

An important part of lifetime planning is the Power of Attorney.

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By Jeffrey Broobin

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An important part of lifetime planning is the Power of Attorney. Valid in all states, these documents give one or more persons the power to act on your behalf. The power may be limited to a particular activity (e.g., closing the sale of your home) or general in its application, empowering one or more persons to act on your behalf in a variety of situations. It may take effective immediately or only upon the occurrence of a future event (e.g., a determination that you are unable to act for yourself). The latter are "springing" Powers of Attorney. It may give temporary or continuous, permanent authority to act on your behalf. A power of attorney may be revoked, but most states require written notice of revocation to the person named to act for you.

The person named in a Power of Attorney to act on your behalf is commonly referred to as your "agent" or "attorney-in-fact." With a valid Power of Attorney, your agent can take any action permitted in the document. Often your agent must present the actual document to invoke the power. For example, if another person is acting on your behalf to sell an automobile, the motor vehicles department generally will require that the Power of Attorney be presented before your agent's authority to sign the title will be honored. Similarly, an agent who signs documents to buy or sell real property on your behalf must present the Power of Attorney to the title company. The same applies to sale of securities or opening and closing bank accounts. However, your agent generally should not need to present the Power of Attorney when signing checks for you.

Why would anyone give such sweeping authority to another person? One answer is convenience. If you are buying or selling assets and do not wish to appear in person to close the transaction, you may take advantage of a Power of Attorney. Another important reason to use Powers of Attorney is to prepare for situations when you may not be able to act on your own behalf due to absence or incapacity. Such a disability may be temporary (e.g., due to travel, accident, or illness) or it may be permanent.

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If you do not have a Power of Attorney and become unable to manage your personal or business affairs, it may become necessary for a court to appoint one or more people to act for you. People appointed in this manner are referred to as guardians, conservators, or committees, depending upon your local state law. If a court proceeding, sometimes known as intervention, is needed, then you may not have the ability to choose the person who will act for you. With A Power of Attorney, you choose who will act and define their authority and its limits, if any.

What if I move? Generally, a Power of Attorney that is valid when you sign it will remain valid even if you change your state of residence. Although it should not be necessary to sign a new Power of Attorney merely because you have moved to a new state, it is a good idea to take the opportunity to update your Power of Attorney.

Will my Power of Attorney expire? Some states used to require renewal of Powers of Attorney for continuing validity. Today, most states permit a "durable" Power of Attorney that remains valid once signed until you die or revoke the document. However, you should periodically meet with your lawyer to

revisit a Power of Attorney and consider whether your choice of agent still meets your needs and learn whether developments in state law affect your Power of Attorney.

Note that

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Jeffrey Broobin is a free-lance writer on family and finance issues; his main goal is to help people during their complicated period of life.

Website:

Legal Matters - Power Of Attorney

By Lucy Bartlett

A person can issue a letter to another person authorizing him to act in business or legal matters on his behalf and this is called a letter of attorney, or power of attorney in common law. The person who is issuing the power of attorney is known as principal and the person who acts on behalf of the principal is known as attorney-in-fact or agent. The attorney-in-fact is authorized to sign documents in the name of the principal.

When a person is incapacitated because of some ailment and could not sign a cheque, that person can

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request another person to do so through oral instructions. Institutions such as banks, hospitals, IRS in the US insist on a power of attorney in writing to honour the instructions and they normally take up the original letter with them for their records.

The signature of the principal in a power of attorney should be notarized to get a legal status similar to the case of signatures in any deed in normal circumstances which are notarized. This process is known as "equal dignity rule".

The scope of the power of attorney can be defined in the letter itself. It can be a limited power of attorney to carry out specific acts or it can be a broad or general power of attorney to carry out any and all acts on behalf of the principal. A court will interpret the scope of power of attorney, exactly as described in the letter. A time limit can be set to a power of attorney.

Upon the death of the principal, the power of attorney becomes invalid. It also becomes invalid when the principal becomes incapacitated due to mental illness or physical injury unless a provision is made in the original power of attorney specifically exempting such provisions.

This type of "durable power of attorney" or "living will" enables the agent to make decisions regarding the health care of the principal in case it is needed.

In a "springing power of attorney", the power granted becomes valid only when specific acts described in the letter takes place - such as illness, which incapacitates the principal - in the future. Due to the privacy legislation in US, doctors will not provide medical history or related information regarding the capacity of the principal unless specific authorisation is given in the power of attorney.

The principal of a power of attorney can revoke the powers granted by informing the attorney—in—fact that it is revoked.

A template for various kinds of power of attorney with standardized forms are available for use and various organizations also provide the same to their customers, patients, clients, members or employees.

Lucy Bartlett is a proud contributing author. Find more articles at

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