

What's a Power of Attorney?

Answers for New Yorkers



The Lawyers' Fund for Client Protection
of the State of New York

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What's a Power of Attorney?

A Power of Attorney is a legal instrument that is used to delegate legal authority to another. The person who signs (executes) a Power of Attorney is called the Principal. The Power of Attorney gives legal authority to another person, called an Agent, to make property, financial and other legal decisions for the Principal.

A Principal can give an Agent broad legal authority, or very limited authority. The Power of Attorney is frequently used to help in the event of a Principal's illness or disability, or in legal transaction where the Principal cannot be present to sign necessary legal documents.

Are there different types of powers of attorney?

Yes. There are "Non-durable", "Durable" and "Springing Durable" Powers of Attorney.

A "Non-durable" Power of Attorney takes effect when the Agent signs it and ends if the Principal becomes mentally incapacitated, meaning the Principal becomes unable to make decisions. It is often preferred when the Agent is given authority for a limited purpose, such as the closing on the sale of a residence, or the handling of the Principal's financial affairs for a short period of time, such as while the Principal is traveling outside the country.

A "Durable" Power of Attorney takes effect when the Agent signs it and states that it remains in effect after the Principal becomes mentally incapacitated, meaning the Agent can still act for the Principal even after the Principal becomes mentally unable to make decisions. A New York statutory short-form Power of Attorney is a "Durable" Power of Attorney.

A "Springing Durable" Power of Attorney will depend on when the Principal wants the Agent's authority to begin, i.e. the Power of Attorney does not take effect until the happening of a specific event chosen by the Principal, which is identified in modifications of

the Power of Attorney. Often the “springing” event is the mental or physical disability of the Principal. The “Springing Durable” Power of Attorney will frequently provide that the Principal’s physician will determine whether the Principal is competent to handle his or her financial affairs.

All Powers of Attorney must be signed by the Agent, and terminate when the Principal dies or when they are revoked by a court. Disposition of the Principal’s property after death is governed by applicable law and any will, trust or other legal document.

Statutory Short-form Powers of Attorney

Effective June 13, 2021, New York State permits the use of both statutory short-form and non-statutory form Powers of Attorney. The statutory short-form is a model form for a “Durable” Power of Attorney, which can be modified to make it Non-durable” or “Springing Durable.” New Yorkers can rely on the statutory “short-form” as being legal. Powers of Attorney can be typed or written using as a model the statutory form found in the New York General Obligations Law, at Section 5-1513. Printed “short-form” Powers of Attorney can be purchased from legal stationers and office supply stores. Do not purchase a printed form that is dated earlier than June 13, 2021. Principals may also use a document that substantially conforms to the “short-form.”

Statutory “short-form” Powers of Attorney may be customized to fit the needs of the Principal by making the Power of Attorney “Non-durable” or “Springing Durable”, or adding to the powers that are listed on the statutory short-form, using the “Modifications” section.

A Principal can also use a non-statutory form document that meets the requirements of the statute, found in the New York General Obligations Law, at Section 5-1501B. This Power of Attorney can be “Durable”, “Non-durable”, or “Springing Durable.”



*New York laws involving Powers of Attorney have been amended, effective **June 13, 2021**. Powers of Attorney signed after **June 13, 2021** should reflect those changes in law. However, Powers of Attorney that were properly executed before **June 13, 2021** will remain effective after that date.*

When is it appropriate to use a "Durable" or "Springing" Power of Attorney?

"Durable" and "Springing Durable" Powers of Attorney are frequently used to plan for a Principal's future incapacity or disability and loss of competence resulting, for example, from Alzheimer's Disease or a catastrophic accident.

By appointing an Agent under a "Durable" Power of Attorney, the Principal is setting up a procedure for the management of his or her financial affairs in the event of incapacity or disability. Once the Principal has determined that they want a "Durable" Power of Attorney, whether it will be a "Springing Durable" Power of Attorney, will depend on the Principal's decision regarding when the Agent's authority over the Principal's assets should begin.

"Durable" and "Springing Durable" Powers of Attorney enable a Principal to decide in advance who will make important financial and business decisions in the future. They are also helpful in avoiding the expense of having a court appoint a Guardian to handle the Principal's affairs in the event of incompetence or disability.

