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Perhaps you’re beginning to take care of your aging parents, and you’re wanting to support them in a better capacity. Estate planning is a good opportunity to bring up a discussion about appointing you as their agent, for which the legal term is Power of Attorney (POA).A POA is a powerful estate planning tool, and there are a few different categories of powers, used in difference scenarios. Two types to consider are General Power of Attorney and Durable Power of Attorney. They’re equally important in the legal authority field, but there’s one key difference between them. So what is the difference between a General Power of Attorney and a Durable Power of Attorney? Keep reading to find out which option might be best for you and your family.What is a Durable Power of Attorney?If you’re appointed as the agent through a Durable Power of Attorney (DPOA), you’ll be given legal authority to act on your parents’ behalf. You’ll have agency to care for them even if they become suddenly incapacitated, until the day they pass away.Here are some example tasks that you might find yourself executing as a DPOA:Act in your parents’ behalf on any matterSign their legal documentsAdvise on any healthcare decisionsMake financial and business decisionsWe provide more detailed information on what it means to be a DPOA in our guide, including answers to commonly asked questions. Be sure to check it out to learn more.What is a General Power of Attorney?A General Power of Attorney (GPOA) is a similar legal document that allows your parents to appoint you as their agent. As a GPOA, your duties will end if your parents ever became incapacitated. This means that your role is to support them under their general guidance or supervision, as long as they are still able to make their own decisions.Here are some examples of the tasks that you might carry out for your parents as their GPOA:Purchase insurance policiesHire professionals, including medical helpManage financial and real estate transactionsMake gifts out of a TrustOperate a businessSettle any outstanding financial or legal claimsFore more information, check out our Understanding Power of Attorney guide. What is the Difference Between a General Power of Attorney and a Durable Power of Attorney?Here, it’s very important to pay attention to the difference between a General Power of Attorney and a Durable Power of Attorney. The key differentiation between DPOA vs POA is simple: incapacitation.As a General POA, your agency ends the moment your parents become incapacitated. This means that if they suddenly become unable to make decisions for themselves, you will no longer be able to make important decisions for them. Incapacitation occurs in cases such as an accident, severe medical condition, or mental illness. As a Durable POA, your legal agency remains intact until your parents pass away, or unless they revoke your power. This means that as their agent, you’ll still be able to make important decisions if or when they become unable to do so themselves.Does a Power of Attorney Have to be Filed with the Court?Generally, a POA does not have to be filed with the court system. Rather, your Power of Attorney is a document you include with your other estate planning documents. You’ll want to keep this safe and secured, such as through your password-protected estate planning platform. If you plan on executing any real estate transactions, you’ll want to find out through your County Clerk and Land Title offices if they require your parents to file their Power of Attorney. If so, the document will need to be notarized. Setting Up Your DPOA vs POAWhether you decide to set up a DPOA vs POA is up to you and your family. Ultimately, your parents will be responsible for setting up an estate plan that includes a DPOA or POA document that names you as their agent.You’ll want to have an honest conversation with them about the difference between the two options, and which is the most appropriate. Some key questions to ask are, “in what capacity do you want me to be able to help you,” and, “if you were to suddenly become incapacitated, do you want for me to be able to continue making decisions on your behalf?” This may be an emotional and sometimes unpleasant conversation to have, but an important one nonetheless. It may be helpful to refer them to our guide, What is Power of Attorney. It’s a 10-minute read that’ll give them a break-down on the different types of POAs and important things to know, which will help them make their decision. Once they’re ready, they’ll need to establish or update their Estate Plan so that they can have peace of mind. You’ll have the agency to support them when needed, and you’ll be able to step up to the plate in case anything unexpected were to happen.At Trust & Will, we believe in making the process of estate planning informative, accessible, and seamless. In case your parents don’t have an estate plan yet, or are hesitant to make any changes because their last experience was laborious, know that our platform makes it easy to set up a Power of Attorney from the comfort of their home.Is there a question here we didn’t answer? Reach out to us today or Chat with a live member support representative! Related Topics Legal form of delegation For the TV series, see Power of Attorney (TV series). The examples and perspective in this article deal primarily with the United States and English-speaking world and do not represent a worldwide view of the subject. You may improve this article, discuss the issue on the talk page, or create a new article, as appropriate. (April 2022) (Learn how and when to remove this message) Power of attorney A power of attorney (POA) or letter of attorney is a written authorization to represent or act on another's behalf in private affairs (which may be financial or regarding health and welfare), business, or some other legal matter. The person authorizing the other to act is the principal, grantor, or donor (of the power). The one authorized to act is the agent,[1] attorney, or in some common law jurisdictions, the attorney-in-fact. Formerly, the term "power" referred to an instrument signed under seal while a "letter" was an instrument under hand, meaning that it was simply signed by the parties, but today a power of attorney does not need to be signed under seal. Some jurisdictions require that powers of attorney be notarized or witnessed, but others will enforce a power of attorney as long as it is signed by the grantor. The term attorney-in-fact is used in many jurisdictions instead of the term agent.