

FINANCIAL POWER OF ATTORNEY



What is a Financial Power of Attorney?

Through a financial power of attorney, you (the principal) may delegate authority to another person (your agent) to make decisions regarding your finances and property. If a power of attorney is durable, the agent can make decisions for the principal even if the principal becomes incapacitated. In Maine, a financial power of attorney is presumed to be durable unless it provides otherwise.

What Authority Does an Agent Have?

You may give your agent general or limited authority. If you give a general power of attorney, you are granting your agent broad authority to act on your behalf. You can also choose to give only a very limited power of attorney, perhaps by authorizing one or a few transactions, or by authorizing only a specific type of transaction. In either case, the agent must follow your wishes and, if your wishes are not known, do what is in your best interest.

General authority includes the power to deal with your money and property, such as the power to pay bills, receive income, deposit and withdraw from bank accounts and brokerage accounts, buy and sell investments, buy and sell real estate, borrow money, give mortgages, sign tax returns, open and close accounts, and take other steps to invest and manage your wealth. A power of attorney may also include the power to establish your place of residence and to arrange for nursing home care or in-home care services for you.

In Maine, there are certain actions an agent cannot take on behalf of the principal unless the document expressly grants that authority. Examples are the authority to create trusts for the principal, the authority to make gifts of the principal's assets, and the authority to change the principal's beneficiary designations. On the one hand, these are useful powers for an agent to have, particularly if you ever face the need for expensive long-term care and your agent wants to preserve your assets. On the other hand, these are very "powerful" powers, and an irresponsible or dishonest agent could do a lot of damage. These authorities should be given only to a trustworthy agent in whom you have complete confidence.

When Does an Agent's Authority Become Effective?

As the principal, you can choose when your agent's authority will take effect. Powers can be effective immediately, which means that your agent can act and make decisions for you as soon as you sign the document, even though the understanding may be that the power of attorney will not be used unless and until you are incapacitated. The other option is to give a springing power of attorney that becomes effective upon the happening of a future event, usually the incapacity of the principal as documented by a letter from a physician.

How Do I Choose an Agent?

There are a number of factors you should consider when deciding who to designate as your agent under your financial power of attorney. Some of these factors include the potential agent's ability to responsibly handle finances, willingness to serve as your agent, geographic proximity and availability, and trustworthiness and loyalty to you. Once you have identified a potential agent, you should discuss your intentions with that person and be sure that he or she understands your goals and is willing to serve as your agent. You should also consider naming at least one alternate agent in case your initial agent is unable to serve.

Can I Revoke a Financial Power of Attorney?

Granting an agent the authority to act on your behalf does not take away your right to act for yourself. Only a court can take away your rights to manage your own affairs. By executing a power of attorney, you are simply authorizing another person to act for you, and as long as you are competent, you can revoke any financial power of attorney you have previously given. An agent's authority always terminates automatically upon the death of the principal.

What if I Do Not Have a Financial Power of Attorney and I Become Incapacitated?

If you are unable to manage your own financial affairs, it may be necessary for your spouse, a child, or a friend to petition the Probate Court to be appointed as your conservator. This process takes several weeks, at least, and it can be very expensive. Moreover, the judge may not choose the same person you would have chosen to manage your affairs.

How Do I Create a Financial Power of Attorney?

Maine's power of attorney statute requires that every durable financial power of attorney created on or after September 19, 1997, include specific language explaining the rights of the principal and the duties of the agent. That language cautions the principal that the powers granted to the agent may be broad, and warns the agent that he or she has a legal duty to use the principal's money and property only on the principal's behalf. Unless the exact statutory wording is used, the document may not be valid. This wording can be found in title 18-A, section 5-905 of the Maine Revised Statutes, and was most recently updated in July 2010.

For your financial power of attorney to be valid under Maine law, you must sign it in front of a notary public. Although it is not required that the document be witnessed, we recommend that you execute it in front of two witnesses and a notary public in case the agent needs to act in a state that does have these requirements. Some banks and financial institutions have their own standard power of attorney forms and will resist honoring others. You should ask if this is a requirement of the institutions at which you do business.



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