



Power of Attorney Guardianship Conservatorship What does all that mean?

► **What is a Power of Attorney?** A Power of Attorney (POA) is a legal document containing a written authorization to delegate power and authority to act on behalf of another person. The person who signs the POA is called the Principal. The Principal gives legal authority to another person (the Agent or Attorney-in-Fact) to make decisions on behalf of the Principal. There are two main categories: financial and medical. All of the POA documents discussed below require the Principal to execute (sign) the document while they are of sound mind under Arizona law.

► **What are the different types of POA for financial issues?** A Principal can transfer to an Agent broad legal authority (General Power of Attorney) or limited scope of authority (Special Power of Attorney). Each person has individual needs and the type of POA will differ from person to person. An Agent operating on a General POA can buy or sell your real estate, manage your property, conduct your banking transactions, make legal claims and conduct litigation, and attend to tax and retirement matters. An Agent utilizing a Special POA is usually limited to one event. For example, you own a house in California, but you live in Arizona; you can give someone limited power to do whatever is necessary to sell the house, but they have no power to take any other actions listed above on your behalf. This transfer can take place immediately or when the Principal is determined to be incapacitated by a doctor. The same rule applies for a Health Care POA below.

► **Is there a POA for health related issues?** Yes. The Health Care POA is a legal document nominating an Agent to make medical decisions

on behalf of the Principal if the Principal is unable to communicate their wishes due to incapacity. There is also a separate document called a Living Will which provides instructions to the Agent regarding the end of life decisions of the Principal. If health treatment is required and the patient is unable to accept treatment, and there is no Health Care POA, then there may be no alternative other than to pursue a Guardianship. There is also a Mental Health POA, but this is not a topic which will be discussed in the confines of this article.

► **How do I select an Agent for a POA?** You should choose a trusted family member, a proven friend, or a professional with outstanding reputation for honesty. Remember, signing a POA grants an extreme amount of authority to an Agent. It is comparable to signing a blank check. The Agent appointed in a POA is a fiduciary, with strict standards of honesty, loyalty and candor to the Principal. An Agent must safeguard the Principal's property and keep it separate from the Agent's. Money should be kept in a separate bank account. Agents must also keep accurate financial records of their activities, and provide complete and periodic accountings for all money and property coming into their possession.

► **Do I need a lawyer to prepare a POA?** No. But, a POA is an important legal document; therefore, you may want to consult with a professional

regarding the various laws and options to ensure everything is done according to your wishes.

► **How long does the POA last?** Most active POA's contain legal language allowing the POA to continue after a person has been declared incapacitated (Durable POA). Conversely, if the POA does not contain an expiration date, it will end the moment the Principal passes away. You can indicate a start date, expiration date and you can revoke the document. It also should be noted that the "older" the Power of Attorney is, the greater the chance of someone (bank, doctor, title company, DMV, etc.) will not accept it.

► **What happens if the person does not have a POA and they become incapacitated?** If a POA was not put in place or is not valid for some reason and an individual is unable to manage his or her personal, financial, or health decisions, then a court proceeding can be started to ensure the individual is protected and cared after. This process is called Guardianship. A Guardian is someone who is appointed by the Mohave County Superior Court to make personal and health care decisions for the incapacitated person. A Guardian makes all the decisions regarding how that person lives, including any health-related decisions. An incapacitated person is any person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability. It is important to note: being designated or listed as a person's "Guardian" in a Will or some other document is not sufficient to actually be treated as a Guardian under the law. The person most likely will not have power to act as a Guardian when the time comes.

► **Do I need to hire a lawyer to file a petition for a Guardianship?** No. However, filing a court proceeding can be a contentious proceeding depending on the family dynamic and will feel very complicated to some people.

► **If I am appointed as a Guardian, do I have control over financial issues?** No. You will need to file a petition for a Conservatorship. A Conservator has control over the finances of an individual who has been determined unable to manage their own financial affairs. An application to be appointed as a Conservator is typically filed with the application for Guardianship. A petition to be appointed as a Conservator can be a very contentious situation because the family has to decide who is going to be in control of the money. The necessity of an expensive and time consuming formal court appointment as Guardianship and Conservatorship can be avoided with executing the necessary POA. Everyone is different. It is important to contact a professional to discuss the options specific to your situation.

By Rich Rahnema of Watchel Biehn & Malm. This article is provided for general educational and informational purposes only and does not constitute legal advice. Publication of this information is not intended to create, and the receipt does not constitute, an attorney-client relationship between publisher and reader. These materials are intended, but not promised or guaranteed to be current, complete, or up-to-date. You should not act or rely on any information in this article without first seeking the advice of an attorney.

