

# Powers of Attorney

A power of attorney is a document in which you give someone the legal authority to act for you. This article covers all of the basics you need to know about powers of attorney.

1. **Principal and Agent.** You are called the **principal**. The person to whom you give the authority to act on your behalf is called your **attorney-in-fact** or your **agent**. You may name your spouse, an adult child, a relative or trusted friend to be your agent. You should choose someone you trust completely. Upon granting the agent such authority, the agent is commonly said to have "power of attorney," the same phrase used for the legal document conferring such authority. For peace of mind, more than one agent may be named and signatures from both agents might be prudent for all transactions. However, using more than one agent can be cumbersome and time-consuming.

2. **Incapacity of Principal.** The use of a power of attorney is especially important, if not solely used, when the principal lacks mental and/or physical capacity to act on his or her own behalf. The power of attorney can be a valuable tool for the management of an individual's assets and affairs, especially in a time of a principal's medical emergencies or incompetence caused by brain disorder, senile dementia or Alzheimer's disease.

3. **Authority of Agent.** Through this document, the principal grants the agent every power of the principal, including the power to enter into contracts, issue and endorse checks, pay bills, make gifts, sign tax returns, access banking information and assets, and buy and sell property. The document should list each item and nature

by Darren M. Baldo, Esq., CPA, LLM of authority being granted.

4. **Signature of Principal.** The authority granted under any power of attorney must be in a written document signed PRIOR to the mental incapacity of the principal. Otherwise, the power of attorney may and should be invalidated. Also, the principal's signature upon the power of attorney must be witnessed by a notary public.

5. **Scope.** There are different types of powers of attorney. A power of attorney can be general in scope or may be limited to certain narrow authority. A limited power of attorney can be drafted to just handle issues involving credit card accounts or business or tax matters. For certain agents, like accountants and attorneys, separate prescribed powers of attorney forms for dealing with the Internal Revenue Service and New Jersey Division of Taxation should also be signed and filed as early as possible to ensure such person's ability to represent the principal in IRS and New Jersey tax audits and appeals.

6. **Durable Power of Attorney.** The "**durable**" power of attorney, upon signing, immediately provides the agent with authority to act on the principal's behalf. The durable power of attorney does not become void if or when the principal becomes incompetent. Having a durable power of attorney avoids the need for independent certification of incapacity by physicians or the need for the court to appoint a guardian for the incompetent person, which is extremely costly and time-consuming. There is no guarantee that the court would appoint a preferable agent.



7. **Springing Power of Attorney.** A "**springing**" power of attorney springs into effect only upon the incapacity of a principal. The problem with the springing power of attorney is that, if not properly drafted or if challenged, it might only take effect after a judicial determination of incapacity of the principal, which might take several weeks, if not months. Whichever power of attorney is desired, the document must be carefully drafted so that it is clear when it takes effect and the scope of its effect.

Powers of attorney are an essential component of every family's estate plan, even if the family has a modest estate plan. However, once the principal dies, the power of attorney is no longer applicable. To avoid lawsuits and strain of family relationships, agents should take great care to preserve the principal's assets and should avoid engaging in any self-dealing.

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