

# What is a Power of Attorney?

A power of attorney is a document often created as part of an estate plan. You (the “principal”) can sign a power of attorney document, which authorizes someone else (your “agent” or “attorney-in-fact”) to act or make decisions on your behalf. The types of decisions that can be made by an agent depend upon the type of power of attorney document.

## Types of Power of Attorney Documents:

There are three common types of power of attorney documents.

- 1. Financial Power of Attorney:** also known as General Durable Power of Attorney or GDPOA. In a financial power of attorney, you give your agent the authority to act on your behalf with respect to your finances, property and assets during your lifetime.
- 2. Medical Power of Attorney:** A medical power attorney gives authority to your agent to make health care and personal care decisions on your behalf while you are living.
- 3. Limited Power of Attorney:** also known as a Special Power of Attorney. A limited power of attorney can be created for any purpose, but typically the agent’s authority is limited to a very narrow set of circumstances. For example, in a real estate transaction an agent may have a limited power of attorney to sign transaction paperwork on your behalf for the sale or purchase of the real property.

## What does it mean when a Power of Attorney is durable?

A durable power of attorney is a document that survives your incapacity. Most financial and medical powers of attorney created by attorneys are durable because they are intended to ensure you have assistance in making decisions about yourself or your assets after you are no longer able to make those decisions yourself.

## When does a Power of Attorney take effect?

A power of attorney can be springing or standing.

- A springing power of attorney takes effect after a specific event occurs. One example of a springing event could be that two doctors certify in writing that you no longer have the ability to make your own medical or financial decisions. In this example, your agent could not act on your behalf until that certification is provided.
- A standing power of attorney takes effect immediately when you sign the document. When you sign a standing power of attorney, you continue to have the authority to make your own decisions until you need as-

sistance. An agent is required to consult with you about decisions and consider your wishes whenever possible. You are also entitled to information about your assets and finances after the agent has started acting on your behalf.

## How can I create a Power of Attorney?

A power of attorney is a written document that can be prepared by an attorney or available as a form online. In order to sign a power of attorney, you must be at least 18 years of age and have the mental capacity to understand the nature and meaning of the document.

Exercise caution before signing a power of attorney document that you do not fully understand or that does not follow Colorado law. A power of attorney document can give your agent the authority to change beneficiary designations on your accounts, exercise your rights in a business or partnership, make gifts to others from your assets, or decide whether you live at home or in a facility when you are unable to take care of yourself. If you do not understand the document you are about to sign or do not know if it conforms to Colorado law, you should seek the advice of an attorney.

## Who should I choose as my Agent?

It is very important to choose someone you trust as your agent. Your agent under a financial or medical power of attorney can access private and sensitive information, such as bank accounts, medical records, and other legal documents. Your agent may have the authority to make decisions about how your assets are managed or what medical care you will or will not receive. If you do not trust someone to act appropriately if they were in charge of your assets or medical care, you should reconsider whether to nominate that person as your agent.

Your nominated agent under a financial power of attorney can be different than your nominated agent under a medical power of attorney. Financial and medical decisions sometimes require different skills or personality traits. It is important to choose an agent that would be most appropriate for each role.

## Should I nominate alternate or successor Agents in my Power of Attorney?

An attorney will often ask you to nominate alternate or successor agents in case the first nominated agent is unable or unwilling to serve. If your power of attorney document nominates only one agent and that person is unable to serve, you would need to sign a new power of attorney document to nominate someone else. If you did not have the mental capacity to sign a new power of attorney document at that

time, a court would have to appoint someone to make decisions on your behalf. In Colorado this is called guardianship or conservatorship. It is usually less expensive and easier to sign a power of attorney document that includes a successor agent, while you are mentally capable to nominate that person.

### **Can I nominate multiple people to serve as my Co-Agents?**

You can nominate anyone you want to be your agent, but they have the ability to decline your nomination.

You can nominate multiple people to serve simultaneously as co-agents, however you should carefully consider the effect of this choice. If two individuals are nominated to serve as co-agents, banks and doctors may require that they act together in order to sign checks or make health care decisions, which may become burdensome. If co-agents cannot agree on a decision, a court may have to resolve their dispute. A power of attorney document can give your co-agents the authority to act independently of each other, but an agent can still be liable for the actions or inactions of their co-agent. Communication and cooperation are important for co-agents to be successful at working together on your behalf.

### **Can I change my Power of Attorney document or Agent?**

You can revoke your power of attorney document or an agent's authority at any time as long as you have the mental capacity to do so. If an attorney drafts a new power of attorney document for you, often the attorney will insert language that the new power of attorney revokes any prior power of attorney documents you have signed.

If you change your power of attorney document or your agent, you should notify persons or companies that received a copy of the original power of attorney document, such as banks, medical providers and family members.

### **When does a Power of Attorney expire?**

A power of attorney document that is not durable terminates when you become incapacitated. A durable power of attorney terminates when one of the following events occurs:

- You, the principal, revoke your power of attorney document;
- The agent is unwilling or unable to serve or the agent's authority is revoked by the principal and the power of attorney document does not nominate an alternate agent to act;
- A limited power of attorney may terminate the agent's authority after the purpose for which the power of attorney was created is completed, such as the signing of real estate documents; or
- The principal dies. An agent has no authority to act on your behalf after your death.

### **I just moved to Colorado. Is my Power of Attorney document still valid?**

In general, financial and medical powers of attorney are intended to be effective in other states within the United States. However, different states may provide different authority to an agent under their laws. In addition, financial institutions sometimes prefer specific language in power of attorney documents in order to recognize the authority of your nominated agent. You should review your power of attorney documents every few years in case of changes in your life, in the lives of your nominated agents, or in the law necessitate changes to your powers of attorney.

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