[2] That term should be distinguished from the term attorney-at-law. In the United States, an attorney-at-law is a solicitor who is also licensed to be an advocate in a particular jurisdiction. An attorney-in-fact may be a layperson and is authorized to act pursuant to the powers granted by a power of attorney but may not engage in acts that would constitute the unauthorized practice of law. In the context of the unincorporated reciprocal inter-insurance exchange (URIE) the attorney-in-fact is a stakeholder/trustee who takes custody of the subscriber funds placed on deposit with him, and then uses those funds to pay insurance claims. When all the claims are paid, the attorney-in-fact then returns the leftover funds to the subscribers. The Uniform Power of Attorney Act employs the term agent.[3] As an agent, an attorney-in-fact is a fiduciary for the principal, so the law requires an attorney-in-fact to be completely honest with and loyal to the principal in their dealings with each other. An attorney has power to act on behalf of the person; this power can be misused, for example, to steal the assets of a person who may be vulnerable (e.g. elder abuse) or absent.[4] Main article: Capacity (law) A person, known as the grantor or donor in different jurisdictions, can only create a power of attorney if they have the requisite mental capacity. In some powers of attorney the grantor states that they wish the document to remain in effect even after they become incapacitated, creating a durable or lasting power of attorney. If someone is already incapacitated, it is not possible for that person to execute a valid power, although in some jurisdictions, it may be possible for someone to have the capacity to execute a power of attorney even if they do not have the capacity to make the decisions that they are delegating.[5] If a person without a durable power in place does not have the capacity to execute a power of attorney, the only way for another party to act on their behalf may be to have a court impose a conservatorship or a guardianship. Depending on the jurisdiction, a power of attorney may be oral and, whether witnessed, will hold up in court, the same as if it were in writing.[6] For some purposes, the law requires a power of attorney to be in writing. Many institutions, such as hospitals, banks and, in the United States, the Internal Revenue Service, require a power of attorney to be in writing before they will honor it, and they will usually keep a duplicate original or a copy for their records. Nursing homes often follow the same practice. The equal dignity rule is a principle of law that requires an authorization for someone performing certain acts for another person to have been appointed with the same formality as required for the act the representative is going to perform. This means, for example, that if a principal authorizes someone to sell the principal's house or other real property, and the law requires a contract for the sale of real property to be in writing (which is required under the Statute of Frauds in most U.S. jurisdictions), then the authorization for the other person to sign the sales contract and deed must be in writing too. Likewise, in common-law jurisdictions other than the U.S., a power of an attorney to execute a deed (i.e. instrument under seal or executed in presence of two witnesses) must be itself executed as a deed. For a power of attorney to become a legally enforceable document, at a minimum it must be signed and dated by the principal.[7] Some jurisdictions also require that a power of attorney be witnessed, notarized, or both. Even when not required, having the document reviewed and signed (and often stamped) by a notary public may increase the likelihood of withstanding a legal challenge.[8] If the attorney-in-fact is being paid to act on behalf of the principal, a contract for payment may be separate from the document granting power of attorney. If that separate contract is in writing, as a separate document it may be kept private between the principal and agent even when the power of attorney is presented to others for the purposes of carrying out the agent's duties. A power of attorney may be: special (also called limited), general, or temporary. A special power of attorney is one that is limited to a specified act or type of act. A general power of attorney is one that allows the agent to make all personal and business decisions[9][10] A temporary power of attorney is one with a limited time frame.[11] If ever required, a durable power of attorney can be revoked or changed as long as the principal is still mentally competent to act. Under the common law, a simple power of attorney becomes ineffective if its grantor dies or becomes "incapacitated," meaning unable to grant such a power, if, for example, because of physical injury or mental illness. If the grantor (or principal) specifies that the power of attorney will continue to be effective (endure) even if the grantor becomes incapacitated, this type of power of attorney is called "power of attorney with durable provisions" in the United States or "enduring power of attorney", "lasting" or "continuing" power of attorney elsewhere. In effect, under a durable power of attorney, the authority of the attorney-in-fact to act and/or make decisions on behalf of the grantor continues until the grantor's death.[12] In some jurisdictions, a durable power of attorney can also be a "health care power of attorney." This particular affidavit gives the attorney-in-fact the authority to make health-care decisions for the grantor, up to and including terminating care and life support. The grantor can typically modify or restrict the powers of the agent to make end-of-life decisions.