

Power of Attorney

Most everyone likes to decide things for themselves. The hallmark of being an adult is the legal rights society gives you to make your own life choices. In some cases, though, you are not the best person to decide or act for yourself; other times, you simply are not able to make any choices at all. Though it is impossible for you to clone yourself to handle these issues, there is a way to have a surrogate making legal decisions for you.

A power of attorney (POA) is a legal document that vests an individual's ability to make decisions for another person. Usually used for financial or health care issues when a person is physically unable to act, a POA can be written with a variety of specifications.

POA Basics

Despite the difference in particulars, POA forms all share the same basics. An individual, called the "principal" or "grantor," writes or fills in a document declaring another person, called the "agent" or "attorney-in-fact," to hold the legal ability to take fiscal or medical actions in the principal's stead. The document must be made while the principal is of a sound mind, typically requires two witnesses and a notary signature, terminates with the principal's death and obligates the agent to act with fiduciary responsibility. The last of these features, fiduciary responsibility, could be considered the most important because it legally requires the agent to act in whatever way is best for the principal.

Addendums of Power of Attorney

Durable— Unless specified otherwise, a typical POA is a non-durable document. When a POA is non-durable, it loses its authority when the principal becomes incapacitated. POA is sometimes granted to business partners when the grantor is simply immobile. In these cases, the grantor often has to ratify decisions made with POA. A non-durable POA prevents an agent from being able to act without the principal being able to stop him or her. If the principal desires that his or her agent be able to act during incapacitation, he or she can make the POA "durable." Many choose to add durability to their POA because fear of sudden incapacitation is typically the reason they create a POA statement.

In the event of incapacitation

A medical power of attorney can allow the holder to:

- *Choose medical centers and physicians used for treatment.*
- *Have access to private medical files.*
- *Decide on medical treatments not regulated by a living-will.*
- *Use the legal system to uphold medical decisions or living wills.*

CAISSA

Kelly Pedersen CFP®, CDFA
Founder and CEO

Caissa Wealth Strategies
(952) 777-2273

7825 Washington Ave S
Bloomington, MN 55439

Springing and Immediate – Simply put, a “springing” POA is one that springs into action given a certain situation has occurred, while immediate POA documents are active from the moment they are signed. The most common POAs written are springing documents that are contingent on the incapacitation of an individual.

Medical – A medical POA is both a springing and durable document that gives an agent the ability to make medical decisions for the principal while he or she is incapacitated. For cases of extended or permanent incapacitation, a court may assign medical power to a relative, if the principal has not created a medical POA. Medical POAs are among the most common POA documents drafted because they have superior flexibility when compared to a living will.

Living wills (Declaration to Physicians) – These are documents that carry the same authority as a medical POA, but do not vest that authority in an agent. A living will has clear statements for care given the principal is both incapacitated and has an injury or illness that is terminal. Since the statements on a living will were explicitly made by the principal, they guarantee that the medical action is legal and in accordance with the principal’s exact wishes. However, since a living will is only able to make decisions for an individual who is both terminally ill and completely incapacitated, they do not have the adaptability of an agent carrying POA.

Power in a Document

Because of their legal power, courts and state governments recognize the potential danger of a person being able to act for someone else. A POA is designed to be an opt-in document where you choose what your agent can do, not limit what he or she can’t do. It is essential to consider the extent of powers an agent will need and when they will be needed before a successful POA is drafted. Though some services online allow for easy creation of a POA, the document must be witnessed and notarized to be legal. It is wise to contact a legal counsel who can provide suggestions on how to secure your POA against potential shortcomings or risks.

