

Power of Attorney Handbook

Some information in this booklet is from the Handbook for Older Iowans and the Gift of Peace of Mind Booklets

Iowa Department of Elder Affairs
Jessie Parker Building
510 East 12th St., Ste. 2
Des Moines, Iowa 50319
Phone: 515-725-3333
800-532-3213
Fax: 515-725-3300
Website: www.state.ia.us/elderaffairs
January 2006
Revised June 2006



Use of This Booklet

This booklet is designed to assist those who have been appointed as an attorney-in-fact, those who are considering the need for a power of attorney, or those who have an interest in the subject. This is a general overview of the laws governing powers of attorney and, like most general overviews it will apply in most situations, but not all. Small differences and individual circumstances can be very important in resolving legal problems and the general guidance provided by this booklet cannot take such differences into account. Keep in mind that the laws continually change and information in this booklet is not designed to take the place of legal counsel.

**IF YOU HAVE A LEGAL PROBLEM,
DO NOT ATTEMPT TO SOLVE IT ON
THE BASIS OF THE INFORMATION
PROVIDED IN THIS BOOKLET. SEEK
AN ATTORNEY'S ADVICE.**

DEFINITIONS

Attorney-in-fact (Agent): An individual who is designated by a power of attorney document as an agent to act on behalf of the principal and has consented to act in that capacity.

Durable: the document survives (or comes into existence upon) the disability of the principal. Although “durable” suggests that the power of attorney continues indefinitely, even a durable power of attorney ends with the principal’s death. A document is made durable by the inclusion of language such as “this power of attorney is not affected by the disability or incapacity of the principal”.

Durable Power of Attorney for Health Care: A document authorizing an attorney-in-fact to make health care decisions for the principal if the principal is unable, in the judgment of the attending physician, to make health care decisions.

Health Care: Any care, treatment, service or procedure to maintain, diagnose or treat an individual’s physical or mental condition.

Health Care Decision: The consent, refusal of consent, or withdrawal of consent to health care.

Power of Attorney: A document authorizing another to act as one’s agent or attorney-in-fact.

Principal: A person age 18 or older who has executed a power of attorney.

Area 11 - Aging Resources of Central Iowa
(Counties: Boone, Dallas, Jasper,
Madison, Marion, Polk, Story, Warren)

800-747-5352

Area 13 – Southwest 8 Senior Services, Inc.
(Counties: Cass, Fremont, Harrison,
Mills, Montgomery, Page, Pottawattamie,
Shelby)

800-432-9209

Area 14 – Area XIV Agency on Aging
(Counties: Adair, Adams, Clarke,
Decatur, Ringgold, Taylor, Union)

641-782-4040

Area 15 – Seneca Area Agency on Aging
(Counties: Appanoose, Davis, Jefferson,
Keokuk, Lucas, Mahaska, Monroe, Van
Buren, Wapello, Wayne)

800-642-6522

Area 16 – SE Iowa Area Agency on Aging, Inc.
(Counties: Des Moines, Henry, Lee,
Louisa)

800-292-1268

TABLE OF CONTENTS

Introduction.....	1
General Power of Attorney	2
Limited Power of Attorney	2
Durable & Standby Power of Attorney	3
Durable Power of Attorney for Healthcare.....	4
Power of Attorney for Financial Matters	6
How to Create a Power of Attorney	7
Termination of a Power of Attorney	9
Advantages of a Power of Attorney.....	10
Potential Disadvantages of a Power or Attorney.....	10
Resources	12
Area Agencies on Aging.....	13
Definitions	16

I. INTRODUCTION

Ordinarily, when we use the word “attorney,” we think of a trained, licensed attorney-at-law. But the law recognizes another type of attorney that is not necessarily a licensed lawyer. This type of attorney is called an “attorney-in-fact.” His or her legal status as attorney-in-fact (sometimes referred to as an “agent”) is created by a written document called a “power of attorney.”

A power of attorney is a written document by which one person (the principal) gives to another person (the attorney-in-fact) the authority to act on the first person’s behalf in one or more financial or healthcare matters. The principal (person signing the power of attorney) must be able to understand the documents purpose and appoint an attorney-in-fact. The principal should choose an agent (attorney-in-fact) who can be trusted.