How can I tell if a Power of Attorney is a "Durable" one?

All New York statutory short-form Powers of Attorney are "Durable" Powers of attorney. The form says: "This POWER OF ATTORNEY shall not be affected by my subsequent incapacity unless I have stated otherwise below, under "Modifications." After June 13, 2021, every short-form "Durable" Power of Attorney must substantially conform to the language provided in the statute. A non-statu-

tory form Power of Attorney must contain similar language to be treated as a “Durable” Power of Attorney.

What kinds of legal authority can be granted with a Power of Attorney?

Whether "Non-durable", "Durable," or "Springing Durable", a Power of Attorney can be used to grant any, or all, of the following legal powers to an Agent:

- Buy or sell your real estate
- Manage your property
- Conduct your banking transactions
- Invest, or not invest, your money
- Make legal claims and pursue litigation
- Attend to tax and retirement matters
- Make gifts on your behalf
- Attend to financial matters related to the principal's health care.

Can a Power of Attorney grant an Agent the authority to make medical decisions for the Principal?

No. In New York State, the proper legal instrument for delegating health-care decisions to another is called a Health Care Proxy. Here, too, there is a statutory short-form approved by the State Legislature. It can be found at Article 29-C of the New York Public Health Law. A copy can be obtained by writing: Health Care Proxy, P.O. Box 2000, Albany, NY 12220.

A Principal may authorize their agent(s) to be responsible for all financial matters relating to the principal's health care and, after June 13, 2021, the agent's authority is expanded to allow access to “protected health information”.

How do I select an Agent for a Power of Attorney?

You should choose a trusted family member, a proven friend, or a professional with an outstanding reputation for honesty. Remember, signing a Power of Attorney that grants broad authority to an Agent is very much like signing a blank check.

Certainly, you should never give a Power of Attorney to someone you do not trust fully. And do not allow anyone to force you into signing a Power of Attorney.



Powers of Attorney are only as good as the Agents who are appointed. Appointing a trustworthy person as Agent is critical. Without a trustworthy Agent, a Power of Attorney becomes a dangerous legal instrument, and a threat to the Principal's best interests.

Can I appoint more than one Agent in a Power of Attorney?

Yes. You may appoint multiple Agents. If you appoint two or more Agents, you must decide whether they must act together in making decisions involving your affairs, or whether each can act separately.

There are advantages and disadvantages to both forms of appointment. Requiring your Agents to act jointly can safeguard the soundness of their decisions. On the other hand, requiring agreement of all your Agents can result in delay or inaction in the event of a disagreement among them, or the unavailability of one of them to sign legal documents.

Allowing your Agents to act separately may ensure that an Agent is always available to act for you. But it may also result in confusion and disagreements if the Agents do not communicate with one another, or if one of them believes that

the other is not acting in your best interests.

If you designate that Co-Agents must act together, you may also permit a Co-Agent to delegate a specific responsibility to the other Co-Agent, including conducting banking transactions.

The statutory short-form Power of Attorney also provides space to appoint an alternate or substitute Agent. A substitute Agent can act if the first Agent is unable or unwilling to act for you. It is generally a good idea to appoint a substitute Agent.

Can my Agent be Compensated for their services?

Yes. Your agent is entitled to be reimbursed from your assets for reasonable expenses incurred on your behalf. If you also wish your agent(s) to be compensated, you may make additional provisions in the modifications section of the Power of Attorney and define "reasonable compensation."

After I sign a Power of Attorney, may I continue to make legal and financial decisions for myself?

Yes. The Agent named in a Power of Attorney is your representative, not your "boss." As long as you have the legal capacity to make decisions, you can direct your Agent to do only those things that you want done.

What are an Agent's obligations to a Principal?

The Agent is obligated to act in the best interests of the Principal, and to avoid any "self-dealing". Self dealing is acting to further the selfish interests of the Agent, rather than the best interests of the Principal.

An Agent appointed in a Power of Attorney is a fiduciary, with strict standards of honesty, loyalty

and candor to the Principal. An Agent must safeguard the Principal's property, and keep it separate from the Agent's personal property. Money should be kept in a separate bank account for the benefit of the Principal. Agents must also keep accurate financial records of their activities, and provide complete and periodic accountings for all money and property coming into their possession.

