



## **How to Choose a Power of Attorney**

One of the legal matters that one should consider alongside care planning is getting a power of attorney in place. A power of attorney is a document that grants someone (usually a family member) the authority to make financial and legal decisions and conduct such matters on your behalf. Powers of attorney can be used in a variety of situations and come in different forms. You may want to discuss the right type for you with your lawyer or notary public.

### **Why do a Power of Attorney?**

A power of attorney can sometimes be a good idea if for example you are going to be out of the country for some time and need some matters taken care of while you are away. From an advance planning perspective, especially for a senior, a power of attorney is a good idea to ensure that a family member is named and is able to take care of legal and financial matters if you unexpectedly become unable or lose mental capacity due to a health incident. A power of attorney must be granted when the grantor is of sound mind. The most common type of power attorney is an “enduring” power of attorney, which means that it continues in effect even if you become mentally incapable.

If you become mentally incapable and have not granted a power of attorney already, it will be too late to do so. Your loved ones in this case will need to apply to court to get “committeeship”, essentially a court-appointed person usually in the family to act on your behalf. It is an expensive and time consuming process and the person ending up being named may not necessarily be the person you would have chosen. Therefore, it is always best to get the power of attorney done in advance even when you don’t think one is necessary yet.

### **Who should I name as my Power of Attorney?**

There may be multiple people in your life who you would reasonably consider to appoint as your power of attorney. Here are some considerations to keep in mind.

1. You can choose any capable person over the age of 19 to be your power of attorney. Obviously, choose someone that you trust completely and who you feel would do a good job in managing your finances, as that is often the largest task.
2. You can appoint more than one person as power of attorney. You should appoint them under the same power of attorney document, and you should state specifically whether they need to act together (which requires them to agree on everything) or whether they can act independently.
3. You may want to consider appointing a third party who is not a family member. All of the major banks have a trust division and there may be also independent trust companies in your city. Certainly there are trade-off's in weighing the option of appointment a family member versus a third party, but it is an option worth considering if you do not have any family members that you wish to appoint.
4. It may be possible to word your power of attorney document such that it only comes into effect once you are no longer mentally capable to make decisions yourself. These powers of attorney are sometimes called "springing" powers of attorney, and if you wish to do this you should definitely consult a lawyer to have one properly drafted.

### **What can the person named as Power of Attorney actually do?**

The power of attorney's authority is defined by the wording in the power of attorney document. For seniors who are doing this as an advance planning measure, a general power of attorney will typically be prepared.

Under a general power of attorney, the named person would be able to do all the financial and legal things that you can do. This could include for example, depositing cheques into your banking account, withdrawing money, paying expenses or writing cheques, filing your income tax return on your behalf, purchasing third party services, or dealing with your real estate (although special wording and steps are necessary for authority with dealing with real estate – consult your lawyer).

Your power of attorney is legally required to act on your behalf in your best interests. They must act honestly and in good faith.

Your power of attorney technically cannot make healthcare decisions on your behalf. For healthcare matters, you can appoint someone under a Representation Agreement. Please consult your lawyer for more details or to have one drafted for you. The person named under the Power of Attorney and Representation Agreement need not be the same person, although in certain cases it may make practical sense to do so.

### **Can I change my mind later?**

A power of attorney can be revoked or replaced at any time, so long as the person granting the power of attorney is still mentally capable. If you are revoking your power of attorney, you should consult with the person who drafted it for you, as well as notify the person that you had appointed as your power of attorney. If your power of attorney had already been dealing with legal or financial matters on your behalf, you may wish to also notify the banks or other organizations that have been dealing with this person.

If you are replacing a power of attorney with a new one, ensure that the new document explicitly revokes any and all powers of attorney previously made.

### **What should you do if you are named as Power of Attorney?**

If you are named as a power of attorney, consider thoughtfully whether you are willing to act in this role. You may want to have a heart-to-heart talk with the person who appointed you, to discuss their wishes with respect to how and what decisions are to be made in the case that that person does in fact lose mental capacity. You may want to have a general understanding of the person's assets (real property or other assets such as where they have bank accounts).

Don't be scared to seek legal advice if you are unsure about how to avoid potential conflicts of interest, or if you are uncertain how to act in the best interests of the person who appointed you.

Maintain an original copy of the power of attorney. As you deal with third parties in exercising your power of attorney, you will be asked repeatedly to produce it and/or provide a copy of it to verify your authority.

For more detailed information or to receive a complimentary consultation to enquire how we can help Powers of Attorney fulfill their duties, please contact us anytime.

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