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# Public Information

## Section of Real Property, Probate, and Trust Law

### Public Information Web Site

The Public Information Web Site of the American Bar Association's  
Section of Real Property, Probate and Trust Law  
**Estate Planning Answers**

#### Power-of-Attorney

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An important part of lifetime planning is the Power of Attorney. Valid in all states, these documents give one or more persons the power to act on your behalf. The power may be limited to a particular activity (e.g., closing the sale of your home) or general in its application, empowering one or more persons to act on your behalf in a variety of situations. It may take effective immediately or only upon the occurrence of a future event (e.g., a determination that you are unable to act for yourself). The latter are "springing" Powers of Attorney. It may give temporary or continuous, permanent authority to act on your behalf. A power of attorney may be revoked, but most states require written notice of revocation to the person named to act for you.



The person named in a Power of Attorney to act on your behalf is commonly referred to as your "agent" or "attorney-in-fact." With a valid Power of Attorney, your agent can take any action permitted in the document. Often your agent must present the actual document to invoke the power. For example, if another person is acting on your behalf to sell an automobile, the motor vehicles department generally will require that the Power of Attorney be presented before your agent's authority to sign the title will be honored. Similarly, an agent who signs documents to buy or sell real property on your behalf must present the Power of Attorney to the title company. The same applies to sale of securities or opening and closing bank accounts. However, your agent generally should not need to present the Power of Attorney when signing checks for you.

Why would anyone give such sweeping authority to another person? One answer is convenience. If you are buying or selling assets and do not wish to appear in person to close the transaction, you may take advantage of a Power of Attorney. Another important reason to use Powers of Attorney is to prepare for situations when you may not be able to act on your own behalf due to absence or incapacity. Such a disability may be temporary (e.g., due to travel, accident, or illness) or it may be permanent.

If you do not have a Power of Attorney and become unable to manage your personal or business affairs, it may become necessary for a court to appoint one or more people to act for you. People appointed in this manner are referred to as guardians, conservators, or committees, depending upon your local state law. If a court proceeding, sometimes known as intervention, is needed, then you may not have the ability to choose the person who will act for you. With A Power of Attorney, you choose who will act and define their authority and its limits, if any.

#### Who Should Be Your Agent?

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You may wish to choose a family member to act on your behalf. Many people name their spouses or one or more children. In naming more than one person to act as agent at the same time, be alert to the possibility that all may not be available to act when needed, or they may not agree. The designation of co-agents should indicate whether you wish to have the majority act in the absence of full availability and agreement. You should name a successor agent to address the possibility that the person you name as agent may be unavailable or unable to act when the time comes.

There are no special qualifications necessary for someone to act as an attorney-in-fact except that the person must not be a minor or otherwise incapacitated. The best choice is someone you trust.

#### How The Agent Should Sign?

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Assume Elvis Presley appoints his wife, Priscilla Beaulieu Presley, as his agent in a written power of attorney. Priscilla, as agent, must sign as follows: *Elvis Presley, by Priscilla Beaulieu under POA or Priscilla Beaulieu Presley, attorney-in-fact for Elvis Presley.*

### Beyond Signing Checks

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In addition to managing your day-to-day financial affairs, your attorney-in-fact can take steps to implement your estate plan. Although an agent cannot revise your will on your behalf, some jurisdictions permit an attorney-in-fact to create or amend trusts for you during your lifetime, or to transfer your assets to trusts you created. It is prudent to include in the Power of Attorney a clear statement of whether you wish your agent to have these powers.

Gifts are an important tool for many estate plans, and your attorney-in-fact can make gifts on your behalf, subject to guidelines that you set forth in your Power of Attorney. For example, you may wish to permit your attorney-in-fact to make "annual exclusion" gifts (currently up to \$11,000 in value per recipient per year) on your behalf to your children and grandchildren. It is important that the lawyer who prepares your Power of Attorney draft the document in a way that does not expose your attorney-in-fact to unintended estate tax consequences. While some states permit attorneys-in-fact to make gifts as a matter of statute, others require explicit authorization in the Power of Attorney.

### State Laws Vary

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Beyond the ability to make gifts on your behalf, many aspects of a Power of Attorney are governed by state law. Generally, the law of the state in which you reside at the time you **sign** a Power of Attorney will govern the powers and actions of the agent(s) under that document.

- **What if I move?**

Generally, a Power of Attorney that is valid when you sign it will remain valid even if you change your state of residence. Although it should not be necessary to sign a new Power of Attorney merely because you have moved to a new state, it is a good idea to take the opportunity to update your Power of Attorney.

- **Will my Power of Attorney expire?**

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Some states used to require renewal of Powers of Attorney for continuing validity. Today, most states permit a "durable" Power of Attorney that remains valid once signed until you die or revoke the document. However, you should periodically meet with your lawyer to revisit a Power of Attorney and consider whether your choice of agent still meets your needs and learn whether developments in state law affect your Power of Attorney.

## Send us your Feedback!

We'd like to read your [questions, suggestions for future FAQ's and comments.](#)

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