[13] In many jurisdictions a health care power of attorney is also referred to as a "health care proxy" and, as such, the two terms are sometimes used interchangeably. Related to the health care power of attorney is a separate document known as an advance health care directive, also called a "living will". A living will is a written statement of a person's health care and medical wishes but does not appoint another person to make health care decisions. Depending upon the jurisdiction, a health care power of attorney may or may not appear with an advance health care directive in a single, physical document. For example, the California legislature has adopted a standard power of attorney for health care and advance health care directive form that meets all of that state's legal wording requirements for a power of attorney and advance health care directive in a single document.[14] By comparison, New York enacted a Health Care Proxy law that requires a separate document to appoint someone as one's health care agent.[15] In some U.S. states and other jurisdictions, it is possible to grant a springing power of attorney; i.e., a power that takes effect only after the incapacity of the grantor or some other definite future act or circumstance.[9] After such incapacitation the power is identical to a durable power, but cannot be invoked before the incapacity. This power may be used to allow a spouse or family member to manage the grantor's affairs in case illness or injury makes the grantor unable to act.[16] If a springing power is used, the grantor should specify exactly how and when the power springs into effect. As the result of privacy legislation in the U.S., medical doctors will often not reveal information relating to capacity of the principal unless the power of attorney specifically authorizes them to do so. Determining whether the principal is "disabled" enough to initiate this type of representation is a formal process. Springing powers of attorney are not automatic, and institutions may refuse to work with the attorney-in-fact. Disputes are then resolved in court. Unless the power of attorney has been made irrevocable by its own terms or by some legal principle, the grantor may revoke the power of attorney by telling the attorney-in-fact it is revoked. However, if the principal does not inform third parties and it is reasonable for the third parties to rely upon the power of attorney being in force, the principal might still be bound by the acts of the agent, though the agent may also be liable for such unauthorized acts. Standardized forms are available for various kinds of powers of attorney, and many organizations provide them for their clients, customers, patients, employees, or members. However, the grantor should exercise caution when using a standardized POA form obtained from a source other than a lawyer because there is considerable variation in approved formats among the states. In some jurisdictions statutory power of attorney forms are available.[17] Although a power of attorney grants the agent powers to perform acts in the absence of the grantor, the POA cannot grant powers to the agent that conflict with rules and regulations governing people and companies that the agent deals with. For example, if a bank has regulations that require the grantor to be physically present in the bank to perform certain actions, the POA cannot grant the agent power to perform those actions in the absence of the grantor. Robert's Rules of Order notes that proxy voting involves granting a power of attorney. The term "proxy" refers to both the power of attorney itself and the person to whom it is granted.[18] In financial situations wherein a principal requests a securities broker to perform extensive investment functions on the principal's behalf, independent of the principal's advice, power of attorney must be formally granted to the broker to trade in the principal's account. This rule also applies to principals who instruct their brokers to perform certain specific trades and principals who trust their brokers to perform certain trades in the principal's best interest.[citation needed] In Australia, anyone with capacity can grant a power of attorney. This can be done either for a pre-defined period of time, or in perpetuity ("enduring"). The power of attorney can be granted to one individual, or to multiple individuals. When granted to multiple individuals, they may be authorised either to act jointly (all together) or to act severally (each can act individually). In Canada, there are generally two types of Power of Attorney:[19] Power of Attorney for Property: Allows the appointed attorney to make financial and property decisions on behalf of the grantor, such as managing bank accounts, selling property, and paying bills. Power of Attorney for Personal Care: Allows the appointed attorney to make decisions related to the grantor's health care and personal well-being, such as choosing a place of residence, and making decisions about medical treatment. It is also possible to have a Combined Power of attorney which allows both the personal care and property management decisions to be taken by the attorney. The laws and regulations for Power of attorney vary by province or territory and the specific requirements for each type of Power of attorney may vary. In Ontario, a Power of Attorney for Property allows a person (the "grantor") to appoint another person (the "attorney") to make financial and property decisions on their behalf. This Power of Attorney for Property includes a Continuing Power of Attorney for Property (CPOA), and a non-continuing Power of Attorney.[20][21] The attorney's authority can be limited or broad, and can take effect immediately or only in certain circumstances (such as the grantor becoming mentally incapable). The grantor can also revoke or cancel the Power of Attorney at any time while they still have capacity.