



## Powers of Attorney

### What is a power of attorney?

A power of attorney is written permission for someone to take care of property or money matters for you, in the way you want. In a power of attorney document, you are called the “principal” (person giving the power). The person who takes care of things for you is called the “attorney-in-fact.” This person doesn’t have to be a lawyer.

### How much power does my attorney-in-fact have?

If an attorney-in-fact takes legal action in your name, it is the same as if you had done it yourself. With a power of attorney, you can still act for yourself when you want to, but the attorney-in-fact can **also** act for you. They don’t have to tell you before they do.

The attorney-in-fact is not your guardian. As long as you are competent, you can’t be forced to move. You don’t lose the right to control property or money. You don’t lose the right to make decisions about your life like where you live and how you spend your time. You can revoke (take back) the power of attorney at any time.



Usually, you give a power of attorney so someone else can sign papers about property and money matters. The power can be limited to a certain thing, like selling a property, or it can be very broad, such as handling all property and money matters. It depends on what you write on the power of attorney form.

### Who should I pick as my attorney-in-fact?

Any competent person 18+ can be your attorney-in-fact. This includes family members. Many people choose a spouse or child. It is important to pick someone you trust deeply. Remember they will have access to things like your bank accounts or property.

You can list more than one attorney-in-fact. **But remember**, each of them can do things in your name without asking permission from the other, unless you write out that you want it to be different.

You can also name a “successor attorney-in-fact.” This is someone who takes over if the first one can’t or won’t do it anymore.

### **What else does the attorney-in-fact have to do?**

The attorney-in-fact is responsible for keeping records of all the transactions they do for you. This is called “accounting.” Ask to see these records on a regular basis. Even if you trust someone, getting regular accountings on a quarterly or monthly basis is a good idea. It is also a good idea to have the accountings go to you AND someone else like a family member or friend who can help keep track of things.

Legally, the attorney-in-fact is supposed to do things only in your best interest.

### **How do I make a power of attorney?**

A power of attorney must be written, dated, and signed by you in front of a notary public. If you want the power to end at a certain time, list the day, month, and year when it ends.



**Important: the power of attorney form is effective as soon as it is signed. It gives powers to the attorney in fact right away- not only if you become sick or incapacitated.**

The power of attorney form was updated in January 2014. The current form has more instructions and warnings about the roles and responsibilities of an Attorney-in-Fact.

If you did a Power of Attorney form in the past it is still okay. You don’t need to do a new one. If you are making a Power of Attorney form **now**, use the form attached. Make sure you read the “Important Notice to the Principal” page after the form. You need to initial it to show you have read it and keep it as part of the form.

Or, [create a Power of Attorney online](http://www.lawhelpmn.org/forms) at [www.lawhelpmn.org/forms](http://www.lawhelpmn.org/forms).



→ Look under “Health Care and Power of Attorney”

→ Click on “Power of Attorney”

This is a step-by-step interview that lets you print out a completed form when done.

## Can anyone make a power of attorney?

You must be mentally competent and able to make decisions on your own. Mentally competent means that you are “of sound mind.” Some people who have a dementia diagnosis or other disability may still be mentally competent even with that diagnosis. If there is a question of competence you may want to talk to your doctor or health care provider before signing a power of attorney form.

If a person is not mentally competent, or incompetent, it is too late to make a power of attorney. In that situation, a guardianship or conservatorship may need to be created.

For more information on these, see our fact sheet, [\*Guardianships and Conservatorships\*](#).



## What is a durable power of attorney?

“Durable” means lasting. Normally, if you become mentally incompetent, the power of attorney is not good anymore. But you can write that you want to continue the power even if you become incompetent. Then it is called a durable power of attorney. If you say on it “This power of attorney shall not be affected by incapacity of the principal” it would be a durable power of attorney.

On the attached form, selecting “This power of attorney continues to be effective if I become incapacitated or incompetent” makes the document “durable.”

If you do become mentally incompetent, a durable power of attorney can only be ended by a court-appointed conservator.

## Do I need a lawyer to help make my power of attorney?

No. But it is a good idea to use a lawyer. The courts watch over the things that guardians or conservators do, but they do not watch over what an attorney-in-fact does. **An attorney-in-fact could take advantage of you.** A lawyer can help you put things in your power of attorney papers that limit the actions of the attorney-in-fact. Or make them have to show what they do with money and property.

## How does the power of attorney work and who should have copies?

Both the principal and the attorney-in-fact should have a copy of the document. If you are giving a power to sell land, you need to file a signed original at the county

recorder's office. If the power deals with money matters, file a copy with the bank if you want your attorney-in-fact to be able to act for you.

When the attorney-in-fact acts for you, they sign their own name and then write:

*(their signature)*    **As attorney-in-fact for**    *(your name)*.

