

Financial Powers of Attorney



Prepared by:

COLORADO COALITION for ELDER RIGHTS and ADULT PROTECTION

A Project of the Colorado Non-Profit Development Center

What is a Power of Attorney?

Power of Attorney (POA) is a document (agency instrument) signed by you (the principal) that assigns authority to another adult (the agent) to make specific decisions about your money or property. It is advisable, but not required, to have your POA prepared and/or reviewed by an attorney. Preprinted forms are available.

Your choice of an agent should be carefully considered. The agent must be trustworthy and make decisions **IN ACCORDANCE WITH YOUR WISHES AND DIRECTIONS**.

There are several Financial Power of Attorney choices such as **limited**, **durable** and **springing**. Choose a POA that fits your circumstances the best. *(If you need information on Medical Durable Power of Attorney see Contact and Additional Information on the back of the brochure.)*

The type and extent of financial authority you give an agent is specified in the written agency instrument. This authority may pertain to your financial needs, investments and other assets. An agent's authority ends when the principal dies. Financial POA will end if specified in a divorce decree.

Points to Remember

The Principal must:

- Be at least 18 years of age and competent.
- Choose an agent who can be trusted to carry out the principal's wishes and directions.
- Understand that the principal retains the right to define the use of financial resources and property.

The Agent must:

- Be 21 years of age or older.
- Distribute written signed copies of the agency instrument to persons and institutions asked to accept the POA.
- Use the principal's financial resources and property only according to the principal's wishes and directions.
- Keep and provide accurate and current records of all expenditures and transactions carried out with the principal's assets.

How to Create a Power of Attorney



To create a Power of Attorney you:

- Must write down exactly what the agent is authorized to do.
- May want to seek legal counsel, although it is not required. Legal help can ensure your intentions are clearly expressed and that you have covered everything necessary for your particular situation.
- May have witnesses sign the agency instrument, although it is not required.
- Must notarize your agency instrument in order to have all the protections under Colorado Law.

Types of Financial Powers of Attorney:

- General Financial POA grants an agent specific financial authority over the principal's resources and property while the principal maintains decision-making capacity.
- Limited Financial POA grants specific financial authority, such as check writing authority to an agent, for a limited time.
- Springing POA goes into effect at a specific time or event in the future, such as when the principal becomes incapacitated.

Ending a Power of Attorney

POA authority given to an agent may be amended or ended/revoked by the principal **at any time**. In order to revoke the POA, the principal must:

- Destroy the POA document.
- Notify the agent of the revocation in any manner that can be documented.
- Notify all persons and institutions in writing and/or verbally of the revocation and of any new arrangements.

The principal retains the right to end the agent's POA authority, whether or not the principal has capacity for decision-making. The principal **does not** give up the right to make financial decisions when he/she designates financial POA authority to an agent. Only a court may terminate the principal's legal rights.

The term "**Durable**" means that an agent's authority continues if the principal becomes incapacitated. In order for any POA to be durable, the agency instrument must state the power of attorney will not be affected by the subsequent incapacity or disability of the principal.

The three most common situations in which POA authority is ended/revoked are:

1. When the principal created the POA due to a temporary inability to handle financial affairs, such as a surgery or a trip out of the country, and the event is passed, the POA should be revoked.
2. When the principal's spouse is the agent and they divorce or legally separate, the POA may be revoked.
3. When the principal believes the agent is making decisions that are **not in accordance with his/her wishes and directions**, the POA should be revoked.

Beware! If . . .

- The principal's wishes and directions are **not** being followed and/or
- The agent uses the principal's money or property for the agent's own advantage.

In either situation, the principal may end/revoke the agent's authority. An agent that misuses his/her designated financial authority may be guilty of unlawful activities and liable for civil or criminal action. If POA misuse is suspected, contact the Adult Protection Service through the local County Department of Social Services.



Contacts and Additional Information

For more information or if you have concerns about an agent abusing Power of Attorney authority, please call:

The Colorado Coalition for Elder Rights & Adult Protection
303-866-3433 or 1-800-773-1366 or www.CCERAP.org

Guardianship Alliance of Colorado
303-423-2898

Online:

Financial and Medical Durable POA information is available on the Adult Protective Services website.
www.cdhs.state.co.us/adrs/aas/adprot.htm Click on **Guardianship Manual**

Colorado Bar Association provides public information, law related materials, and brochures
www.cobar.org

10/2004 - Changes may have occurred since the time of publication, so before relying on this information, consult an attorney about your individual case.