

Durable Power of Attorney (POA) – Frequently Asked Questions

What Is a Power of Attorney (POA)?

A POA is a document which allows you to appoint another person to make specific decisions on your behalf. The person you appoint is referred to as your agent or your attorney-in-fact.

There are separate POAs for financial matters and for healthcare decisions. (Note that a healthcare POA is also known as an advance directive or living will; they are all the same thing.)

When your agent acts on your behalf, he is acting in your place and he can make any decision that you yourself could have made in the areas you have approved. However, your agent does not have complete control. A POA creates a sharing of authority between you and your agent. Your agent must act in accordance with your wishes, and, if possible, your input.

You can revoke a POA at any time.

What Does “Durable” Mean?

A POA can be used for a variety of purposes. For example, you might grant a limited POA to a friend to handle specific aspects of your affairs while you are temporarily in the hospital. POAs of this type are usually very limited in scope and duration, and, unless otherwise specified, are automatically revoked if you become incapacitated.

Durable POAs allow you to appoint someone to make medical and financial decisions for you in the event that you are incapacitated. Therefore, a durable POA is designed to take effect when you can no longer make decisions for yourself.

Do I Need a Durable POA?

You can execute a durable POA at any time as long as you have the mental competency required to understand the power you are granting to another person.

Because incapacity can happen at any stage of life, some people feel it is important to always have a POA in place. If you are elderly or ill it may be particularly important to execute a POA to ensure that your medical care and financial affairs will be handled according to your wishes should you become incapacitated.

Who Should I Appoint as My Agent?

The person you appoint as your agent will have the power to make all the decisions that you could have made in the areas listed in the POA. Therefore, it is important that this person is someone you trust. Your agent should also be someone who understands, and will honor, your views regarding your health care and the handling of your finances. Since the POAs for healthcare and for financial matters are separate, you may appoint different agents for each.

What Authority Should I Grant to My Agent?

A healthcare POA includes healthcare decisions, including end-of-life ones, and a financial POA includes decisions over financial matters. Some people choose to grant all power over these decisions to their agent. Others limit the power granted to more specific transactions or situations.

When Should the POA Take Effect?

A POA can take effect immediately or go into effect only if you become incapacitated. There are pros and cons to both approaches.

If your POA takes effect only after you have become incapacitated, there must be some means for determining at what point you are incapacitated (no longer have the mental competency to manage your affairs). The usual method for this determination is to have two health care professionals declare you to be incapacitated. This can be difficult in an emergency and can lead to disagreement among family members.

If your POA takes effect immediately, it can be accompanied by an understanding between you and your agent that the agent will only exercise his/her authority after you have become incapacitated. Again, it is important that your agent be someone who understands your wishes and whom you trust.

What Are the Responsibilities of My Agent?

The money and property managed by your agent continue to belong to you. Your agent is required by law to act in good faith and do what you reasonably expect her to do regarding the decisions they make on your behalf.

Do I Still Need a Will?

A POA is only valid while you are alive. After your death, either your will, or other estate planning alternatives, become the instrument by which your property is managed.

How Do I Get a POA?

The Senior Citizens' Law Office holds a monthly advance directive (power of attorney) clinic at the North Valley the senior center in Albuquerque and will help you execute a POA at the clinic at no charge, if that is your desire. Contact the Senior Citizens' Law Office at 265-2300 for more information.

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