## Can I stop a power of attorney?

Yes. A competent person can revoke (take back) a power of attorney at any time. You must put in writing that you revoke the power of attorney, and sign and date this in front of a notary. Send copies to the attorney-in-fact and to any person, office or bank the attorney-in-fact dealt with for you. If you don't send out copies of the revocation, the businesses won't know, and your attorney-in fact could still try to do business in your name.



You should also get the original power of attorney back.

There is a Revocation of Power of Attorney form attached.

Or you can [create a Revocation of Power of Attorney online](http://www.lawhelpmn.org/forms) at [www.lawhelpmn.org/forms](http://www.lawhelpmn.org/forms).



→ Click on "Health Care and Power of Attorney"

→ Click on "Revocation of a Power of Attorney"

This is a step-by-step interview that lets you print out a completed form when done.

**NOTE:** Powers of attorney automatically end when the principal dies. If you give a power of attorney to your spouse, it ends if either of you start a divorce, separation, or annulment case.

*Fact Sheets are legal information NOT legal advice. See a lawyer for advice.  
Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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**STATUTORY SHORT FORM POWER OF ATTORNEY  
MINNESOTA STATUTES, SECTION 523.23**

*Before completing and signing this form, the principal must read and initial the IMPORTANT NOTICE TO THE PRINCIPAL that appears after the signature lines in this form. Before acting on behalf of the principal, the attorney(s)-in-fact must sign this form acknowledging having read and understood the IMPORTANT NOTICE TO THE ATTORNEY(S)-IN-FACT that appears after the notice to the principal*

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**PRINCIPAL** (Name and address of person granting the power)

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ATTORNEY(S)-IN-FACT  
(Names and Addresses)

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SUCCESSOR ATTORNEY(S)-IN-FACT  
(Optional) To act if any named attorney-in-fact dies,  
resigns or is otherwise unable to serve.

(Name and Address)

First Successor

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Second Successor

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NOTICE: If more than one attorney-in-fact is designated to act at the same time, make a check or "x" on the line in front of one of the following statements:

\_\_\_\_\_ Each attorney-in-fact may independently exercise the powers granted.

\_\_\_\_\_ All attorneys-in-fact must jointly exercise the powers granted.

EXPIRATION DATE (Optional)

\_\_\_\_\_ Use specific month, day, and year only

I (the above-named Principal), appoint the above named Attorney(s)-in-fact to act as my attorney(s) in fact:

**FIRST:** To act for me in any way I could act with respect to the following matters, as each of them is defined in Minnesota Statutes, section 523.24:

(To grant the attorney-in fact any of the following powers, make a check or "x" on the line in front of each power being granted. You may, but need not, cross out each power not granted. Failure to make a check or "x" on the line in front of the power will have the effect of deleting the power unless the line in front of the power (N) is checked or x-ed.)

Check or "x"

\_\_\_\_\_ (A) Real property transactions;

I choose to limit this power to real property in \_\_\_\_\_ County, MN described as follows: (use legal description. Do not use address.)

(If more space is needed, continue on the back or on an attachment.)

\_\_\_\_\_ (B) Tangible personal property transactions;

\_\_\_\_\_ (C) Bond, share, and commodity transactions;

\_\_\_\_\_ (D) Banking transactions;

\_\_\_\_\_ (E) Business operating transactions;

\_\_\_\_\_ (F) Insurance transactions;

\_\_\_\_\_ (G) Beneficiary transactions;

\_\_\_\_\_ (H) Gift transactions;

\_\_\_\_\_ (I) Fiduciary transactions;

\_\_\_\_\_ (J) Claims and litigations;

\_\_\_\_\_ (K) Family maintenance;

\_\_\_\_\_ (L) Benefits from military service;

\_\_\_\_\_ (M) Records, reports, and statements;

\_\_\_\_\_ (N) All of the powers listed in (A) through (M) above and all other matters other than health care decisions under a health care directive that complies with Minnesota Statutes, chapter 145C.

**SECOND:** (you must indicate below whether or not this power of attorney will be effective if you become incapacitated or incompetent. Make a check or "x" on the line in front of the statement that expresses your intent.)

\_\_\_\_\_ This power of attorney shall continue to be effective if I become incapacitated or incompetent.

\_\_\_\_\_ This power of attorney **shall not** be effective if I become incapacitated or incompetent.



Acknowledgment of notice to attorney(s)-in-fact and specimen signature of attorney(s)-in-fact.

By signing below, I acknowledge that I have read and understand the IMPORTANT NOTICE TO ATTORNEY(S)-IN-FACT required by Minnesota Statutes, section 523.23, and understand and accept the scope of any limitations to the powers and duties delegated to me by this instrument.

