



Financial Powers of Attorney

From the Office of Minnesota Attorney General Keith Ellison

It is usually best for people to make their own decisions on matters that significantly affect their lives. In some cases, however, people become unable to do so because of health or cognitive impairments. In these situations, it is important for people to have someone they trust who can make decisions for them. Establishing a power of attorney may be something to consider.

What is a financial power of attorney?

A financial power of attorney is a document that gives someone permission to act on another person's behalf. When a person creates a power of attorney, they are considered the "principal." The individual to whom they give this permission is called their "agent" or "attorney-in-fact."

This individual does not need to be an attorney, but should be someone the person greatly trusts. There has been an uptick in recent years of financial fraud by agents who abuse the authority granted to them under a power of attorney. The person selected as the agent should be responsible, honest, and diligent.

When establishing a power of attorney, a person must decide how much authority they want their agent to have over their affairs. A **general power of attorney** gives an agent the ability to act on a person's behalf in all of their affairs, while a **limited power of attorney** grants an agent this authority only in specific situations.

A person may also choose to make their power of attorney "durable," which means it stays in place even if the person becomes incompetent or incapacitated. A principal can also revoke a power of attorney. For example, somebody facing surgery may complete a power of attorney on a temporary basis, but then revoke it once they are healed and out of the hospital.

When should I use a power of attorney?

A power of attorney may be a good idea for people who are unable or who may become unable in the future to manage their financial affairs or make other decisions for themselves. Examples of powers people can give to their agent are:

- To use a person's assets to pay their everyday living expenses.
- To manage benefits from Social Security, Medicare, or other government programs.
- To handle transactions with their bank and other financial institutions.
- To file and pay a person's taxes.
- To manage a person's retirement accounts.

How do I create a power of attorney?

A power of attorney must be in writing, signed in front of a notary, dated, and clear on what powers are being granted. If a person wishes to make the power of attorney durable (i.e., to last even if they become incapacitated), they must include a statement such as: "This power of attorney shall not be affected by incapacity or incompetence of the principal." It is not necessary to have a lawyer prepare a power of attorney, but consulting with one can help ensure that the power of attorney is constructed in a way that aligns with the person's wishes.

When does a power of attorney end?

A mentally competent person can remove a power of attorney at any time with a signed document. If a power of attorney is not removed, it ends with a person's death.

Where can I get a sample form?

A statutory power of attorney short form is available on the Minnesota Attorney General's Office website at: www.ag.state.mn.us/Consumer/Handbooks/Probate/PowerOfAtty.pdf. This form is prepared according to statutory requirements. It allows a person to create a

power of attorney, choose which powers they wish to delegate to their agent, and identify whether or not the power of attorney will be durable. Before completing the form, the principal and agent should carefully read all pages of the form, including the instructions at the top of the first page.

In addition, some banks and financial companies have their own power of attorney forms. Preparing additional, organization-specific forms may make it easier for an agent to work with certain organizations with which the principal does business.

For general information (not legal advice) and sample forms, contact:

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