



Before You Sign That Document!

What You Need To Know About

Durable Powers of Attorney

What Is a Durable Power of Attorney?

A durable power of attorney is a document you can use to allow another person to act on your behalf. You, as the person signing the durable power of attorney, are the “principal.” The person you name to act on your behalf is called the “attorney-in-fact” or “agent.”

Even though we call this person an attorney-in-fact, your agent does not need to be a lawyer. You can choose any adult to act for you.

What Will My Agent Be Able To Do?

Each durable power of attorney is different. Some only deal with property and financial matters. Others include medical care. It is up to you to decide what powers you want to give to your agent.

Common powers in a durable power of attorney include:

- banking and paying bills
- maintaining and selling real property
- making most health care decisions

While there are standard forms available, it is a good idea to talk to an attorney about drafting a document that fits your needs. State laws vary, so a standardized form may not comply with Oklahoma law.

Do I Need a Durable Power of Attorney?

Durable powers of attorney are powerful tools. They can be a good way to give your

loved ones the ability to take care of you without going to court for a guardianship. However, they can also be abused and cause significant financial and personal hardship.

Before signing a durable power of attorney, consider the following:

- *How trustworthy and responsible is your chosen agent?*
- *Do you want to give this person the power to make decisions about your property? Your medical and personal care? Both?*
- *Do you want to put any limitations or safeguards in place for certain decisions?*

Who Should I Appoint As My Attorney-In-Fact?

Choose your agent carefully and make sure it is someone you trust. This person may have the power to sell your home, write checks, place you in a nursing home or make other significant decisions for you.

When choosing your attorney-in-fact, consider the following:

- *Can this person legally act as your attorney-in-fact?* An attorney-in-fact must be at least 18 years old and have sufficient mental capacity to make decisions.
- *Is this person willing to serve?* Ask permission to name someone as your attorney-in-fact.
- *Will this person be available?* Does the person live nearby? Does the person have other responsibilities that would prevent him or her from being available?

- *Does this person have the necessary skills?* This will depend on the complexity of your financial or medical affairs.
- *Will this person act for your benefit?* Can this person be trusted to act only on your behalf and not in his or her own interest?
- *Can you talk to this person about your medical conditions?* If you are giving this person power over medical decisions, make sure you feel comfortable sharing your personal health information.
- *Will this person be able to handle conflict?* Make sure your agent can handle conflicts that might arise if loved ones or others disagree about your medical care or finances.

You may want to appoint more than one person to serve as your agents. You can appoint co-agents, who will both be able to act for you. You can also appoint one primary agent and an alternate person as a backup.

When Will My Durable Power of Attorney Take Effect?

You can choose when your durable power of attorney will take effect. One option is to make your durable power of attorney take effect as soon as you sign it. If you do this, your agent could immediately use the document to act on your behalf.

After you sign, you can continue to do things for yourself. Signing an immediate durable power of attorney does not mean you lose the right to control your own life.

Some durable powers of attorney only take effect when the person who signed it can no longer make decisions. If the durable power of attorney takes effect when the principal is incapacitated (called a “springing” durable power of attorney), it should clearly describe the standard used to determine incapacity. Of-

Immediate vs. Springing

Immediate - takes effect as soon as you sign it

Springing - only takes effect when you can no longer make your own decisions or manage your affairs

ten this type of durable power of attorney will require letters written by one or more doctors stating that the principal is incapacitated.

If you want assistance now but are still able to act for yourself, an immediate durable power of attorney may make sense. Immediate durable powers of attorney are also easier to use because they do not require getting evidence of incapacity from a doctor.

On the other hand, you may prefer a springing durable power of attorney if you only want your agent to step in if you can no longer make decisions or handle your own affairs. While it may be more difficult to use a springing durable power of attorney, the required medical documentation makes it less likely the durable power of attorney will be used before it is necessary.

Another option is to execute a durable power of attorney that takes effect immediately, but not give a copy to your attorney-in-fact until you are ready for your agent to use it. If you do this, make sure your attorney-in-fact knows where to find the document if needed.

Does My Durable Power of Attorney Need To Be Notarized or Witnessed?