[22][23] One can make a power of attorney document oneself for free using a web tool created by Community Legal Education Ontario or have a lawyer do it.[24] It is important to note that the Power of Attorney must be in writing, signed by the grantor, and witnessed by someone other than the attorney. If one doesn’t make a Power of Attorney, the government will not automatically step in if one can’t manage own affairs. In these circumstances a family member has the right to make your health care decisions or apply to become your “guardian” of property. Alternatively, someone else – such as a close friend - could apply to make decisions for you in these matters. The government, through the Office of the Public Guardian and Trustee (OPGT), acts only in situations where it is legally required and where no other suitable person is available, able and willing.[23] United Kingdom legislationPowers of Attorney Act 1971Act of ParliamentParliament of the United KingdomLong titleAn Act to make new provision in relation to powers of attorney and the delegation by trustees of their trusts, powers and discretions.Citation1971 c. 27DatesRoyal assent12 May 1971Status: AmendedText of statute as originally enactedText of the Powers of Attorney Act 1971 as in force today (including any amendments) within the United Kingdom, from legislation.gov.uk. In English law, applying in England and Wales, anyone with capacity can grant a power of attorney. These can be general (i.e. to do anything which can legally be done by the donor in relation to their money or assets), or can relate to a specific act only (e.g. to sell freehold property), and are governed by the Powers of Attorney Act 1971 (c. 27). An ordinary power of attorney is only valid for so long as the donor has the mental capacity to ratify the attorney's actions. There are also powers of attorney for trustees, governed by section 25 of the Trustee Act 1925. If the donor become incapacitated a normal power of attorney can no longer be used. To provide for such cases a lasting power of attorney must be created. This is a separate and quite different type of power, which must be in a prescribed form, signed and witnessed in a prescribed order, and registered with the Office of the Public Guardian (OPG).[25] This type of power of attorney was introduced in 2007 under the Mental Capacity Act 2005. It replaces the former enduring power of attorney, although enduring powers correctly made before the law changed remain valid. Enduring powers were very different, as they only needed to be registered if the donor later lost capacity. The OPG provides an online process for registering a lasting power of attorney.[26] Many of the provisions in American law, described in the sections above, use terminology having different meaning from both common British usage and from the terms used in the Mental Capacity Act 2005. Examples are 'enduring power of attorney', 'advance directive', and 'notary public': in English law, these terms do not have the same meaning as they have in America. During the coronavirus pandemic that started in 2019, England and Wales permitted documents such as wills to be witnessed via video link; however, a power of attorney still had to be signed by hand by all persons involved, in the right order, and witnessed directly, although possibly through a window or outdoors.[27] In Irish law there are two types of power of attorney: Power of attorney, which may be general or specific, which ceases once the donor becomes mentally incapacitated.[28] This type is virtually identical to an ordinary 1971 Act power of attorney in England and Wales. Enduring power of attorney, which takes effect once the donor is incapacitated[28] The death of the donor ends both.[28] The relevant legislation is the Powers of Attorney Act 1996 and the Enduring Powers of Attorney Regulations 1996 (SI No. 196/1996) as amended by SI No. 287/1996.[28] Part 7 of the Assisted Decision-Making (Capacity) Act 2015 provides for new arrangements for those who wish to make an Enduring Power of Attorney and once the 2015 Act is brought into force, no new powers of attorney will be created under the 1996 Act.[28] A solicitor is not required to create a Power of Attorney - it is created simply by being signed by the donor, in the presence of (and countersigned by) a witness.[28] Creating an Enduring Power of Attorney requires the following: it must be in a particular format[28] a statement from a doctor stating that the doctor thought the donor had the mental capacity to understand the effect of creating the power of attorney when the document was executed[28] a statement from the donor to say that they understood the effect of creating the power[28] a statement from a solicitor to say they are satisfied that the donor understood the effect of creating the power of attorney[28] a statement from a solicitor to say the donor was not acting under undue influence[28] The courts play a general supervisory role in the implementation of the power.[28] Under Russian law, in article 185 of the Russian Civil Code, a power of attorney can be created by being signed by the donor.[29] Creation of the power of attorney must be witnessed, e.g. countersigned by a public notary. Notarial witnessing is mandatory if the power of attorney is made in order to enter into a contract to buy or sell an interest in land, as this has to be done on a public register.[30] A power of attorney must also be dated, pursuant to article 186 of the Russian Civil Code.[29] Any POA without an express date of execution is void. A power of attorney cannot be irrevocable. The grantor may terminate the POA at any time, at his or her sole discretion. Any waiver of this right is void, as provided by the Civil Code. See Doverennost (in Russian) The law in Scotland is broadly similar to that of England and Wales. Scottish practice differs from England in one respect. In Scotland, the Office of the Public Guardian offers eAttorney, the Electronic Power of Attorney (EPOAR) system, for the submission and payment of a power of attorney registration.