Make clear to your Agent that you want accurate records of all transactions completed for you, and to give you periodic accountings. You can also direct your Agent to provide an accounting to a third party -- a member of your family or trusted friend -- in the event you are unable to review the accounting yourself.

Is it possible for an Agent to steal my money and property?

Yes. A Power of Attorney can be abused, and dishonest Agents have used Powers of Attorney to transfer the Principal's assets to themselves and others. That is why it's so important to appoint an Agent who is completely trustworthy, and to require the Agent to provide complete and periodic accountings to you or to a third party.

Can the transfer of a Principal's assets to other people be a good thing?

Yes. A Principal may want to authorize transfers or gifts of property for estate planning and other valid purposes. New statutory short-form Powers of Attorney in New York State permit Agents to make gifts to members of the Principal's family, if the Principal so authorizes in the Power of Attorney. The Principal can also customize a Power of Attorney to permit the Agent to make gifts to non-family members.

Who monitors the actions of my Agent?

There is no official or government monitoring of Agents acting pursuant to Powers of Attorney.

That is the responsibility of the Principal who may designate a monitor. It is important to insist that your Agent keep accurate records of all transactions completed for you, and to provide you with periodic accountings. You might also direct your Agent to give an accounting to a third party in the event you are unable to review the accounting yourself.



Should a Principal, member of the Principal's family or a friend have grounds to believe that an Agent is misusing a Power of Attorney, the suspected abuse should be reported to the police or other law enforcement authority to protect the Principal from the loss of his or her property. Consider asking a lawyer for help and advice.

What can I do if my Agent does not follow my instructions?

You may revoke your Power of Attorney at any time.

You should inform your Agent, in writing, that you are revoking the Power of Attorney. Request the return of all copies of your Power of Attorney.

You should notify your bank or other financial institution where your Agent has used the Power of Attorney that it has been revoked.

You should file a copy of the revocation with the County Clerk if your Power of Attorney has been filed in the Clerk's office.



If you decide to revoke a Power of Attorney, it is probably in your best interests to consult a lawyer, and arrange to have a new Power of Attorney executed.

Am I required to file a Power of Attorney in a government office?

Not unless the Power of Attorney is used in a real estate transaction. In that case, it must be recorded in the County Clerk's office. And when you record in the County Clerk's office, the Power of Attorney is a public record open to inspection by the public. A writing that revokes a filed Power of Attorney should also be recorded in the County Clerk's office.

If you record a Power of Attorney in the County Clerk's office, you will be able to get additional "certified" copies from the County Clerk for a small fee. A certified copy is legally equivalent to the original document, and it is often convenient to have certified copies of your Power of Attorney on hand.

How many copies of a Power of Attorney should I sign?

You are required to sign (execute) only one copy. However, it is not unusual for a Principal to sign several original copies. Banks and financial institutions, for example, generally require an original or a certified copy before allowing an Agent to transact business on the Principal's behalf. And banks and financial institutions frequently provide customers with their own Power of Attorney forms.

Banking institutions and other third parties are required to accept or reject your Power of Attorney within a prescribed period of time. Penalties and attorney's fees can be recovered against institutions that unreasonably refuse to accept a valid Power of Attorney.

Do I need to have my signature witnessed on a Power of Attorney?

Yes. Your signature on the Power of Attorney must be witnessed and acknowledged by a Notary Public.

After June 13, 2021, at your direction, your Power of Attorney may be signed in your name by another person, other than your agent(s) or successor agent(s) under specific conditions.

Do I need a lawyer to prepare a Power of Attorney?

No. You are not required to hire a lawyer. However, because a Power of Attorney is such an important legal instrument, the careful consumer will consult a lawyer who can:

- Provide legal and other advice about the powers that are appropriate to be delegated to your Agent;
- Provide counsel on the choice of an Agent;
- Outline the Agent's legal and fiduciary obligations while acting under a Power of Attorney;
- Ensure that the Power of Attorney is properly executed and meets all legal requirements.

The typical legal fee for preparing a Power of Attorney is modest. Before engaging a lawyer to prepare a Power of Attorney, inquire about the fee, and feel free to get prices from other lawyers and law firms.

