



Powers of Attorney

This section will answer some basic questions about Powers of Attorney.

What is a Power of Attorney?

A Power of Attorney is a document that gives someone else (usually a trusted relative or friend) the authority to make certain decisions and act on your behalf. The person to whom you give these powers is called an "agent" or "attorney-in-fact." You are called the "principal."

The most common type of Power of Attorney is called a Durable Power of Attorney. The word "durable" means that you created your Power of Attorney while you still had capacity, and that you intended for the document to remain in effect if you become "incapacitated." You are "incapacitated" when you are too sick to make decisions for yourself or tell others what care you want. Without the document expressly stating that it is a Durable Power of Attorney, the agent could lose their authority if you are later determined to be incapacitated.

Will I have to give up my rights to handle my own affairs?

No. You can still manage your own affairs as long as you are willing and able. Signing a Power of Attorney does not mean you can no longer make your own decisions. Signing a Power of Attorney means that someone else can handle your affairs if you ask them to or when you cannot. It **does not** mean you give up any rights to your money, your property or your ability to make your own decisions.

If your agent does start handling your affairs, they must handle your money and property the way you want. As long as you are capable of making decisions, the agent must follow your directions. The law says that your agent must do what is in your best interests. You can revoke the Power of Attorney at any time if you become unhappy with what the agent is doing so long as you still have capacity, meaning that you understand what you are doing.

If your agent is telling you that you can't do something because they have "Power of Attorney over you," they might not understand what it means to be your agent, or worse, might be abusing their authority as your agent. **REMEMBER: when you sign a Power of Attorney, you do not give up your rights and freedoms.** If you are unhappy with your agent or want to revoke your Power of Attorney, call the Legal Services for Maine Elders Helpline to talk to an attorney for free and confidential help: [1-800-750-5353](tel:1-800-750-5353).

How do I get a Power of Attorney?

Talk to an attorney who can help you decide what's best for you. If you're 60 or older, an attorney from Legal Services for Maine Elders can answer your questions and may be able to create a Power of Attorney for you.

Do not use a pre-printed form from an office supply store, a library, or the internet. Some of these forms are not legal in Maine. Even if the form is legal, it may not give you the best legal protection. Most pre-printed forms give agents the broadest possible authority with few limits. Unfortunately, some agents abuse this authority and help themselves to your money

and property. An attorney can help draft a Power of Attorney that includes protections to avoid or reduce this risk.

If you have already used one of these forms to create a Power of Attorney, you might want to talk to an attorney. An attorney can help you put some limitations on the agent's authority if you decide it is a good idea. Legal Services for Maine Elders can answer your questions for free. Call the Legal Services for Maine Elders Helpline at [1-800-750-5353](tel:1-800-750-5353).

Does the court need to be involved?

No. The benefit of signing a Power of Attorney is that it gives someone else the legal power to do things for you when you can't without having to go through any type of court process. But, if you don't have a Power of Attorney and something happens to you, your family will need to go to court and ask the court to give them the authority to handle your affairs.

How do I choose an agent?

The person you choose to be your agent or attorney-in-fact has to do certain things. The agent's most important job is to always act in your best interest.

Although your agent is only supposed to do things that are in your best interest or for your benefit, your agent has great freedom to do as they please. Because your agent will have so much power, it is important to choose someone whom you trust. Before choosing an agent, ask yourself the following questions:

- Do I trust this person?
- Does this person understand my feelings and my point of view? Will they follow my wishes if I am ever incapacitated?
- Is this person willing to do the work and spend the time handling my affairs?
- Is this person available to visit me or to keep in contact by phone?
- Is this person knowledgeable about finances? If not, would this person seek the help of experts?
- Would I trust this person to handle my money if no one was watching them?

An agent must keep your money separate from their own. They must not be personally involved in or stand to profit by any action taken on your behalf.

An agent is not allowed to give away or transfer any of your money, personal property, or real estate to themselves unless the Power of Attorney document says this is OK. You and your agent must remember that certain gifts can affect your eligibility for long-term care benefits under Medicaid and can result in other serious consequences. Because of these risks, it is especially important that people with property (such as a house or a camp), savings (such as bank accounts, stocks, bonds, certificates of deposit) and income (such as salary, pension, and Social Security benefits) get an attorney to help them make a Power of Attorney.

