

Powers of Attorney

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Presentation today is:

- General information only
- The basics
- Not legal advice
 - Every situation is different
 - If you need legal advice, get a lawyer



Big Picture: Power of Planning Ahead

Concern:

Who will make financial and medical decisions for you if you cannot make them?

Solution:

It depends on your situation. You decide.



Big Picture: Power of Planning Ahead

From least to most restrictive:

- Informal arrangements
- Joint ownership and banking arrangements
- Powers of attorney and health care directives
 - DNR/DNI/DNH and POLST
- Trusts
- Guardianships and conservatorships



Big Picture:
Power of Planning Ahead

Power of Attorney ->
finances

Health Care Directive ->
the person



Power of Attorney

What is a Power of Attorney (POA)?

- Written permission for someone to take care of your property and money matters for you
 - Powers granted must be stated



Power of Attorney

Person giving power (you) =
Principal

Person taking care of things
for you = Attorney-in-fact



Power of Attorney

How much power does attorney-in-fact have?

- Depends on how POA is written
 - Only powers granted
- If attorney-in-fact acts, it is the same as if you had done it yourself
- Supposed to do things only in your best interest
- Attorney-in-fact ≠ guardian



Power of Attorney

Do you lose power to act for yourself?

Assuming you have capacity:

- You can still act for yourself and make decisions for yourself
- Attorney-in-fact can also act for you
 - Function: to support you
- Can be revoked at any time



Power of Attorney

What if you lose capacity?

It depends on how the POA is written

- If POA is “**durable**,” it remains valid even if you lose capacity
 - Durable = lasting
- “This power of attorney shall not be affected by incapacity of the principal”



Power of Attorney

Who can be the attorney-in-fact?

- You choose!
 - Over the age of 18
 - You can list more than one
 - Can also name a “successor”
 - Doesn’t have to be a lawyer



Power of Attorney

Choose attorney-in-fact **carefully!**

- Good with money
- Very conscientious
- Someone you trust deeply
- The person you chose can do things in your name without asking for permission unless you say otherwise



Power of Attorney

Who can make a Power of Attorney?

- You must be mentally competent
 - “Of sound mind”
 - If question about competence: talk to doctor or health care provider



Power of Attorney

Continued - Who can make a Power of Attorney?

- If not mentally competent:
 - Too late
 - Conservatorship may need to be created



Power of Attorney

How do you make a Power of Attorney?

- Written, dated, and signed by you in front of notary
- Attorney in fact signs, too, but not in front of notary
- Effective **immediately** (not just when you become sick or incapacitated)



Power of Attorney

Advantages of Power of Attorney?

- Easy and low-cost
- You get to choose attorney-in-fact
- Less restrictive
- Financial entities (banks, lenders) know what it is



Power of Attorney

Disadvantages of Power of Attorney?

- Attorney-in-fact
 - Can take advantage of you!
 - Not court supervised
- Not required to act



Power of Attorney

- Safeguards:
 - Require regular accountings
 - Can be given to a third person, too
 - Require two people to work together
 - Professional fiduciary



Power of Attorney

Do I need a lawyer to make a Power of Attorney?

- No.
 - Short form POA and instructions available at LawHelpMN.org
 - But lawyer can help customize and build in protections



Power of Attorney

What should I do with the POA document?

- Keep a copy
- Attorney in fact should keep a copy
- Give copies where needed depending on powers given
 - Ex: if giving power to manage money, give a copy to bank



Power of Attorney

How does POA end?

- A competent person can revoke at any time
- If you lose capacity, and the POA is **not** durable
- If you revoke the POA in writing
- If your spouse is attorney in fact, when you divorce
- If you die
 - Different planning required for after your death (e.g. will)
- If it is durable and you lose capacity, only by court appointed conservator



Power of Attorney

If you revoke POA:

- You should send copies to the attorney-in-fact and to any person, office, or bank that attorney-in-fact dealt with
- If you don't send these copies, the businesses won't know, and your attorney-in-fact could still try to do business in your name
- Revocation form is attached to the fact sheet I brought and can get it at lawhelpmn.org/forms



Mid-Minnesota Legal Aid (MMLA)

- Free civil legal services (not criminal)
- Help vulnerable Minnesotans gain access to:
 - safety,
 - shelter,
 - food,
 - health care and
 - education



Mid-Minnesota Legal Aid (MMLA)

- Serve clients who are disabled, older (60 and over) and/or low-income
- Poverty law work and work for older people:
 - More than 20 counties across central Minnesota
 - Offices: Minneapolis, St. Cloud & Willmar
- Founded in 1913 – over 110 years of experience!



MMLA Minneapolis Office's Senior Law Project

Who does Senior Law Project serve?

- Residents of Hennepin and Anoka counties
- People 60 years of age or older
- Income does not matter but we focus on clients with the greatest economic and social need.

CAVEAT:

- Limited resources



MMLA Minneapolis Office's Senior Law Project

Types of legal issues:

- Landlord-Tenant / Housing
- Public Benefits
- Medical Assistance
- SSI / Social Security
- Assisted Living Questions
- Nursing Home Questions
- Debtor rights / Consumer
- Grandparent Rights
- Powers of attorney / Health care directives
- Probate advice and referrals
- Immigration



MMLA Minneapolis Office's Senior Law Project

Our free legal services include:

- Referrals
- Advice
- Brief services
- Direct representation



Senior Wills Clinic

- We prepare:
 - Simple Wills
 - Health Care Directive
 - Transfer on Death Deed
 - Power of Attorney



MMLA Minneapolis Office's Senior Law Project

Need help?

Call our intake line at 612-334-5970

- Monday through Friday
 - 9:30 am-11:30 am
 - 1:30 pm-3:30 pm



Your questions and your experiences

Questions?

Do you have experiences to share?