(Notarization not required)

Specimen signature(s) of Attorney(s)-in-Fact:

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(Notarization not required)

Specimen signature(s) of Attorney(s)-in-Fact:

(Notarization not required)

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This instrument was drafted by:

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## IMPORTANT NOTICE TO THE PRINCIPAL

READ THIS NOTICE CAREFULLY. The power of attorney form that you will be signing is a legal document. It is governed by Minnesota Statutes, chapter 523. If there is anything about this form that you do not understand, you should seek legal advice.

**PURPOSE:** The purpose of the power of attorney is for you, the principal, to give broad and sweeping powers to your attorney(s)-in-fact, who is the person you designate to handle your affairs. Any action taken by your attorney(s)-in-fact pursuant to the powers you designate in this power of attorney form binds you, your heirs and assigns, and the representative of your estate in the same manner as though you took the action yourself.

**POWERS GIVEN:** You will be granting the attorney(s)-in-fact power to enter into transactions relating to any of your real or personal property, even without your consent or any advance notice to you. The powers granted to the attorney(s)-in-fact are broad and not supervised. THIS POWER OF ATTORNEY DOES NOT GRANT ANY POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. TO GIVE SOMEONE THOSE POWERS, YOU MUST USE A HEALTH CARE DIRECTIVE THAT COMPLIES WITH MINNESOTA STATUTES, CHAPTER 145(C).

**DUTIES OF YOUR ATTORNEY(S)-IN-FACT:** Your attorney(s)-in-fact must keep complete records of all transactions entered into on your behalf. You may request that your attorney(s)-in-fact provide you or someone else that you designate a periodic accounting, which is a written statement that gives reasonable notice of all transactions entered into on your behalf. Your attorney(s)-in-fact must also render an accounting if the attorney-in-fact reimburses himself or herself for any expenditure they made on behalf of you.

An attorney-in-fact is personally liable to any person, including you, who is injured by an action taken by an attorney-in-fact in bad faith under the power of attorney or by an attorney-in-fact's failure to account when the attorney-in-fact has a duty to account under this section. The attorney(s)-in-fact must act with your interests utmost in mind.

**TERMINATION:** If you choose, your attorney(s)-in-fact may exercise these powers throughout your lifetime, both before and after you become incapacitated. However, a court can take away the powers of your attorney(s)-in-fact because of improper acts. You may also revoke this power of attorney if you wish. This power of attorney is automatically terminated if the power is granted to your spouse and proceedings are commenced for dissolution, legal separation, or annulment of your marriage.

This power of attorney authorizes, but does not require, the attorney(s)-in-fact to act for you. You are not required to sign this power of attorney, but it will not take effect without your signature. You should not sign this power of attorney if you do not understand everything in it, and what your attorney(s)-in-fact will be able to do if you do sign it.

Please place your initials on the following line indicating you have read this IMPORTANT NOTICE TO THE PRINCIPAL:

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## **IMPORTANT NOTICE TO THE ATTORNEY(S)-IN-FACT**

You have been nominated by the principal to act as an attorney-in-fact. You are under no duty to exercise the authority granted by the power of attorney. However, when you do exercise any power conferred by the power of attorney, you must:

- 1) act with the interests of the principal utmost in mind;
- 2) exercise the power in the same manner as an ordinarily prudent person of discretion and intelligence would exercise in the management of the person's own affairs;
- 3) render accountings as directed by the principal or whenever you reimburse yourself for expenditures made on behalf of the principal;
- 4) act in good faith for the best interest of the principal, using due care, competence, and diligence;
- 5) cease acting on behalf of the principal if you learn of any event that terminates this power of attorney or terminates your authority under this power of attorney, such as revocation by the principal of the power of attorney, the death of the principal, or the commencement of proceedings for dissolution, separation, or annulment of your marriage to the principal;
- 6) disclose your identity as an attorney-in-fact whenever you act for the principal by signing in substantially the following manner: Signature by a person as "attorney-in-fact for (name of principal)" or "(name of principal) by (name of the attorney-in-fact) the principal's attorney-in-fact";
- 7) acknowledge you have read and understood this IMPORTANT NOTICE TO THE ATTORNEY(S)-IN-FACT by signing the power of attorney form.

You are personally liable to any person, including the principal, who is injured by an action taken by you in bad faith under the power of attorney or by your failure to account when the duty to account has arisen.

The meaning of the powers granted to you is contained in Minnesota Statutes, chapter 523. If there is anything about this document or your duties that you do not understand, you should seek legal advice.

**REVOCATION OF POWER OF ATTORNEY**  
**Minnesota Statutes, § 523.11**

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TO WHOM IT MAY CONCERN:

I \_\_\_\_\_ revoke and declare null and void the

POWER OF ATTORNEY I granted to \_\_\_\_\_

which is dated \_\_\_\_\_ 20 \_\_\_\_\_

Please be advised that the above-named person no longer has power to act as my attorney-in-fact in any way.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Principal)

STATE OF MINNESOTA

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

by \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Notary Public