You should call Legal Services for Maine Elders to talk to an attorney about your situation. It's free and easy. The attorney can help you decide what you should do. Call the Legal Services for Maine Elders Helpline: [1-800-750-5353](tel:1-800-750-5353).

Is the agent required to keep records?

Yes, unless you say otherwise in your Power of Attorney. The agent should keep separate and accurate records and make them available to you or anyone you choose.

Does an agent get paid?

This depends on the relationship of the agent and the principal and the duties involved. Normally, in family situations where the agent's duties are simple, no payment is provided. However, if an agent has to run a business or manage complicated financial affairs, then payment is appropriate. Legally, no payment is required. If payment is intended, it should be clearly stated in the Power of Attorney document.

Where should I keep my Power of Attorney?

If your agent is going to start taking actions for you immediately, you should give them the Power of Attorney. You should keep a copy for your records. You may also choose to keep the original yourself if you do not want your agent to start conducting your business right away. Keep the original in a safe place at home where it can be found if it is needed.

Can I create a Power of Attorney when I am mentally incapacitated?

No. In order to create a Power of Attorney, you must know and understand what you are doing. A person who is mentally incapacitated cannot make a Power of Attorney.

Can I create a Power of Attorney if I cannot sign my name?

Yes. If you are mentally capable but unable to sign your name, any mark made with the full intention that it be your signature is acceptable.

Can I revoke my Power of Attorney?

Yes. If for any reason you are no longer comfortable having your agent handle your affairs, you have the right to revoke the Power of Attorney at any time, as long as you are of sound mind. You might want an attorney to help you do this. Call the Legal Services for Maine Elders Helpline at [1-800-750-5353](tel:1-800-750-5353) to talk to an attorney for free.

In order to revoke a Power of Attorney, you simply write or type a statement which includes the following:

- Name and date;
- You wish to revoke the Power of Attorney;
- Specify the date the original Power of Attorney was signed;
- Specify the person or persons named as your agent(s); and,
- Your signature.

Give copies of that statement to your agent and to any institutions and agencies that had notice of your Power of Attorney, such as banks and hospitals. After you revoke the Power of Attorney, you can 1) execute a new Power of Attorney naming someone else as your agent to handle your affairs; or 2) handle your own affairs.

Is my Power of Attorney effective after I die?

No. A Power of Attorney ends upon your death. Your will, or if you don't have a will, Maine law, governs the handling of your estate. A Power of Attorney document is not a substitute for a will.

Are there alternatives to a Power of Attorney?

Yes, Guardianship and Conservatorship are alternatives. However, you lose many freedoms and rights under Guardianship or Conservatorship and only a probate court can appoint a Guardian or Conservator. If you want the court to be able to review your affairs, you might want to have this formal arrangement. However, managing your affairs by either alternative can be accomplished more easily and cheaply with a Power of Attorney.

Can I just add a relative's name to my bank accounts instead?

This is very risky. When you put someone's name on your bank account, that person becomes the co-owner of all the money in the account. This means the other person does not need your permission to withdraw some, or all of the money, regardless of who deposited it. It also means that if the other person runs into money problems or gets a divorce, then you risk losing some, or all of the money to their creditors or in the divorce settlement. Sometimes co-owners abuse the trust placed in them and take all the money. Also, adding someone to your bank account can impact your ability to get MaineCare to cover your long term care costs. This is why joint accounts are very risky.

If you are still interested in having a joint account, you should talk to your bank. It might be able to offer a safer alternative to a joint bank account that accomplishes what you want.

If you already have a joint account and you think the co-owner is taking money when they shouldn't, you should get an attorney to help. Or, if you are unsure as to whether you should add someone's name to your account, you should talk to an attorney. Call the Legal Services for Maine Elders Helpline at [1-800-750-5353](tel:1-800-750-5353) to talk to an attorney for free.

Resources

Legal Services for Maine Elders

If you are a Maine resident who is 60 or older and you want help making or revoking a Power of Attorney, call the Legal Services for Maine Elders Helpline at [1-800-750-5353](tel:1-800-750-5353) to talk to an attorney for free and confidential help.

Maine Office of Aging & Disability Services, Department of Health & Human Services
The Office of Aging and Disability Services is a great resource for older people in the process of planning for their future.

Source URL: <https://mainelse.org/handbook/planning-future/powers-attorney>