There are several types of power of attorney, including the following:

A. General Power of Attorney

B. Limited Power of Attorney

C. Durable and Standby Power of Attorney

Area 4 - Siouxland Aging Services, Inc.
(Counties: Cherokee, Ida, Monona,
Plymouth, Woodbury)

800-798-6916

Area 6/7 – Hawkeye Valley Area Agency on Aging
(Counties: Black Hawk, Bremer, Butler,
Buchanan, Chickasaw, Grundy, Hardin,
Marshall, Poweshiek, Tama)

800-779-8707

Area 8 – Scenic Valley Area Agency on Aging
(Counties: Delaware, Dubuque, Jackson)

563-588-3970

Area 9 – Generations Area Agency on Aging
(Counties: Clinton, Muscatine, Scott)

800-892-9085

Area 10 – The Heritage Agency
(Counties: Benton, Cedar, Iowa,
Johnson, Jones, Linn, Washington)

800-332-5934

AREA AGENCIES ON AGING

Area 1 - Northland Agency on Aging

(**Counties:** Allamakee, Clayton, Fayette, Howard, Winneshiek)

800-233-4603

Area 2, 5 & 12 - Elderbridge Agency on Aging

(**Counties:** Audubon, Guthrie, Crawford, Carroll, Greene, Sac, Calhoun, Webster, Hamilton, Pocahontas, Humboldt, Wright, Franklin, Kossuth, Winnebago, Hancock, Cerro Gordo, Floyd, Mitchell, Worth)

Fort Dodge: 800-543-3280

Carroll: 800-543-3265

Mason City: 800-243-0678

Area 3 - Northwest Aging Association

(**Counties:** Buena Vista, Clay, Dickinson, Emmet, Lyon, O'Brien, Osceola, Palo Alto, Sioux)

800-242-5033

A. GENERAL POWER OF ATTORNEY

A “**general power of attorney**” authorizes the attorney-in-fact to act on the principal’s behalf in all personal financial transactions and affairs. The general power of attorney authorization automatically ceases upon the principal’s death. Unless the document states otherwise, it also terminates upon the principal’s disability or incapacity. See the durable power of attorney section.

B. LIMITED POWER OF ATTORNEY

A “**limited power of attorney**” authorizes the attorney-in-fact to act only in the matters specifically designated in the written document. Examples of such limited authority might be: to perform maintenance on a particular piece of property; to sign checks for a limited amount of money or time; or to purchase a certain piece of real estate, but only if it can be purchased at a certain price and in a certain condition.

As with a general power of attorney, the authority granted in a limited power of attorney terminates upon the principal’s death. Unless the document states otherwise, it also terminates upon the principal’s disability or incapacity. See the durable power of attorney section.

C. DURABLE AND STANDBY POWER OF ATTORNEY

A “**durable power of attorney**” differs significantly from the two previously discussed powers of attorney because it is effective even if the principal becomes disabled or incapacitated. Furthermore, a durable power of attorney can be made effective upon the occurrence of a certain event (standby).

For example, it is quite common to have a power of attorney become effective only if a doctor diagnoses a disability or incapacity. Because the effective date is delayed, this second type of durable power of attorney is sometimes referred to as a “**standby power of attorney**.” The advantage to this form of power of attorney is that it can serve as a planning tool. It allows an individual to pre-determine who will handle their financial and/or healthcare decisions if disability or incapacity strikes.

Examples of how a durable power of attorney might be used are:

- * An attorney-in-fact is designated to handle current banking and bill paying needs. The attorney-in-fact continues to take care of those matters after the principal is incapacitated or disabled;

RESOURCES

Iowa Concerns Line..... 800-447-1985

Iowa Dept. of Elder Affairs..... 800-532-3213

Iowa Legal Aid..... 800-532-1275

Lawyer Referral Service..... 800-532-1108

Legal Hotline for Older Iowans.....800-992-8161

**State Long Term Care
Ombudsman 800-532-3213**

for the attorney-in-fact to exercise the authority in an unethical or dishonest manner.

It is a good idea that the principal consult with the individual selected to be appointed as the attorney-in-fact. It is also advisable to nominate a second or third alternate in case the first choice is unwilling or unable to serve in this capacity.



- * The principal continues to handle his/her own financial affairs, but specifies in the standby power of attorney that a specific attorney-in-fact is authorized to handle financial management decisions, upon the occurrence of a specific event.
- * The attorney-in-fact can make medical decisions in the event that the principal becomes disabled or incapacitated.

The durable power of attorney document must be carefully worded. Make clear that the intent is to provide a power of attorney that will survive disability or incapacity **or** become effective only upon disability or incapacity. **All powers of attorney terminate automatically upon the principal's death.**

II. DURABLE POWER OF ATTORNEY FOR HEALTH CARE

The “**durable power of attorney for health care**” is a legal document that allows an individual (principal) to choose someone as his/her agent (someone who acts on his/her behalf) to make health care decisions whenever the principal is unable, in the judgment of an attending physician, to make those decisions.

