



# Power of Attorney Fact Sheet

## Introduction

A power of attorney is a legal way to have one person act on behalf of another. The power of attorney document gives someone the authority to act on your behalf on matters you list in the document. The power can be specific to a certain task or cover many duties, including financial and medical. The power can start immediately or only after some event occurs, such as if you become mentally incompetent. A power of attorney does not take away your right to act on your own behalf.

## Types

There are different types of powers of attorney. Each type has a different purpose and grants different levels of power to an agent.

### Durable

A “durable power of attorney” remains or becomes effective upon the principal becoming incompetent or unable to manage their own affairs. Powers of attorney created under Arkansas law on or after January 1, 2012, are automatically durable unless the Power of Attorney specifically states that it is terminated by the incapacity of the principal.

### For Healthcare

A “durable power of attorney for healthcare” is an advance health care directive. It allows you to name an agent to make healthcare decisions for you, including the power to consent to or withdraw from any type of medical treatment, even if death results. The agent may exercise the powers given throughout the principal's life, even after the principal becomes disabled, unless it is revoked or a court revokes it.

### Living Wills

The principal may combine a durable power of attorney with a living will. A “living will” is a document in which a person states their wishes in case they are unable to make medical decisions for themselves.

### General

A “general power of attorney” authorizes an agent to carry on business or an enterprise for a principal and usually has broad, rather than specific, powers.

### Limited, or Special

A “limited power of attorney” authorizes an agent to carry out a business or transaction for a principal. A limited power of attorney can be helpful if you are temporarily hospitalized, will be traveling for an extended time, or are unable to do your own banking or pay your bills for any reason.

## If you appoint an agent in a durable power of attorney:

- you clearly define ahead of time how you want your financial affairs handled if you are unable to do so
- you have peace of mind that comes from knowing that the person you have chosen is the one who will handle your affairs if you are not able to do so
- you can get the benefits you are entitled to, because your agent can make claims and apply on your behalf

## Ending

An agent cannot transfer property, or act in any other way under a power of attorney, after the principal's death. To ensure your property is divided per your wishes upon your death, a trust, will, or other estate planning tool should be used. You should speak with an attorney specializing in estate planning to determine what technique is best suited for you.

## A power of attorney can end for the following reasons:

- by setting a specific date for it to end
- if the agent or principal dies
- if the sole agent resigns
- if the principal and agent are married to each other and either person files for divorce or separation
- if the principal revokes the power of attorney in writing and files that writing with the court

## Revoking

You can revoke a power of attorney by giving written notice to the attorney-in-fact. You should also file a copy of the letter with the court revoking the power of attorney. It is a good idea to give notice to any banks, brokerages, or other places where the attorney-in-fact conducted normal business on your behalf.

If a power of attorney is durable, and you become incompetent, only the court can revoke it during the time you are incompetent. This could happen if a party petitions the court on your behalf, alleging the attorney-in-fact has violated their responsibilities.

## Considerations

### Children

If someone else takes care of your child for you, then a power of attorney can provide a way for the caretaker to provide medical consent and make educational decisions.

### Your Rights

You retain full control over your affairs, even after you have signed a durable power of attorney. You can allow your agent to act or not at your discretion. You can also revoke the power of attorney at any time and for any reason.



## Benefits

You should think very carefully before granting a power of attorney to someone. A power of attorney can be very helpful in some situations. For instance, a durable power of attorney may be a better alternative than adding someone's name to your bank account, because the person you designate can handle your money without having a legal interest in it. It is not expensive to have a lawyer prepare a durable power of attorney, and it can be revoked quickly.

## Glossary

**advance health care directive:** a document stating your wishes to your doctor and family about the medical treatment you would or would not like to have in case you become unable to make medical decisions for yourself

**agent:** a person who is authorized to act for another, also called an attorney-in-fact

**durable power of attorney:** a power of attorney that remains or becomes effective, depending on its language, upon the principal becoming incompetent or unable to manage their affairs

**fiduciary:** a person, such as the agent of a principal, who stands in a special relation of trust or confidence

**living will:** a document where a person states their wishes for medical treatment

**principal:** a person who has given the authority to an agent to act on their behalf

**power of attorney:** a document that gives someone the authority to act on your behalf on matters you specify

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*The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.*

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