

What is a Power of Attorney?

A power of attorney is a legal paper. It lets you give another person the legal right to make certain decisions for you. Then if you become so sick or hurt that you can't make your own decisions, you have someone who can make decisions for you.



This booklet is about the power of attorney for money and property. It is called a **power of attorney for finances**.

If you give someone your power of attorney, the law calls you the **principal**. In this booklet, we call the principal "you." The law calls the person you give your power of attorney to your **agent** or **attorney-in-fact**. In this booklet, we call the person you give your power of attorney to the "**agent**."

Who needs a Power of Attorney?

Anyone can use a power of attorney. But it is more important for those who are older or facing illness. Who needs a Power of Attorney for money and property (finances) the most? Anyone who needs their money or property managed if they become unable to make decisions.



What can a Power of Attorney do for me?

Want to give someone the power to make decisions about your money and property? Then you can give them a **power of attorney for money and property (finances)**.

A power of attorney can spell out exactly what decisions your agent can make. And it can also say what the agent **can't** do. **Example:** You could give your agent the power to pay bills and make bank deposits. **OR** you can keep your agent from selling or borrowing against your house or property. **AND** you can keep your agent from taking the title to your house or property.

What chances am I taking if I don't give anyone a power of attorney?

1. If you wait too long, you may no longer be mentally competent. **Competent** means you must know what you are doing when you sign the

power of attorney. And, you must know what it means. If you are not competent, you can't legally give someone power of attorney.

2. If you aren't mentally competent, then a court may pick a conservator for you. A conservator would make all the decisions about your money and property. There would be public hearings in court. It could drag on for months. And, it can cost a lot in fees for lawyers and court costs. The judge may choose someone you don't want to be your conservator.



What chances am I taking if I do give someone a power of attorney?

The law gives the agent a **lot of power**. The agent could cheat you. Choose an agent you trust to make good decisions for you.

Who can give someone else a power of attorney?

To do this, you must be what the law calls **mentally competent**. This doesn't mean you have to be as mentally sharp as you ever were. But it does mean you must know what you are doing when you sign this paper. And you must know what kinds of things it lets the agent do.

Can I still manage my money and property after signing a power of attorney?

Yes, as long as you can still make decisions.

BUT have you signed a power of attorney that starts when it is signed? Then your agent can also make

decisions about your money and property. Make sure your agent is someone you can trust.

After I sign a power of attorney, how long until my agent can use it? And how long is it good for?

That depends on how the power of attorney was written. There are two different kinds.

1. One kind of **power of attorney** gives the agent power as soon as it is signed. This makes it very clear when the power of attorney starts. Your agent can make decisions for you even if you can still do it yourself. This kind of power of attorney works until you die or you revoke it. To **revoke** it means you take back the power you gave to your agent. To revoke your power of attorney, you must be mentally competent. This means you know what you are doing when you revoke the power of attorney.
2. A second kind of power of attorney is called a **springing power of attorney**. Your agent can't use the power it gives until after something happens in the future. **Example:** The agent only starts making decisions for you if you go into a nursing home. The papers **must** say what has to happen for the agent to start making decisions. The papers **must** say what the proof must be. You may have to go to court and pay a lawyer.

Important: Make sure your power of attorney has the word "durable." If it is "durable," your agent can keep making decisions even after you can't. This is when you need the help the most.



Choosing an agent for your power of attorney

People often give a husband, wife or other relative their power of attorney. But your agent doesn't have to be a relative.

What you need is an agent who is honest. You must be able to trust them to make good decisions for you.

It is against the law for your agent to:

- Use your power of attorney to make themselves richer **or**
- Make you poorer by taking your money or property

The best way to protect yourself is to choose an honest person as your agent. What if your agent cheats you? The law could take the power of attorney away from them. The agent could be sued. Or, they may have to pay money back to you. The agent could even be arrested and sent to jail.

What are an agent's duties?

By law, your agent must handle your money and property **only** to help **you**. These are the 4 basic legal duties of an agent:

1. An agent must act only to help you.

- An agent should read the power of attorney paper and do what it says. The power of attorney paper and state law say what power the agent has. This is the only power the agent has.
- An agent must find out when they can begin to use this power of attorney. It may be right away. Or, it may be only when you can no longer make your own decisions.
- As much as they can, an agent should make decisions **with** you.
- An agent must stay away from conflicts of interest. Conflicts of interest are when the agent is hurt or helped by deciding something for you.
- An agent must not give away **any** of your money or property to themselves or others.



2. An agent must manage your money and property carefully.

- They must keep a list of all of your money, property, and debts.
- They must protect your property and be very careful with any investments.

