



Power of Attorney

What is a Power of Attorney (POA)?

A Power of Attorney is a legal document in which you appoint an agent to handle your financial and general affairs. In New York, we have a statutory form (which is set forth in New York State's law) that is durable, meaning it will work even after you become disabled. You can decide if you want the authority given to your POA to be very narrow and only cover certain transactions, or very broad so that your agent could do most anything you can do. In either case your POA is not effective until after it is signed by you as well as signed by your agent accepting their position as your Attorney in Fact. (Also note that you and your Agent do not need to sign at the same time, it can be any amount of time after you sign that your Agent signs and your POA will still be effective.)

What are the benefits of having a Power of Attorney?

Having a valid POA in place will make things easier on both you and your loved ones. If you don't have a valid POA in place and you become incapacitated, no one has the legal authority to act on your behalf. If that were to happen, your loved ones would have to go to court to ask to have a Guardian appointed for you in order to handle your financial affairs. Guardianships can be both time consuming and expensive. By executing a POA you will get to select who will handle your financial affairs if you are unable to, rather than a court (which would be the case in a guardianship proceeding).

Who should have a Power of Attorney?

Everyone over the age of 18 should have a valid POA. There are many things that require a valid POA in place in order to handle. Real estate transactions requires all owners to sign a deed to transfer property. Therefore even if a husband and wife own property jointly, if one becomes incapacitated, the other cannot transfer the property alone and would need an original POA in order to transfer the property. Also, some items must be owned only by one individual, such as IRA's or other qualified retirement accounts. In addition, income such as a pension is in your name alone. All of these (and more) require a valid POA in order to manage if you are disabled or not able to yourself.

Other important information about Power of Attorney Forms.

A Power of Attorney is automatically revoked at death and can no longer be used.

For most people the NYS Statutory POA may not be adequate to handle all of their affairs. At our office we often add more than 20 additional powers to the standard form.

If you want to protect assets from long term care costs (such as nursing home costs), you will need to sign the Gift Rider (and add additional powers) together with your POA.

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