

Powers of Attorney

A Guide for Service Providers

COLORADO COALITION for ELDER RIGHTS and ADULT PROTECTION

A Project of the Colorado Non-Profit Development Center

www.ccerap.org

Terms

Principal refers to the person giving power of attorney to another.

Agent refers to the person appointed by the principal to assume the duties specified under a power of attorney.

Agency refers to the relationship between the principal and the agent.

Agency instrument refers to the written power of attorney document.

Third party refers to a person or company requested by the agent to deal with a principal's property as authorized in the agency instrument.

Durable refers to the agent's authority. The durable POA authority will continue if the principal becomes incapacitated and the agency instrument states the power of attorney will not be affected by the subsequent incapacity or disability of the principal.



Responsibility

The Principal:

- Must be at least 18 years of age.
- Must have decision-making capacity.
- Must select a trustworthy, capable agent (described below).
- Must document in the agency instrument the exact authorization given to the agent.
- Must notarize the agency instrument in order to have all the protections under Colorado Law.
- Will instruct the agent to distribute the written signed copies of the agency instrument to persons and institutions asked to accept the POA.
- May have witnesses sign the agency instrument, though this is not required to validate the POA.
- May implement periodic financial reviews by an objective designee.
- Maintains the right to make financial decisions. (Only the court may terminate a person's legal right to make decisions.)



The Agent must:

- Be 21 years old or older.
- Make decisions according to the principal's wishes and directions.
- Maintain and provide accurate, current records of transactions carried out with the principal's assets.

Types

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 an agent specific financial authority for a limited time.

Springing POA grants an agent authority at a specific time or event in the future, such as when the principal is medically determined to be incapacitated.

Medical Durable Power of Attorney grants an agent authority to make medical treatment decisions on behalf of the principal should the principal lose decisional capacity. Financial authority is sometimes included with an MDPOA.

POA - Revocation

In order to revoke or amend the agency instrument, the principal must:

- Destroy original agency instrument.
- Notify the agent of the revocation or amendment.
- Notify all persons/institutions of revocation or amendment.



An agency may be revoked or amended when the principal:

- Decides to appoint someone else as agent, whether or not the principal has decision-making capacity. If the principal revokes or amends the POA and has lost decision-making capacity, the decision is binding, and court intervention is indicated.
- Decides to resume sole responsibility for his/her own financial affairs.
- Has created the agency instrument due to his/her temporary inability to handle financial affairs, such as a surgery or a trip out of the country, and the event has passed.
- Divorces or legally separates from the agent.
- Feels the agent is making decisions that are not in accordance with the wishes and directions of the principal.
- Dies, and the agent is notified of the principal's death.

Abuse

The agency instrument must be carefully examined to clarify the agent's authority. The following procedures are helpful when POA abuse is suspected.

- Scrutinize agency instrument to decide if action is needed.
- Consider each agency on its own merits as to the agent's authority.
- Assist the principal in designating a successor agent, if the principal has decision-making capacity.
- Seek court intervention to ensure the most appropriate level of authority, if the principal has diminished decision-making capacity,
- Avoid using undue influence over a principal with diminished decision-making capacity.

Abuse of power of attorney authority and false claims by the agent or someone claiming to be an agent can create devastating problems for the principal. Since there is rarely court oversight with POA arrangements, accountability of the agent is difficult to enforce. Examples of POA abuse are:

- The agent is not following the principal's wishes and directions.
- The agent ignores the needs of the principal and uses the principal's money or property for the agent's or other's advantage.
- The agent assumes authority that is not designated in the agency instrument.

Legal Remedies*

Once an agent and/or agency instrument has been revoked or amended due to perceived abuse of the agent's authority, legal action should be considered. Possible legal remedies for the abuse of POA authority include:

- Report suspected criminal activities for investigation and prosecution of the agent for theft, fraud, or other criminal charges by law enforcement and/or the district attorney's office.
- File a civil suit against the former agent for breach of fiduciary duty, questionable or poor accounting practices, agent fraud, and theft or misappropriation of funds.
- Petition the court, recommending a comprehensive accounting from the former agent of the principal's assets and all transactions and activities carried out by the agent with the principal's assets.
- Pursue the court appointment of a guardianship or conservatorship.

*Consultation with an elder law attorney is recommended when dealing with alleged abuse of POA authority.

For More Information Contact:

The Colorado Coalition for Elder Rights & Adult Protection

303-866-2849 or 1-800-773-1366

www.ccerap.org

Guardianship Alliance of Colorado

303-423-2898

AARP ElderWatch

1-800-222-4444 or 303-222-4444

www.aarpElderWatch.org

Resources:

Colorado Adult Protective Services - Guardianship Manual

www.cdhs.state.co.us/adrs/aas/adprot.htm

Colorado Bar Association

www.cobar.org

Go to: "Public information" - "Law related materials" - "Brochures"