- As much as they can, they must help protect you from scams. They must not give your account numbers or passwords to any one.
- They must pay your bills and taxes on time.
- They must apply for any help you may be able to get. This could be:
 - Pensions **or**
 - Disability payments **or**
 - Social Security **or**
 - Medicare **or**
 - Medicaid **or**
 - Veterans benefits **or**
 - Housing help **or**
 - SNAP Food Stamps

3. An agent must keep your money and property separate from theirs.

- They must keep all of your money completely separate.
- They must keep all titles to your property in your name.
- They must know how to sign as agent. For example, your agent might sign, "John Doe, as agent for Sally Smith." They should never just sign your name.
- The agent should always pay your expenses out of your money.



4. An agent must keep good records.

- They must keep a detailed list of everything that comes in and everything spent.
- They must keep receipts and notes even for small expenses.
- They should never pay in cash.

It's a good idea to give this booklet to the person you are thinking about choosing. Then they will know what their duties would be. It may be too much work for some people to take on.

When do the agent's duties end?

- If you end (revoke) the agent's power of attorney, the agent's duties end. If you are mentally competent, you can end the power of attorney at any time. You can end it by getting the paper

back and tearing it up. Or you can give your agent a written statement ending it. Tell your bank and anyone you do business with that you no longer have an agent.

- Are you married to your agent? If you get divorced or legally separated, the agent's power may end.
- If a court names a conservator for you, your agent's duties usually end.
- If the agent asks to no longer be your agent, his power ends.
- The agent's power ends when you die. The probate law takes over. Your will says what happens to your money and property. Don't have a will? State law will say what happens to your money and property.

What if someone I know needs a power of attorney but is not mentally competent anymore?

A person who is mentally incompetent can't give a power of attorney. Depending on the type of income the person has, there are 3 choices.

1. **Social Security representative payee** - Does the person only have Social Security income and needs help managing it? A person can be named to do this without going to court. This person is called a **representative payee**.

If you want to be a representative payee, you need to get a letter from the person's doctor.

The letter must say they can no longer manage their own money.

Take the letter to the local Social Security office. Social Security can OK a person or an organization to manage the money.

Important: What if the representative payee doesn't use the money

for the person it belongs to? They can be charged with cheating the person (fraud). They could be sent to jail.



2. **Veterans Administration fiduciary** - **What if the person gets Veterans' benefits?** The VA has a way to OK someone to manage the vet's income. This person is called a VA fiduciary.

3. **What if the person needs help managing money that is not Social Security or Veterans' benefits?** Getting a conservator appointed by a court is likely to be the next step.

For more information on getting a conservator, see our booklet about this. It is called **“Do you know an Adult Who Can No Longer Make Health Care or Money Decisions? Being their conservator is one way you can make decisions for them.”** You can find it on our web site at www.las.org.

- At the top of the home page, click the red button that says, “Legal Help Booklets.”
- Then hit the blue button that says “Health Care.”
- Then hit the button that says, “How to make health care decisions for someone else.”
- Then click on the button that says “Conservator.”

Or you can call Legal Aid for a copy at **1-800-238-1443**. It's a free call.

What about using a power of attorney paper from the internet?

This is not such a good idea. Power of attorney papers on the web may not be legal in Tennessee. It is important to have a lawyer write your power of attorney. That way you only give your agent the power you want them to have. Papers from the internet may give the agent more power than you want. Or they may leave out some decisions you want your agent to make.

Worried about the cost of a lawyer? You may want to call the Legal Aid or Legal Services office in your area. Their lawyers may write you a power of attorney paper for you for free.

Want to give someone the power to make decisions about your health care?



If you can decide this for yourself (are mentally competent), here is what to do:

You can sign a paper to name a health care agent. A health care agent is also called a “Power of Attorney for Health Care.” This paper says who will decide if you can't. You can also make a Living Will/Advance

Care Plan at the same time. This will say what kind of care you want.

You can get this paper from the Legal Aid Society web site at www.las.org. On the home page, click “Legal Help Booklets” on the red strip at the top of the page. On the next page click the blue-and-white button that says “Health Care.” Then click the button that says, “How to make health care decisions for someone else.” Then choose the yellow button. It says “Naming a Health Care Agent or Power of Attorney for Health Care.” If you can't use the internet, you can call us and ask us to send you a copy. The free phone number is **1-800-238-1443**.

What if you are no longer able to give someone the power (not mentally competent)? Then:

1. Your doctor can sign a paper naming someone as your Health Care Surrogate. **OR**
2. A court can name someone to be your conservator of the person. This lets them make your health care decisions.

You can find out more by calling Legal Aid at **1-800-238-1443**. It's a free call. Ask for our:

- Living Will/Advance Care Plan - It tells you about naming a health care agent and making a Living Will.
- Health Care Surrogate booklet
- Conservatorship booklet

Or go on the internet to www.las.org.

- At the top of the home page, click the red button that says, “Legal Help Booklets.”
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- Then choose which booklet you want. You can print them or save a copy on your computer.



Legal Aid Society
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This booklet is not meant to take the place of legal advice. Each case is different and needs individual attention. 7/15