[31] Cestui que Delegata potestas non potest delegari Estate planning Will and testament Legal guardian ^ Under Louisiana state law only, the agent is referred to as a "mandatary". See Mandatary Definition from Louisiana Civil Code Art. 2989 ^ "Attorney-in-Fact". Wex. Cornell University Law School. 2010-08-19. Retrieved 4 May 2017. ^ "Uniform Power of Attorney Act, 2006". Archived from the original on November 29, 2011. ^ Hughes, Michele. "Remedying Financial Abuse by Agents Under a Power of Attorney for Finances". Marquette Elder's Advisor. 2 (4): 39–48. Retrieved 4 May 2017. ^ See, for instance, the Ontario Substitute Decisions Act ("S.O. 1992, c. 30". e-Laws Ontario. 2014-07-24. Retrieved 9 December 2018.) ^ "Power of Attorney". Cornell Legal Information Institute. 2007-08-06. 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Gratuitous Transfers: Wills, Intestate Succession, Trusts, Gifts, Future Interests, and Estate and Gift Taxation. St. Paul, MN: Thomson/West. p. 311. ISBN 978-0-314-16040-9. ^ New York Code, Public Health Law, Sec. 2981. State of New York. ^ "Financial Power of Attorney". AARP. Retrieved 5 May 2017. ^ For example, see the California Statutory Form Power of Attorney, New York Form Power of Attorney and Wisconsin Form Power of Attorney, Ontario Power of Attorney, and England and Wales Lasting power of attorney. ^ Robert, Henry M. (2011). 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Original date 17 April 2020; updated many times (listed on page); guidance withdrawn on 30 March 2022. ^ a b c d e f g h i j k l "Power of Attorney". Retrieved 27 February 2017. This article contains quotations from this source, which is available under the Creative Commons Attribution 4.0 International (CC BY 4.0) license. ^ a b "Глава 9.1. ГК РФ Решения собраний (ст.ст. 181.1 - 181.5) | ГАРАНТ". base.garant.ru. ^ See Section 16 of Act 122 of 2003 "On state registration of interests in immovable property and related transactions" (in Russian) [1] ^ "How do I make a submission?". Office of the Public Guardian (Scotland). Retrieved 6 December 2017. Retrieved from " Perhaps you’re beginning to take care of your aging parents, and you’re wanting to support them in a better capacity. 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Related Topics There are many types of POA but the two most common you’ll come across are Durable and General Power of Attorney forms. These legal documents can grant far-reaching powers to an agent but there are many differences between them you must consider when choosing which is best for you and your needs. To help make this decision easier before starting a Power of Attorney form, this article looks at the key distinction between these two types of legal instruments and what you should keep in mind when you select your preferred form of POA. Read more:Power of Attorney Cost General POA: How and When It Can be Used A General Power of Attorney is a form of financial POA grants the agent control over some or all of an individual’s personal and fiscal affairs (unless specified otherwise on the initial legal form). This allows them to complete purchases, transactions and sign contracts on your behalf as you would as an individual. General POAs can either be temporary or long term documents depending on your needs and the duration that you want the agent to make decisions for you. Normally they come into effect as soon as they’re signed (unless otherwise is stated) and end when the principal dies or becomes incapacitated. General Power of Attorney Pros The common powers that a General POA grants the agent make it easy for them to quickly and effectively respond to any and all financial requirements you have. This can ease the process of: Selling a property Making business transactions Doing government-mandated tasks like filing tax returns Borrowing money Paying bills These can all be done without you signing the documents in person. This can be highly practical if you are frequently overseas and unable to sign documents yourself. Alternatively, it can be highly practical if you need assistance to complete these types of transactions from a professional or knowledgable acquaintance. General Power of Attorney Cons The biggest disadvantage of a General Power of Attorney is that it ends automatically if you, the principal, become incapacitated. These conventional documents are only designed to be in place whilst the appointing individual is still fully lucid and conscious. Should anything happen to you during this time then the validity of the document will expire. Additionally, General Power of Attorney’s only focus on financial decision making. They cannot be used for other necessities such as your medical needs. Durable POA: What it is and How it is Used Durable Power of Attorney, on the other hand, is a much more robust form of legal instrument. It allows the Agent to continue making decisions for you even if you become incapacitated. It is the best option for Principals looking to appoint an agent to look after their financial or medical needs during advanced age or time of sickness. This will allow your Attorney-in-Fact to keep working on these issues for you if you cannot manage them personally. Unless specified otherwise it can continue to be used until your death or it is revoked. Durable Power of Attorney Pros Unlike General POAs which are normally used for your financial requirements only, Durable Power of Attorneys can be used for more serious, far-reaching personal needs. For example, a Durable POA can be used if you are experiencing serious health complications. In order to grant these kinds of powers to an agent, you will need a specific Medical Power of Attorney and often a Living Will to formalize your agreement with the Agent and express your healthcare preferences. However, you can also take out a Durable Power of Attorney to allow your agent to manage or keep managing your financial interests if and when you become incapacitated. The POA, in this case, can become effective at the time of signing or you can stipulate the exact future date or scenario when it will come into use. Medical POA and Financial Power of Attorneys are 2 separate