

Power of Attorney

What is a Power of Attorney?

A Power of Attorney is a written document, which allows you to choose someone to help make financial, legal and business decisions for or with you. It does not apply to health care matters.

You must be 18 years of age or older and of sound mind to have a valid Power of Attorney. The document must be in writing and be notarized.

Each state sets forth its own requirements for a Power of Attorney.

The person you select or appoint to act for you is known as the “Attorney-in-Fact”.

You are the “Principal” when that word is used.

What does a Power of Attorney Do?

When you write a Power of Attorney, you choose the person, people or organization that may assist you with business, financial or legal decisions. The power can be limited to very specific acts or be very broad to encompass essentially any decision.

There are many types of Powers of Attorney. In Minnesota, two types are primarily used.

The “Statutory Short Form Power of Attorney” is the form Minnesota law allows us to use that lets you give certain powers to the Attorney-in-Fact by checking a box or a sentence of your preference. (The extent to which the Minnesota Statutory Short Form Power of Attorney will be recognized in other states is not clear).

The “General Durable Power of Attorney” is a longer narrative form of a Power of Attorney commonly used prior to the enactment of the law allowing use of the Statutory Short Form Power of Attorney. The General Power of Attorney is valid and is useful today under most circumstances. It is the preferred document if the Principal owns assets in other states and/or wishes to give the Attorney-in-Fact broad gifting authority.

When does a Power of Attorney become effective?

Usually, a Power of Attorney is effective immediately upon execution. It does not wait for you to become incompetent to be effective. An Attorney-in-Fact must, however, have a document with your original notarized signature in order to use the power.

This document contains general information and is not legal advice. You should speak to an attorney to discuss your particular circumstances.

What happens if I do not have a Power of Attorney?

If an individual does not have a Power of Attorney and a signature is needed in order to sell real estate, cash in an insurance policy or retirement policy, pay bills, etc., a Conservatorship will be necessary. The person or agency appointed by the court is the Conservator and the individual over whom the conservatorship is established is the ward.

A Conservatorship is established through a Probate Court process. Upon filing a petition with the Probate Court, an individual or agency may be appointed as a Conservator. That individual or agency is legally obligated to manage the estate of the ward. Some of the responsibilities include preparing an inventory of all assets, paying necessary bills and preserving existing assets. The conservator must also provide the court with an annual accounting of all the assets that come into and leave the estate of the ward. In other words, keep track of all income and assets as well as all payments made on behalf of the ward.

Gifting assets of the ward away for purposes of estate planning in a conservatorship is not permissible.

Does having a Power of Attorney help avoid Conservatorship?

Generally, yes. If a Power of Attorney is properly executed pursuant to law, it can be used for most financial, business and legal issues that arise.

Are there some things that a Power of Attorney can not be used for?

A Power of Attorney can not be used for purposes of making medical decisions.

In some circumstances, a Power of Attorney is not accepted by the social security administration unless a separate writing is prepared pursuant to federal law.

How long is a Power of Attorney valid?

A "Durable" Power of Attorney is a Power of Attorney that will remain in force and be effective until the death of the Principal, even if the Principal becomes incompetent. Under old law, a Power of Attorney automatically terminated if the Principal became incompetent. Under Minnesota Statutes, Section 523.07, however, a durable Power of Attorney will remain in force until the death of the Principal even if the Principal becomes incompetent. A durable Power of Attorney will also remain in force after the appointment of a conservator or guardian of the Principal, unless the conservator or guardian expressly revokes it.



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