



Senior Supplement

An Educational Service of Lawyer Referral for the Elderly Program

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Power of Attorney

For more information call the LREP toll-free Legal Helpline at 1-800-876-6657 or 505-797-6005 (Albuquerque area)

What is a Power of Attorney?

You, the principal, are giving someone else, your *agent* or *attorney-in-fact*, the power to act on your behalf.

Why do I need to give a Power of Attorney?

The power of attorney (POA) is a very important document in financial planning. If you become too ill to handle your affairs, you probably will need someone to make decisions for you. You need to think carefully about who you would want to make the decisions for your financial needs in the event you are unable to make them yourself. Without a POA, if you become incapacitated, your family may need to apply to the court for guardianship or conservatorship, which can be expensive and time-consuming.

Can anyone give a POA?

Anyone, 18 years of age or older, who understands both what they are doing and the contents of the document they are signing can give a POA.

Who should I choose as my agent?

A POA is a very powerful document. The person you choose should be someone you trust implicitly. Your “agent” should be someone you trust to act in your interests instead of in his or her own interest, and who will try to make the same decisions you would have made for yourself. You can give POA to a relative, to a friend, or you can hire a bank or corporation, as long as you choose someone who is trustworthy.



How can I be sure my agent follows my wishes?

When you give someone a POA you should talk to them about what you want them to do. You should inform them about your bills and bank accounts, for example, and make sure they know where you keep your records and important papers.

Can my agent use my money for personal gain?

The person who is your attorney-in-fact has a fiduciary duty to act in your interest and try to do what you would do for yourself if you were able. Third parties will presume the person is acting on your behalf. There have been agents who have used POA for their own benefit, so you should choose only someone you trust.

How can I hold my agent accountable?

You can ask your attorney-in-fact to provide an accounting. This means that the person acting as your agent provides a record of all money spent. The accounting can be made annually, semi-annually, quarterly, or monthly. You should specify in the POA document how often and to whom your agent must provide an accounting.

What can I do if someone is trying to force me to sign a POA?

You should not sign a POA even to a relative if you do not want to. Call your lawyer or Lawyer Referral for the Elderly if someone tries to force you to sign any documents you do not want to sign.

What powers should I grant to my agent?

A power of attorney can be specific or it can be general. You may want to give powers, such as

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health decisions using an Advance Health Care Directive, to one person and give a financial POA to someone else to make financial decisions. You should make the POA specific if your agent is going to transfer real estate, pay taxes, or purchase and sell stocks and bonds. If you want your POA to affect real estate, you need to record it with the county clerk in the county where the real estate is.

How long does a POA stay in effect?

A POA can be for any specific period of time, or it can be indefinite until revoked. It can be “springing,” which means that it will only become effective if you become incapacitated and will not be effective until then. In order for the power to remain effective after you become incapacitated, it must say so in the document.

What is a durable power of attorney?

A durable power of attorney states in the document that it remains in effect even after the principal becomes incapacitated. This is important, because without the “durable” clause, the power of attorney will be void just when you need it the most.

Can my agent use the POA after I die?

Absolutely not. The power ends upon the death of the principal. If your agent knowingly uses the POA after your death, he or she is committing fraud.

How do I revoke a POA?

You can revoke a POA at any time as long as you are of sound mind. One way to revoke a POA is to tear up the document and all copies. Otherwise, the revocation must be in writing and signed in the presence of a notary. If the original POA was recorded, then the revocation must also be recorded. A copy of the revocation should be given to banks, stockbrokers, your doctor, or anyone else who might be relying on the POA.

Is my POA made in another state good here in New Mexico?

Probably. However, it is wise to update your POA because requirements vary from state to state.

Would my spouse need a POA?

A husband or wife will need POA to transfer property held jointly. A transfer may be necessary if one spouse enters a nursing home under Institutional Care Medicaid. The at-home spouse may want to transfer title to the family home into his or her name to avoid losing benefits.

Do I need a lawyer to draw up a POA?

Not necessarily. There is a statutory form that has been approved by the State Legislature. The POA must still be signed in the presence of a notary. However, you should proceed with caution because a POA is such an important document. Also, a lawyer can ask about your specific needs and include provisions in the POA to fit those needs. LREP recommends that you consult an attorney before signing a POA.

Do I need witnesses?

No. New Mexico law does not require a POA to be witnessed, but witnesses may strengthen the validity of the document if it is challenged. As stated above, the POA must be signed in the presence of a notary public.