

What is a Power of Attorney for Property or an Enduring Power of Attorney?

The two terms mean the same thing. Both are terms for a legal document, signed by you in front of two witnesses. In it, you authorize a person, or people, to make financial decisions on your behalf if, because of accident or illness, or in the event that you become mentally incapable, you should become incapable of acting for yourself.

How Many Types of Power of Attorney Are There?

There are two types of Power of Attorney,

- A *Continuing Power of Attorney* or a *Power of Attorney for Property* deals with your personal possessions and finances
- A *Power of Attorney for Personal Care* deals with your personal health care decisions such as hygiene, shelter and consenting to medical treatment

The term "attorney" refers to the person you give the authority to and should not be confused with your lawyer.

What Does a Power of Attorney for Property Do for Me?

Ask yourself what would your family do if they didn't have the power to access bank accounts or manage your business affairs if you were in a car accident and in a coma. Further what would happen to your finances if you became mentally incompetent. A Power of Attorney for Property authorizes someone to deal with and manage your property for you. Your property includes all your assets and finances unless you specifically exclude certain things.

Isn't My Will With Executors Named In it Sufficient?

No. A Will only covers your affairs once you pass away. Power of Attorney is only effective when you are alive.

What About the Power of Attorney Issued by Your Bank?

The bank's Power of attorney allows the person named to manage your assets deposited with that bank, but only that bank.

Does My Chosen "Attorney" Have To Be a Lawyer?"

Absolutely not. The person you designate is your "attorney". You can name one attorney or more than one. You can require that they act together ("jointly") or you can have them act separately as well as together ("jointly and severally"). If you designate more than one, you should include some form of disagreement resolution.

You can also take the wise precaution of naming someone to replace, or substitute for, an attorney who cannot act, or continue to act, for you - a "substitute" attorney.

Why Would I Want A Power of Attorney for Property?

You should have a Power of Attorney for Property in case you, because of accident or

illness, become incapable of making decisions for yourself. In it you authorize someone to act for you and your best interests in conducting your financial and property matters.

By preparing a Power of Attorney for Property now, you can ensure that your property, your assets, your bank accounts, are managed by someone you trust who knows you and what you want, to act in your best interests, when you can no longer make the decisions for yourself.

What Should I Consider in Making A Power of Attorney for Property?

- Who do you want to manage your finances?
- What instructions will you give them?
- Will it be limited or general?
- Do you want more than one attorney,
 - and if you want more than one, are they to act jointly or jointly and severally?
- If your attorney can't act or continue to act, do you want to name a substitute?

What is a Limited Power of Attorney for Property?

A "limited" Power of Attorney for Property is given to someone for certain specific items and no others. For example you may appoint someone to pay your bills, write cheques, but do nothing else.

What is a General Power of Attorney for Property?

A "General" Power of Attorney for Property authorizes your attorney to do anything that you can do, except writing your will. **What is a "Continuing" Power of Attorney for Property?**

A "Continuing" Power of Attorney for Property continues if you become incapable of managing your property. It specifies that it is a "continuing power of attorney for property", and/or it says that it can be used during your incapacity. If it doesn't say that, it is not a continuing power of attorney and it cannot be used during your incapacity and it ends if you become incapable. Obviously this defeats the purpose and so you must insert this clause in your Power of Attorney for Property.

What if I Become Incapable and Do Not Have a Power of Attorney for Property?

If you become incapable and do not have a power of attorney, the Public Guardian and Trustee becomes the guardian of your property. If someone who cares about you wants to be named "guardian" instead, they can go to court and ask to be named your guardian. It is far more efficient and cheaper if you appoint your own guardian before the need arises. Going to court is always expensive and wasteful.

Do I Have to Sign A Power of Attorney for Property?

No, absolutely not. No one can make you sign a Power of Attorney for Property. However it is very important to consider whether to make a Power of Attorney for Property. You also do not need to make a will, but in both cases, you stand to lose a great

deal and have your wishes ignored if you do not prepare both. If you don't make a Power of Attorney for Property, someone may have to be formally appointed some day to make decisions for you, if the decisions involve matters other than medical treatment. This could easily be a court appointed stranger who has no knowledge of you, your wishes and can legally ignore your family's requests and needs.

What does "Being Incapable" mean?

Being incapable means not being able to understand information that is relevant to a decision and not being able to evaluate the likely consequences of making it.

Who Will Say I Am Incapable?

You define that in your Power of Attorney for Property. You might require that two doctors must agree that you are incapable before the Power of Attorney comes into effect.

You must also be capable of granting an attorney at the time that the document is signed. This generally means that the grantor must show that s/he is aware of the nature and extent of his/her property, that /she understands his obligations to his/her dependants and the nature of the power being granted to the attorney. **What if do not feel I am incapable?**

If you are found incapable, you have the right to request a capacity review hearing and be represented by counsel at that hearing. The person you named to act for you, in your power of attorney has to explain this right to you and cannot try to prevent you from contacting a lawyer or asking for a review hearing.

Does the Person I Appoint Have Controls?

When the power of attorney for property is in effect, the person you have authorized to act for you must act in your best interests and keep a complete record of all transactions made on your behalf.

Your representative can do anything you would do, including selling your house, unless you set up limits or restrictions in your Power of Attorney for Property. They cannot however change your will.

How Long Does a Power of Attorney for Property Last?

A Power of Attorney for Property lasts until you die or recover sufficiently to resume control of your own affairs.

If you feel that someone is using the Power of Attorney for Property to make decisions for you when you are still capable of making them, or have recovered, you can ask for a court hearing to review your situation.

Can a Power of Attorney be Revoked After You Sign It?

As long as you have capacity, you can revoke any Power of Attorney you have signed. The procedure for doing so depends on the type of Power of Attorney in question.

What Are My Attorney's Responsibilities?

- To act in your best interests.
- If you also give someone a power of attorney for personal care, act consistently with that person's decisions (if those decisions don't impair your finances).
- Consult with you, and with those who take care of you, and with your family and friends.
- Use what you have, first, for your support and care; then if assets are available, for the support of your dependants; then if assets are available, for your other obligations.
- If there is something left over, your attorney can make gifts or loans to relatives, and gifts to charity based on your previous practice and intentions (you can refer to this in your power of attorney). Gifts to charity cannot be more than 20% of your income unless your power of attorney says otherwise (and you can restrict it to less than 20%).
- Obtain a copy of your will and information about your assets and liabilities (others who have this information have to provide it to your attorney). If, in your Will, you give a particular asset, for example a personal item or a particular property, to someone, your attorney should not dispose of that item to raise the funds to look after you, unless it is necessary to do so; and in that case the person to whom you give the item in your Will is to receive equivalent value from your estate.
- Keep all accounts, and give an accounting when called on to do so:
 - this includes lists of your assets as of the date of your attorney's first transaction;
 - of assets acquired and disposed of and the date and particulars of each transaction;
 - of all money receipts and disbursements and the date and particulars of each transaction;
 - of all investments bought and sold and the date and particulars of each transaction;
 - of all your liabilities as of the date of the attorney's first transaction;
 - of liabilities incurred and paid and the date and particulars of each transaction;
 - of all compensation taken by the attorney and how it is calculated.
- Keep a copy of the continuing power of attorney and of any court orders relating to the attorney's authority.
- Not disclose any information in the accounts except to you and to your attorney for personal care, if requested by you or such attorney.
- Keep these records until she or he ceases acting for you and until the attorney receives a release from someone authorized to give it, or until another person acquires authority to manage your property and your attorney gives the records to that person, or if you die, until the attorney gives the records to your executor, or until there is a court order.