legal instruments, however. It is therefore crucial that you decide if you need one or both of them in your situation when you plan for the years to come. Durable Power of Attorney Cons The situations arising from a Durable POA can make it more complicated to override the document. Given the nature of its use and broad authority it grants, there may come a time where the principal cannot simply revoke the Power of Attorney as is their right, for example, if they are incapacitated and cannot state their wishes properly. In the event of a dispute in this scenario, there will be more complications for friends or loved ones to remove the granted powers from the agent if they misuse them. If this happens it may be necessary to escalate the matter to the courts. A lot of thought needs to go into how to choose the right type of Power of Attorney you will need. When you design your document be sure to consider your exact necessities as the principal and think about the complexities of the powers you are granting. That way you’ll be able to create a form that responds perfectly when it is needed. LawDistrict’s legal instrument creation tools can help you do that. We give you step-by-step guidance on the different types of powers, important dates you need to specify, and key points to remember during the process. Create an Official POA Now Read more: Medical VS Financial POA Do you know someone who needs some help with their financial affairs? Powers of attorney and third party bill management are both used by people who need help managing their affairs. This information about how they work in the telecoms sector has been prepared by Ofcom with assistance from the Office of the Public Guardian. Telecoms providers should have an approach that protects their customers from fraud while allowing properly authorised people access to help operate accounts where appropriate. Powers of attorney and third party bill management enable this to happen. There are some differences between how things work in England & Wales, Scotland and Northern Ireland. Please see the relevant sections below. England and Wales What is a lasting power of attorney? A lasting power of attorney (LPA) is a legal document that lets a person (known as the ‘donor’) appoint someone else (known as an ‘attorney’) to help make decisions, or to make decisions on their behalf, either immediately or when they lack mental capacity. The attorney is usually a family member, friend or solicitor. A person lacks mental capacity if they cannot understand, remember and act upon appropriate information and so cannot reliably make a certain decision for themselves. There are two types of LPA: property and financial affairs health and welfare Only a property and financial affairs LPA is valid in relation to a telecoms account, and it must be registered by the Office of the Public Guardian (OPG) before it can take effect. Once the LPA is registered, the attorney should have the same power to manage the account as the account holder. Are there other types of power of attorney? LPA is the most common, with over 1.8 million registered. However, you may come across other similar arrangements. Deputies: If a person has not created an LPA and loses mental capacity, the Court of Protection can appoint a ‘deputy’ to act in the same way as an attorney. The court order will set out what decisions the deputy can make on behalf of the person who lacks mental capacity. Enduring power of attorney: prior to October 2007, a person could create an enduring power of attorney (EPA) in relation to property and finance. EPAs can no longer be made, but existing EPAs are still valid if the donor has lost or is losing their mental capacity, providing they have been registered with the Office of the Public Guardian. Ordinary power of attorney: this enables someone to make financial decisions on behalf of the account holder. However, an ordinary power of attorney stops being legal authority if the donor loses mental capacity. Benefits Appointee: the Department for Work and Pensions can approve a person to act as the appointee for a mentally incapable or severely disabled person who receives benefits. The appointee receives and manages the benefit payments; this can include making payments such as telecoms and utility bills on behalf of the person. What is third party bill management? Ofcom requires all telecoms providers in the UK to offer third party bill management. This allows a customer to nominate a friend or relative to help manage their account. The third party can receive copies of bills and can pay the bills, but does not become liable for them. The customer should contact their telecoms provider to set this up. How is a lasting power of attorney different from third party bill management? An LPA gives the attorney the same power to manage the account as the account holder. Third party bill management gives the nominee the ability to speak to the provider about the account, receive copies of bills and pay bills. Speak to the provider about the account Receive copies of bills Pay bills Close the account/make changes to the account Third party bill management Yes Yes Yes No Lasting power of attorney/deputyship/ enduring power of attorney Yes Yes Yes Yes Benefits Appointee Yes Yes Yes Yes How do I let a telecoms provider know that I have power of attorney? Telecoms providers will need evidence of your authority to act for the account holder. In England and Wales, for lasting powers of attorney registered after 1 January 2016, the attorney or donor can generate individual access codes enabling a company or organisation to view a one-page summary of the lasting power of attorney (LPA). An access code is valid for 30 days from the day it was created and has 13 characters starting with V. To view the summary of the LPA the telecoms provider will need to: Enter the donor’s surname and the access code. Check the donor’s name and LPA type are correct. Give the name of their company. There will be a record of the company name and the date, so the donor and any other attorneys can see when and how the LPA is