

Powers of Attorney in Maine – What are they and what do I need to know?

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Introduction

This article will answer the most common questions about Powers of Attorney (POA) under Maine law. Creating a POA can be an important part of planning for your future. A POA can help you make sure your personal and financial matters are handled the way you want. If you're planning for long-term care, managing finances, have been named as an agent, or just want a better understanding of how these legal tools work and your options for protecting your rights and interests, this guide is a good place to start.

This article only covers personal and financial Powers of Attorney. Medical or health care POAs, called Advance Health Care Directives, can help you manage decision making about your medical care. You can learn more about Advance Health Care Directives with these resources from [Legal Services for Maine Elders \(LSE\)](#):

- [Planning for the Future – Health Care Advance Directives](#)
- [Health Care Advance Directives Forms](#)

Note: These resources are from [LSE](#), but they have good information for anyone who needs it – not only for elders.

What is a Power of Attorney (POA)?

A POA is a legal document that allows one person (called the “principal”) to give another person (called the “agent”) the authority to act for them in certain areas. In Maine, this can include making decisions about finances, property, or health care, depending on the type of POA. The person you name as your agent can act for you to take care of your personal and financial matters if you can't, either temporarily or permanently. You can decide whether to make a POA effective immediately or only if you become incapacitated.

Is a Power of Attorney a good option for me?

Whether or not a POA is right for you is a very personal decision. It can be a helpful thing to have if you want to be sure someone you trust can make decisions or take care of your personal and financial matters if you can't.

Here are some examples of situations where a POA may be a good option:

- You are going to have surgery or a medical procedure. If you have a POA in place your agent can manage your finances if needed during your recovery.
- You want to plan ahead for aging, injury, or illness. If you have a POA your agent can step in if you become unable to make decisions on your own.
- You travel often or know you will be away from Maine. If you need someone to handle things like signing documents, paying bills, or managing your property while you are away, a POA allows you to give a trusted person the ability to do those things.
- You believe your ability to make decisions for yourself may decline over time because of a medical condition. With a POA you can name someone to manage your money and property (called a “conservator of your estate”) or someone to make your personal decisions (called a “guardian of your person”). If protective proceedings in court are started about you, the court will be able to look at your POA and put the people you chose in those roles.

If you are not sure if a POA is right for you or if you have questions it is a good idea to.

What are the risks and benefits of giving someone Power of Attorney?

Benefits

A POA allows you to plan ahead without the need for a court-appointed guardian. Without a POA, your family may need to go through a legal guardianship or conservatorship process to be able to make decisions or have the power they need to help you take care of your personal and financial matters if you are not able to do those things. This process can be expensive and take a long time, so having a POA could avoid this and give you peace of mind. You can also make your POA fit your personal needs, like limiting it to certain kinds of decisions or timeframe. You get to decide when the POA takes effect. You could choose to give someone POA while you can still make your own decisions because you want them to help you with certain things or at certain times. You could also choose to give someone POA that will only take effect if you are no longer able to make your own decisions or manage certain tasks.

Risks

Because a POA gives someone so much power and control over your decision making, it is very important to choose your agent carefully. A POA may not be the right choice if you are unsure about who to trust as your agent.

The biggest risk of a POA is that an agent could misuse their power or make decisions that go against your wishes or interests. Make sure you fully understand the legal authority you are giving to your agent, and when they can use that authority. When a POA takes effect (either immediately or at some date in the future), your agent may have the power to make decisions without you, even if you are still mentally capable.

What kinds of decisions can someone make for me if I give them Power of Attorney?

The types of decisions that your agent can make depend on what powers you give them in a POA document. In Maine, a POA can allow an agent to make financial, legal, and healthcare decisions. Some examples of the types of financial and legal decisions you could give an agent the power to make include:

- Pay your bills and manage your bank accounts;
- Buy, sell, or manage real estate;
- File and pay taxes for you;
- Access and manage your retirement accounts;
- Apply for government benefits for you, like Social Security or MaineCare;
- Sign legal documents or contracts for you;
- Run a business you own;
- Handle your insurance policies or claims.

Can I still make my own decisions if I give someone Power of Attorney?

Yes. As long as you are mentally competent and capable, you can continue to make your own decisions even if you give someone POA. Giving a POA does not take away any of your rights to make your own decisions and take care of your personal and financial matters yourself. It simply gives your chosen agent the legal authority to act for you. They can either do this at the same time with your direction, or in your place.

Who can I choose to give a Power of Attorney?

You can choose almost any adult (at least 18 years old) to be your agent. It is extremely important you choose someone trustworthy, reliable, and capable of acting in your best interest. For example, many people choose a spouse or partner, an adult child, a sibling, a trusted friend, or a professional (like an attorney or financial advisor).

What are my responsibilities if someone gives me Power of Attorney?

If someone gives you POA and you accept, you are accepting a legal duty to act in that person's best interest. That means you must manage their affairs with honesty, care, and loyalty. The person who gives you POA is called the 'principal' and if you accept the POA you are called the 'agent.' This is a serious decision and you should be sure you understand what you are agreeing to do.

