

Alternatives to Guardianship (Part 5): Powers of Attorney

Hi there. I am here to talk with you about financial powers of attorney, also called POAs for short. A POA is an important part of any estate plan and is an alternative to guardianship as discussed in part 1 of this series. Alternatives are important because guardianship significantly interferes with a person's independence, and legal and human rights.

So, what is a power of attorney?

CHAPTER HEADING: WHAT IS A POWER OF ATTORNEY?

This is a legal document that gives another person authority to manage your business or personal financial affairs. In this arrangement, you are known as the "principal." The person you give authority to make decisions about your money or other property is called your "agent" or "attorney-in-fact."

Your power of attorney can be general or limited. First, let talk about General Power of Attorney.

CHAPTER HEADING: GENERAL POWER OF ATTORNEY

A general power of attorney gives your agent authority to act and make decisions for you on all financial matters. This includes managing real estate, bank accounts, stocks and bonds, insurance policies, and filing taxes. Your agent can also take out loans, file lawsuits, and enter contracts on your behalf. Now, let's turn to Limited Power of Attorney.

CHAPTER HEADING: LIMITED POWER OF ATTORNEY

A limited power of attorney allows you to specify your agent's powers. For example, you can decide to only authorize your agent to manage your real estate or file lawsuits on your behalf, but nothing else.

Who can create a power of attorney?

CHAPTER HEADING: CAN CREATE A POWER OF ATTORNEY?

Anyone who is at least 18 years old and mentally competent can. In this context, "mentally competent" means you understand:

- What a power of attorney is
- The powers you are giving your agent
- And what property would be affected under your POA.
- You must also intend to give your agent power over your property or financial affairs

Next, Let's talk about how to create a power of attorney.

CHAPTER HEADING: HOW TO CREATE A POWER OF ATTORNEY

First thing to know: Your POA has to be in writing, signed by you in front of at least two witnesses, and notarized. Maryland has what are called "statutory power of attorney" forms

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you can use to create a general or limited power of attorney. These forms are not mandatory but provide additional protection if someone later refuses to honor your POA. It is best to work with a lawyer. They can also help you decide when your POA goes into effect.

CHAPTER HEADING: WHEN YOUR POA GOES INTO EFFECT

Unless you say otherwise, your agent's authority starts right away. You might not want this. You may instead want your agent to be on standby until a specific time or event. For example, you may only want your agent's power to go into effect if you become incapacitated and are unable to manage your own affairs. Talk to a lawyer about the pros and cons of all the options. They can help you write your power of attorney and ensure it is clear and reflects your wishes.

Who can be your agent?

CHAPTER HEADING: WHO CAN BE YOUR AGENT?

Anyone age 18 or older. It can be a family member, friend, or lawyer. It should be someone you trust and who will honor your wishes. It is their responsibility to be loyal to you, to make decisions based on what *you* would do, and to act only in *your* best interest. They need to understand that being an agent means following your instructions and knowing the limits of their authority. They also need to keep receipts and good records of all transactions made on your behalf. They should also know that while they can be reimbursed for certain expenses, they are not eligible for compensation unless you include that in your POA.

How long does a power of attorney last?

CHAPTER HEADING: HOW LONG DOES A POWER OF ATTORNEY LAST?

You decide. Your agent's authority typically ends when you die, but you can choose to have it end at a different time. For example, you may only want your agent to act on your behalf while you are recovering from major surgery or out of the country for a significant period of time. Your POA can also end if your agent becomes incapacitated, dies, or resigns.

Maybe you want to change your agent or their powers? As long as you are mentally competent, you can revoke or change your power of attorney at any time. It's a good idea to talk to a lawyer before revoking or changing your POA.

Sometimes there are conflicts over a power of attorney.

CHAPTER HEADING: CONFLICTS

There could be disagreement about your agent's authority under your POA or questions about its validity. For example, someone might challenge whether you were mentally competent when you signed it. Maybe your agent is using their authority beyond what you intended it to be? If this happens, you, your agent, a family member, and others can ask a court to intervene.

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If the court agrees with the challenge, it may invalidate your power of attorney. To avoid these types of challenges, it is important to work with a lawyer to draft your POA.

What happens if you don't have a power of attorney?

CHAPTER HEADING: WHAT HAPPENS IF YOU DON'T HAVE A POWER OF ATTORNEY?

You're not required to have a POA but having one can make things easier for you and your loved ones. If you later become unable to manage your financial affairs and do not have a POA, someone may petition for guardianship over your property. Guardianship is a complex and expensive process and the court may end up appointing someone you don't know or don't want to make decisions for you. It's best to talk a lawyer.

We have covered a lot of material. I hope it was helpful. Thanks for watching.