

# The Importance of a Power of Attorney (POA) in Estate Planning



Estate planning is essential for anyone who has accumulated money and assets. It can also be complex and confusing – resulting in too many people avoiding the topic and being ill-prepared for foreseeable circumstances.

While most Americans understand the basic need for a will to distribute assets when they die, too many overlook the value of establishing a Power of Attorney (POA) to manage their affairs while they are alive.

Whether you are young and growing your wealth, actively enjoying retirement or simply worried about your elderly parents or family members, every adult should consider a POA to help manage their affairs

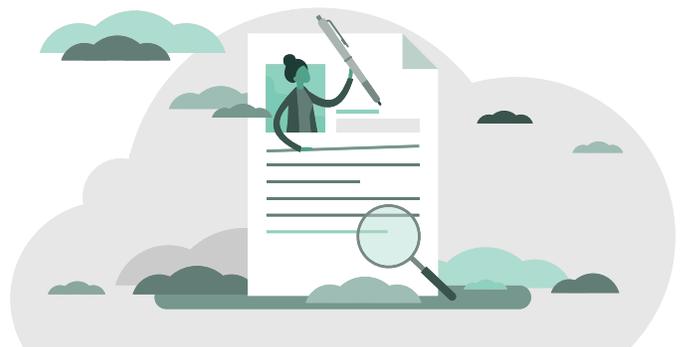
if they cannot do it themselves. As waiting too long can be complicated and costly, it is important to take control while you are healthy.

It is also essential to seek the professional advice of your estate attorney and work with your investment advisor, CPA and other specialists to put all the pieces in place. **To help get you started, below is a summary of key information about what a POA is and how it might help you.**

## What is a Power of Attorney (POA)?

A power of attorney is the legal document that gives one or more persons the power to act on another person's behalf as agent. In the case of your parents, they are the principals, and you are their agent.

POAs are generally governed by state law, which is why it is important to talk to an attorney.



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## What Can/Can't a POA Do?

A POA only allows someone to act on items agreed upon within the document. It can be limited to particular activities or be general in nature to handle a broad array of affairs. For example, if you sign a POA allowing your adult child to act as agent on your behalf, you can still act on your own behalf as long as you retain the capacity to do so. An agent does not have the exclusive right to act and make decisions for the principal.

Importantly, a person serving as a financial POA must also act as a fiduciary. This means that the POA agent entrusted to manage your affairs must do so in your best interests – not theirs. Their role as an agent is limited to what the document and state law allow.



## What are the Types of POAs?

Different types of POAs can also give different powers, so it is important to match the type of POA with the needs they will serve.

**General Power of Attorney** gives the agent broad rights to manage the affairs of the principal. It can also be revoked by the principal at any time and *will automatically end when the principal is determined to be incapacitated*. This type of POA is often used when someone can still take care of their affairs but would rather someone else do so.

**Durable Power of Attorney** lasts after the principal's incapacitation. What you can do with a durable POA is based on both the document and state laws. These are used when a person can no longer handle their affairs. They can be revoked upon the principal's death or when a guardian is appointed. The principal can revoke the POA if they are no longer incapacitated.

**Springing Power of Attorney** is a type of durable POA. The terms do not become effective until the principal is incapacitated. A doctor(s) must determine that the principal can no longer manage their finances; however, the POA or state may have a different definition of when a person becomes legally incapacitated. This type of POA allows the principal to stay in control while they have the capacity, but springs into action once they are not.

**Medical Power of Attorney** gives the agent the right to make decisions about the principal's health care. A medical POA is different from a living will, which states what medical procedures a principal does and does not want done. In the case of a medical POA, the agent can make all health care decisions for the principal. Because of this, the principal needs to make their wishes known before they are incapacitated.

**Limited Power of Attorney** limits the decisions directed to specific tasks. It is often used to authorize the ability to pay bills or sell a house, and the agent can only act by what is specified in the document. These POAs are generally only active temporarily and will be revoked if the principal becomes incapacitated.



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## POA Issues to Consider

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If a parent appoints a power of attorney within the family, potential problems and infighting can arise. For example, if an adult child is chosen, the other children may be upset and/or disagree with choices being made on behalf of the parent. To help avoid these problems, parents should talk to all relevant family members about their wishes and why they chose the specific power of attorney. These are conversations that are always better had sooner than later.
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Note that a power of attorney does not have to be related to the principal. A non-relative might be a better choice in many circumstances, for example, when the adult children live in different states, have busy lives or simply might have a difficult time being objective when handling their parents' affairs.
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When selecting a POA, it is important to keep in mind how much responsibility and work is involved currently – as well as what might be expected or change in the future. For example, paying monthly bills takes less time than making decisions about medical care for a parent with dementia. Make sure your detailed wishes and desires are recorded in the document. The more items left unaddressed in the document, the more decisions that will have to be made on your behalf – creating stress for you and your POA agent.

## Conclusion

Estate planning is not simply about creating a will to determine how assets are distributed at one's death. Instead, it is a comprehensive topic with numerous tools at the ready to help you create a more enjoyable life today and shape a legacy for tomorrow.

A power of attorney is one such essential but often overlooked legal way to take control of your financial, health and other affairs. It allows you to direct exactly how you want everything managed – and by whom.

NPF works with clients and their estate attorneys to put the pieces together – establishing tailored plans, clarifying investment objectives and strategies, and helping their POAs protect the best interests of clients.

