



Consumer Tips August 2012: Power of Attorney 101: The Basics



A Power of Attorney (POA) is a legal document that authorizes another person or persons to handle your financial, legal, and in some cases your health matters. This can be a very helpful document if you are unavailable - for example if you are traveling abroad and have a loan closing to attend. A POA can be critically important if you become disabled and need someone to act on your behalf - for example manage your finances, pay taxes or authorize medical treatments.

A POA usually has two parties – a “Principal” and an “Attorney in Fact” or “Agent”. The person granting their authority is the “Principal”. The person or persons assuming that authority is the “Attorney in Fact” or “Agent” and does not have to be an actual licensed attorney. In order for the POA to be “legally binding” (can be accepted or acted upon) it must be signed by the Principal who must be mentally competent at the time they sign the POA. Most people give their power of attorney to a spouse, other adult relative or close friend. The Principal will want to name an Agent that knows them well and will act according to their wishes and best interest when and if necessary. The Principal also may name a substitute agent when making a Power of Attorney in the event that the named “Agent” is unable to act.

There are generally two types of POAs – a General Power of Attorney, and a “Special” or Limited Power of Attorney. A General POA is just that - it gives the Agent very broad power and authority to do almost anything that the Principal can do for themselves. A person giving a POA needs to be very comfortable with anyone named as an Agent because the Principal will likely be bound by whatever actions are taken on their behalf. A Special or Limited Power of Attorney is different from a General POA because it limits the authority of the Agent only to carry out certain prescribed powers that the Principal grants. A Limited POA can restrict the authority of the Agent to act only on certain matters - for example financial, medical, or real estate issues.

Another important concept when considering a Power of Attorney is if the Principal wants the POA to remain in force if the Principal become mentally incompetent because of an accident or illness. These are called “Durable”. A General POA or a Limited POA can be “Durable” and they remain effective or can be triggered into effect after a doctor certifies that the “Principal” is mentally incapacitated. A POA that becomes effective only upon the mental incapacity of the Principal is also called a “Springing” POA.

The Principal may terminate a POA at any time that they are competent to manage their own legal affairs. To terminate a POA the Principal should notify any named Agent that they have terminated the POA. The Principal should also collect and destroy the original and any copies of the POA, and notify any bank or third party that may have been relying upon the POA to allow the Agent to conduct business on behalf of the Principal that the POA has been revoked.

A POA also terminates upon the death of the Principal. In other words, when the Principal dies so does the POA and any authority of the Agent is revoked. The Agent is no longer authorized to act on behalf of what would now be the estate of the Principle.

It's important to check with an attorney familiar with the state specific Power of Attorney rules where you reside. For example, in some states a POA is only as good as someone's willingness to accept or honor it. Any third party presented with the Power of Attorney in those states has the right to tell the Agent they will not accept or honor the POA..

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