Unless the POA says something different, you accept becoming an agent by agreeing to do it, or by acting like an agent (taking on those responsibilities and powers), or by doing other things that show you have agreed to the role.

Because a POA can give you, the agent, so much power in the principal's life, there are legal protections if someone gives you POA. As an agent you can be held legally and financially responsible if you:

- misuse the POA;
- neglect your duties or do not act in the principal's best interest; or
- steal or commit fraud.

No matter what the POA says, your responsibilities include:

1. Acting in good faith;
2. Following the principal's (the person who gave you POA) reasonable instructions and expectations; and
3. Only acting in the ways and in the areas where the POA gives you power.

Unless the POA says otherwise, you are also required to:

1. Act loyally for the principal's benefit;
2. Avoid conflicts of interest, like using the POA powers to benefit yourself;
3. Act with the care, competence, and diligence exercised by other agents (people with POA powers, like you);
4. Keep a record of all receipts, disbursements, and transactions made;
5. Cooperate with the person who has the power to make health care decisions; and
6. Try to preserve the principal's estate plan (the plans, like a will, that the person who gave you the POA has put in place for when they die).

You may also have more responsibilities if they are written in the POA.

Unless the POA says something different, as an agent you are allowed to pay yourself back for expenses you have reasonably taken on for the principal. In some situations you may also be paid if it is reasonable. This is different from using the POA to benefit yourself as the agent. For example, sometimes your responsibilities in a POA could mean you need to travel long distances or pay up front yourself for something your principal needs. If you are a professional and also someone's agent, you may be doing work for them (like tax preparation and filing) that you usually charge for.

If you are worried about the responsibilities you would have as someone's agent under a POA, you can decline. You can also resign from the role at any time. If you need to resign, make sure you do it in writing and tell the principal or their legal representative. You may also work with attorneys, financial advisors, or other professionals if you need help.

What can I do if someone is using a Power of Attorney to hurt or exploit me or someone else? Is there anywhere I can get help?

If you believe that someone is using a POA to hurt or exploit you, you can end the POA at any time, as long as you are mentally capable. To end or 'revoke' a POA you can use a formal, written document (called a "revocation"), and notify your financial institutions or any other business or government agency that may rely on the POA. You must also tell the agent, because the POA cannot actually end until the agent has been told. This is important because if they do anything while they still believe in good faith that they are your agent, you may not be able to undo it. You can learn more about how to end a POA in the next section of this article.

If you believe that a crime has occurred, you may want to consider contacting law enforcement or another community resource. You should also tell someone you trust, like a family member or friend, advisor, or social worker. You may want to consider seeking legal advice if you are harmed, either financially or legally.

You may be able to get help at the following:

- [Legal Services for Maine Elders](#)
- [Maine Department of Health and Human Services – Adult Protective Services](#)
- Your local police department

How can I end a Power of Attorney that I've given to someone?

You can end a POA at any time, for any reason, as long as you are mentally capable of making the decision to end or 'revoke' it. As mentioned above, you can use a written document called a 'revocation' to end a POA that you've given to an agent.

To do this, create a separate, new document with this information:

- Your name
- The name of your agent (the person you gave POA)
- The date of your POA
- State clearly that you are officially revoking your POA.

You must sign and date the document in front of a notary, and deliver it to your former agent. It is best to use certified mail so you will have proof the document was delivered. Remember, the POA cannot actually end until the agent has been told. This is important because if they do anything while they still believe in good faith that they are your agent, you may not be able to undo it.

You should also send copies of the notice to all others (like your bank or the Social Security Administration) who may have a copy of the POA.

[Download a template for a Maine Power of Attorney Revocation form.](#)

What can I do to make sure places like my bank or medical provider know I have ended the Power of Attorney?

If you have revoked a POA there are steps you need to take to make sure the revocation is effective. You should tell any person, agency, or business that may rely on your old POA by sending them a copy of the revocation notice. Common places you may want to notify include:

- your bank;
- your health care providers;
- government agencies (like the VA or Social Security Administration);
- financial advisors;
- insurance companies; or
- any other professionals involved in your life.

If you are replacing your POA with a new one, include a copy of the new, valid POA along with the revocation notice. After you mail these notices, it is always a good idea to call or visit to make sure they got and documented your revocation.

How to create a Power of Attorney in Maine

A Power of Attorney is a specific kind of legal document that must have certain things to be valid. What it takes to create a POA is set by state law. To create a POA in Maine:

- The POA must be a written document

- The POA must be signed by the principal (or at direction of principal);
- POA must be notarized;
- A durable POA must contain certain legal notices. You can [read about these legal notices in the Maine law about POAs](#).

There are some other important things to know about creating a POA in Maine:

- A POA is effective when the principal signs it, unless the POA says it becomes effective at a future date or when or if a specific event happens.
- A principal may choose 2 or more people to act as co-agents. Unless the POA says otherwise, each co-agent may act on their own.
- A principal may choose one or more ‘successor agents’ for their POA. A ‘successor agent’ is someone who can take over responsibility if an agent resigns, dies, becomes incapacitated, is not qualified or declines to serve.

[Download a template for a Maine Durable Power of Attorney \(DPOA\) form.](#)