being used. Access codes are not currently available for registered continuing and/or welfare Powers of Attorney in Scotland or for Enduring Powers of Attorney in Northern Ireland. You can also send an LPA form that has been completed, signed and registered with the Office of the Public Guardian. The telecoms provider may ask for proof of your name and address. Some telecoms providers will accept a photocopy of the registered LPA; others require a copy with the OPG stamp on every page or a copy signed on every page by the donor, a solicitor or a notary to confirm that it is a true copy of the original. The copy of the LPA should be returned to you on request. Examples My mother has had a stroke and is now in a care home. She has made an LPA (property and financial affairs), naming me as her attorney. Her house is being sold, and I need to close her telecoms account. The telecoms provider should be able to close the account on receipt of the registered LPA or valid access code. My father is in hospital and has made an LPA (property and financial affairs). I am his attorney and wish to receive copies of his bills so that I can ensure that the phone is not cut off during his stay. His account has a password, but I don’t know it and he is unable to tell me as he is confused. The telecoms provider should accept the LPA without the password to the account in these circumstances. They can use different security checks if necessary. My aunt is being cared for in a dementia unit and I wish to close her telecoms account. She has third party bill management in place with me as her nominee. Third party bill management without an LPA would not normally allow you to close the account. However, the telecoms provider is likely to accept a letter from the manager of the dementia unit or the aunt’s GP. My brother has suffered a head injury and can no longer manage his own affairs. I am going to the Court of Protection to ask for a deputyship order, but this is likely to take two or three months. In the meantime, he is paying for a telecoms service that he cannot use. The telecoms provider may be willing to accept a letter from the hospital or GP in order to close the account in these circumstances. If not, you could ask for the account to be suspended until the court order is issued, meaning that no further charges accrue. Useful links More information about lasting power of attorney Alzheimer’s Society about powers of attorney More information about the benefits appointee scheme The OPG has published a guide for regulated firms on supporting customers who do not make their own decisions. Scotland and Northern Ireland In Scotland, powers of attorney come under the Office of the Public Guardian (Scotland). The legal framework is slightly different from that in England and Wales, and different names are in use. A continuing power of attorney relates to property and financial affairs. It can be used both while the granter has mental capacity and after capacity is lost. A welfare power of attorney relates to personal welfare decisions and can only be used after the granter has lost capacity. Both types of powers can be granted in the same document. As in England and Wales, general or ordinary powers of attorney enable someone to make financial decisions on behalf of the account holder. However, they cease to have legal authority if the granter loses mental capacity. In Northern Ireland, powers of attorney come under the Office of Care and Protection (NI) and are similar to pre-2007 enduring power of attorney in England and Wales. They can be used without registration while the donor has mental capacity. If the donor loses capacity, the attorney must apply to the High Court (Office of Care and Protection) for registration. The Motorsport Images Collections captures events from 1895 to today’s most recent coverage.Discover The CollectionCurated, compelling, and worth your time. Explore our latest gallery of Editors’ Picks.Browse Editors' FavoritesExperience AI-Powered CreativityThe Motorsport Images Collections captures events from 1895 to today’s most recent coverage.Discover The CollectionCurated, compelling, and worth your time. Explore our latest gallery of Editors’ Picks.Browse Editors' FavoritesExperience AI-Powered CreativityThe Motorsport Images Collections captures events from 1895 to today’s most recent coverage.Discover The CollectionCurated, compelling, and worth your time. Explore our latest gallery of Editors’ Picks.Browse Editors' FavoritesExperience AI-Powered Creativity If you become sick or incapacitated, you may need help making financial choices or taking care of your financial responsibilities. Learn more about picking someone to make your financial choices when you can’t using a Financial Power of Attorney (also sometimes called a Durable Financial Power of Attorney). Financial Power of Attorney (FPOA) is a legal document. It gives someone else (called your "agent") the right to make your financial, business and real estate choices when you can’t. FPOAs are often used by people who can’t manage their finances because they are incapacitated by health problems. This is different from a healthcare power of attorney, where you select someone to make healthcare decisions for you if you are not able to because you are very hurt or sick. Creating a FPOA While you are competent: Choose an agent. An attorney-in-fact or “agent” is an adult who can make your financial choices when you can’t. It is very important to choose someone that you trust. You should also talk to the person you pick to make sure that they’re willing to serve as your agent. Fill out the FPOA form. Read it carefully and initial next to the rights you want your agent to have. Examples include rights over your real estate, “tangible property” like cars, bank accounts or your government benefits. Sign the form. Sign the form. If your FPOA gives rights to buy or sell land, you must also notarize it and file it at the recorder’s office in the county where the property is located. Your FPOA options You can customize your FPOA by choosing its: Powers. You can give your