal
3. Purchase life insurance, alter beneficiary designations, borrow against policies, repay policy loans, and pay premiums
4. Exercise a spouse's elective share rights
5. Exercise options under retirement plans

I further authorize _____ to act as my "watchdog" to obtain and receive information from my Attorney-in-Fact named above, or to obtain and receive information from any third party with whom my Attorney-in-Fact has had contact, whenever my "watchdog" deems appropriate. Any third party releasing information Regarding the acts and actions of my Attorney-in-Fact shall not be liable for the release of such information, confidential or otherwise, to my "watchdog." The third party releasing the information need not advise the Attorney-in-Fact of the inquiry or of the inquiry or of the information released.

This Power of Attorney shall not be affected by subsequent disability or incapacity of the principal, and shall continue in force even though I may suffer mental incapacity, pursuant to the Uniform Durable Powers of Attorney Act, *W. Va. Code §§ 39-4-1 thru 39-4-7*.

SIGNATURE OF PRINCIPAL

Taken, sworn to and subscribed before me this ____ day of _____,
_____. My commission expires _____, _____.

NOTARY PUBLIC