Unless the durable power of attorney is the Uniform Statutory Form (see below), it will need to be witnessed by two people and notarized. The witnesses must be at least 18 years

old and cannot be related by blood or marriage to either you or your agent.

There is a standardized durable power of attorney form under the *Uniform Statutory Form Power of Attorney Act* (15 O.S. §§ 1001-1020). This statutory form lists 13 powers over financial matters and property that you may select by placing a check next to each. This kind of durable power of attorney cannot be used for health care decisions.

If you use the Uniform Statutory form, you do not need to have the document witnessed. However, it will still need to be notarized.

Are Others Required To Honor My Power of Attorney?

There is no law that requires someone to honor your power of attorney. Check with your bank and other institutions with which you do business to make sure your durable power of attorney meets their requirements and will be accepted. Your bank may be able to provide you with a durable power of attorney form that they prefer (or require) you to use.

Some government agencies, such as Social Security, may not honor your durable power of attorney. Instead, they use their own system to appoint a Representative Payee. If you

Requirements For Most Durable Powers of Attorney

Signed by you (the principal) while you still have mental capacity
Witnessed by two adults who are not related by blood or marriage to you or anyone you have appointed as your attorney-in-fact
Notarized

become incapacitated, your agent may need to apply to be your Representative Payee in order to manage your government income.

Can My Agent Go Against My Wishes?

The purpose of a durable power of attorney is to help with financial and/or health matters. It does not give your agent the power to go against your wishes or take actions that are harmful to you.

Can I Limit My Agent's Powers?

To protect yourself, it may be a good idea to include limits or safeguards in your durable power of attorney. For example, you can require that your agent send a copy of your bank statement each month to someone else. This may help your agent resist the temptation to borrow or otherwise mishandle your money.

You can also require that more than one person be involved in certain actions. This may be a good idea for major decisions, such as selling a house or nursing home placement.

Can My Agent Make All Medical Decisions For Me?

A general durable power of attorney can give your attorney-in-fact the authority to make most medical decisions on your behalf. However, unless the durable power of attorney meets specific requirements, it cannot grant the power to make life-sustaining treatment decisions, such as withholding or withdrawing a feeding tube or respirator.

If you would like to authorize your agent to make all medical decisions, including life-sustaining treatment decisions, you should have a knowledgeable attorney draft the durable power of attorney for you.

Another document that can be used to authorize someone to make all medical decisions, including life-sustaining treatment decisions, is an Advance Directive for Health Care. This is a standardized form that allows you to express your wishes about end-of-life treatment and appoint agents (called “health care proxies”) to make all medical decisions if you are ever unable to. For more information, see the publication *Your Right To Decide*, available from the Senior Law Resource Center.

What If I Change My Mind?

As long as you can still make decisions, you can change or cancel your durable power of attorney at any time.

You can make changes to your durable power of attorney in a separate document, sometimes called an amendment. This amendment should be signed, witnessed and notarized in the same way as your original durable power of attorney. If you wish to make significant changes, it may be easier to execute a new durable power of attorney.

You can revoke your durable power of attorney by crossing out or destroying the form. You may also sign a new document stating that you revoke your durable power of attorney.

Never cross out or add words to any legal document after it is signed. These changes may not be effective and could void the document.

ney. If you do a new durable power of attorney, usually this will revoke your older one.

You must tell your agent, preferably in writing, that your durable power of attorney has been changed or revoked. It is also a good idea to inform anyone to whom the durable power of attorney has been shown, such as your bank.

Can My Agent Use My Durable Power of Attorney After My Death?

Your durable power of attorney is only in effect while you are living. After your death, your agent will no longer have the legal authority to handle your affairs.

Why Is It Called a “Durable” Power of Attorney?

The word “durable” means that your agent will be able to act for you even if you can no longer make decisions on your own. If the power of attorney is not durable, it will end as soon as you are unable to act for yourself.

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For more information about durable powers of attorney and other legal issues, contact the **Senior Law Resource Center** at **(405) 528-0858** or **info@senior-law.org**, or go to **www.senior-law.org**.