agent power over all of your finances or only certain parts. You can also write down specific wishes or directions for your agent. Your agent is required to make decisions that align with these wishes. Timeline. A regular FPOA (also called a "durable" financial power of attorney) is active immediately, and will continue to be active if you become incapacitated. A springing FPOA is active after a specific date or event. For example, some people write into their FPOA that it is only active if they become incapacitated. That means that you cannot understand or respond to questions about your finances. Your FPOA can include an expiration date, or it can continue until you die. If you are setting up your FPOA in preparation to enter a long-term care facility, there may be more detailed information that you'd like to include in the form's "Special Instructions." Pro Seniors provides information on special clauses that may be helpful in their Financial Power of Attorney Toolkit. Consider speaking with a lawyer. A lawyer can help you understand your needs for a FPOA and make sure that the document does everything that you want it to. Ending your FPOA If your situation changes, you can always end a FPOA. To end your FPOA, follow these steps: Complete the FPOA revocation form. Sign, date and notarize the statement. Give the notarized statement to your agent and any banks that might have a copy. If your FPOA gives rights to buy or sell land, file the cancellation in the recorder’s office where the FPOA was originally filed. Other planning You should prepare all of these documents before you need help making decisions. Estate planning documents. This includes wills and transfers on death. This documents help make sure that your money and property go where you want it to after you pass away. Advance directives. In Ohio, there are several documents, including a Healthcare Power of Attorney and a Living Will that let you designate your wishes about healthcare and who can make healthcare decisions for you if you are unable to make them yourself. One of the most frequently used terms in estate planning is “power of attorney." Indeed, it is one of the most important documents you can have, and there are several types of powers of attorney, each with its own rules and provisions. Not sure which one or ones you might want to put in place? Below is a quick explanation of the different types of powers of attorney to help you decide. What is power of attorney? A power of attorney is a legal document through which you, as the principal, name someone to have the authority to make decisions and take actions on your behalf. This person is called your agent or attorney-in-fact. Note that the person you name does not have to be an attorney. A durable power of attorney, sometimes called a DPOA for short, means there is language within the legal document providing that this power extends to your agent even in the event you become incapacitated and unable to make decisions for yourself. A durable power of attorney generally remains in effect until the principal revokes the powers or dies, but can also be terminated if a court finds the document invalid or revokes the agent's authority, or if the principal gets divorced and the spouse was the agent. A regular power of attorney, on the other hand, ends if you become incapacitated, which may be one good reason for having a durable power of attorney in place, depending on your needs. You may not want to discover that a regular power of attorney has ended—just when those powers could be needed most. Common powers of a power of attorney While it is up to you as the principal to decide exactly what powers your power of attorney should have, some of the most common powers include the following: Paying bills, including signing checks Buying, selling, and managing real estate Conducting business transactions Borrowing money Handling legal or insurance claims Filing tax returns Making donations or gifts Making medical decisions One important option to consider when drawing up a power of attorney is whether to make it general or limited. While a general power of attorney can include a combination of the powers described above—including financial, business, legal, and medical—limited power of attorney does just what it sounds like: it limits the powers granted to the agent. This may also be called a special power of attorney, and may even refer to one single process or event, such as the authority to sign a contract when the principal cannot because of illness. A limited or special power of attorney may also be restricted to a specific time period. Specific types of durable powers of attorney There are two main types of durable powers of attorney: Financial power of attorney. Also called a durable power of attorney for finances, this gives the person of your choice the authority to manage your financial affairs should you become incapacitated. Why all the different types of powers of attorney? You may find that you want one person to make medical decisions for you, such as your spouse, but that your business partner is in a better position to make business-related decisions. How to get power of attorney Getting a power of attorney drawn up can be as easy as using an online process, but note that state laws vary regarding the establishment of a power of attorney. Because of this, you should always make sure your document is executed in accordance with your state's laws. When deciding to create a power of attorney, be sure to think about all the aspects you may want an agent to handle and consider carefully the person—or people—you will name to be in charge of your affairs, especially in case of your incapacitation. Also, be sure to revisit your power of attorney documents regularly, at least once a year, to make sure that they still reflect your wishes. Having a power of attorney in place, especially a durable power of attorney, can offer you great peace of mind, knowing that your affairs will be handled by someone of your choice and not someone chosen by the court—which could end up costing time and money as well.