

Powers of Attorney

What is a power of attorney? It is a legal document that authorizes one person to take action on behalf of another person. The person who creates the power is the *principal*. The person who acts on behalf of the principal is the *agent*. The powers authorized in a power of attorney can be very broad, or limited to a specific purpose or transaction. A power of attorney is *not* a court order and cannot be enforced like a court order. A court order always prevails over a power of attorney.

What kind of power of attorney do I need? It depends on the actions that you would like the agent to take in your behalf. For example, if you want to buy a house but cannot attend the closing, you can give someone a *special power of attorney* for that purpose. A *power of attorney for a nonparent caregiver* gives an agent permission to make decisions for a child that a parent would usually make. A *statutory or durable power of attorney* gives an agent permission to access bank accounts, sell property and make other important decisions when the principal becomes incapacitated or unable to make decisions. It stays in effect until revoked or until the principal dies. A *general power of attorney* does the same thing as a statutory power of attorney, except that it expires automatically if the principal becomes competent.

Who can make a power of attorney? Anyone at least 18 years of age and of sound mind can create a power of attorney. "Sound mind" means that the person signing the power of attorney understands what they are signing and the acts they have authorized the agent to perform in their behalf.

How long does a power of attorney last? It depends on what powers are authorized and for what purpose. Some powers of attorney state the ending or expiration date in the document. Others automatically expire when the principal becomes incapacitated. A durable power of attorney ends with the death of the principal.

Do third parties have to accept my power of attorney? No. Businesses usually accept payments through a power of attorney, and banks will usually accept deposits made by the agent into the principal's account. However, many financial institutions will not allow an agent to withdraw funds or close an account. Some banks have their own power of attorney form and will not accept any other.

Who should be my agent? Your agent acts in your name. In most cases, you are responsible for acts of your agent performed in your name. Choose your agent very carefully. Be especially cautious when signing a general durable power of attorney or statutory power of attorney, as these documents give your agent the authority to do practically anything in your name.

Can my agent tell me what to do? No. A power of attorney only allows your agent to do the things you want done for you. It does not keep you from doing things for yourself. *If you give someone a power of attorney, you can still act on your own behalf.* It does not mean that everyone must go through your agent, or that your agent has the exclusive right to act and make decisions for you.

How do I revoke a power of attorney? You can revoke your power of attorney at any time as long as you have sufficient mental capacity to understand that you are revoking it. You do not need anyone's permission to revoke it. Destroy the original power of attorney and any copies. Although not required, it is always best to have a written revocation. Prepare a written statement of revocation with the name of the agent and the date you made the power of attorney you wish to revoke. Sign the revocation before a notary. You can hand-deliver a copy to your agent or send it by certified mail so that you can prove that it was received. Provide copies of the revocation to everyone that your agent dealt with on your behalf, including individuals, businesses, and financial institutions, so that they are aware that the agent no longer acts for you.