This agent is required to make health care decisions according to directions provided by the principal. If the principal's wishes are not clearly understood and defined, then the agent must make decisions based on what he/she believes to be in the principal's best interests.

The durable power of attorney for health care only comes into play when the principal's doctor has determined that the principal is unable to make health care decisions for him/herself, even when the situation is temporary.

A health care power of attorney essentially takes the place of a guardianship. It allows the attorney-in-fact to make daily health care decisions without court supervision, when an individual is unable to make decisions for him/herself. A federal law requires medical facilities to inform all patients, prior to admission, of the right to sign a living will or a durable power of attorney for health care.

It is a good idea to nominate an alternate attorney-in-fact, in case the choice as attorney-in-fact is not able or no longer willing to serve. However, it is not recommended that co-attorneys-in-fact be appointed. This will avoid potential deadlocks or disputes over health care decisions.

The presence of a living will relieves the attorney-in-fact from making that difficult decision, if the situation arises.

VI. ADVANTAGES OF A POWER OF ATTORNEY

Powers of attorney are simple and inexpensive to prepare. The attorney-in-fact may begin exercising his or her authority under the document immediately without the need for court authorization. Because there is no court supervision and annual accountings are not required, it is mandatory that the nominated attorney-in-fact be a trusted individual. An attorney-in-fact under a durable power of attorney for health care takes priority in decision making for healthcare over any other person, including a guardian.

VII. POTENTIAL DISADVANTAGES OF A POWER OF ATTORNEY

The same characteristics that make a power of attorney convenient and inexpensive also constitutes the biggest potential disadvantage. Because there is no court supervision and annual accountings are neither required nor scrutinized by anyone, it is vital that the nominated attorney-in-fact be trustworthy. With a power of attorney, there is ample opportunity

5. If recorded, certified copies of the “power of attorney” document may be obtained from the country recorder.

6. It is not necessary to have a lawyer write the power of attorney document, but it would be wise to do so.

V. TERMINATION OF A POWER OF ATTORNEY

A power of attorney may be revoked at any time. To make an effective revocation, the principal must communicate his/her intent to revoke. This communication may be oral or written. The communication should be made to the attorney-in-fact. However, if a health care provider currently is providing health care services, then the principal may effectively revoke the power of attorney by communicating the intent to the care provider.

The health care power of attorney allows the principal to grant to the attorney-in-fact the authority to make decisions regarding the use of life-sustaining procedures. Because of this, it has been said that the execution of a living will no longer is necessary. It is important to realize that the execution of a living will memorializes intent and desire regarding the use of life-sustaining procedures, and not what the attorney-in-fact thinks the principal would desire.

III. POWER OF ATTORNEY FOR FINANCIAL MATTERS

The most common purpose for the use of a financial power of attorney is to grant authority to an attorney-in-fact to transact business on the principal’s behalf. Depending on how much authority is conveyed, the power of attorney document may grant to the attorney-in-fact any one or all of the following:

1. Open, maintain or close bank accounts or brokerage accounts;
2. Sell, convey, lease, or maintain real estate;
3. Access to safe deposit boxes and their contents;
4. Make financial investments;
5. Borrow money, mortgage property, or renew or extend debts;
6. Prepare and file federal and state income tax returns (IRS Form 4868 also should be executed);
7. Vote at corporate meetings;
8. Purchase insurance for your benefit;
9. Initiate, defend, prosecute or settle any lawsuit;
10. Start or carry on a business;

11. Employ professional and business assistants of all kinds, including lawyers, accountants, real estate agents, etc.;
12. Apply for benefits and participate in governmental programs;
13. Transfer to a trustee any and all property; and
14. Disclaim part or all of an inheritance.

To be effective, the power of attorney must be signed before a notary public. If it affects real estate, it should include the legal description of the real estate and it should be filed with the county recorder in the county where the real estate is located.

IV. HOW TO CREATE A POWER OF ATTORNEY

In order to create an effective power of attorney, the following elements must be present. This is true whether the power of attorney is to be general, limited, or durable.

1. The principal must be competent (rational and capable of making decisions).

2. The power of attorney must be in writing. It can be handwritten or typed, or preprinted forms can be used.

3. The power of attorney document must contain the following:

- A. The name of the person authorized to act as the attorney-in-fact.
- B. The powers and responsibilities given to the attorney-in-fact.
- C. The principal's signature, which must be signed and attested to in the presence of a notary public or for a health care power of attorney, by two witnesses.

4. If the power of attorney affects real estate, the document should include the legal description of the property and it should be filed with the office of the county recorder where the property is located.

If the power of attorney affects health care decision making, a copy of the documents should be provided to the attending physician and other health care professionals. All documents should be shared with the attorney-in-fact.