



## Power of Attorney Forms in Minnesota

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**What is a Power of Attorney in Minnesota & Why Would I Want One?**

**What is a Power of Attorney?**

A Power of Attorney (a.k.a. Financial Power of Attorney) is a legal document which allows you to give others the power to act on your behalf in financial matters. That person or persons have the power to act just as you would, subject to any restrictions you place on this power.

**How is a Power of Attorney different from a Health Care Power of Attorney?**

Historically in Minnesota there used to be a document known as a Health Care Power of Attorney. In order to reduce confusion, the Health Care Power of Attorney designation was eliminated and the function of a health care Power of Attorney was included in what is now known as a Health Care Directive.

Therefore, in Minnesota, if someone is referring to a new “Power of Attorney”, they are referring to a Power of Attorney for financial decision making only. There is no longer a separate document in Minnesota known as a Health Care Power of Attorney.

For the rest of this guide, any mention of Power of Attorney refers to the financial Power of Attorney.

**Who is the “principal” and the “attorney-in-fact”?**

The principal is the person who gives the power to manage financial decisions to someone else. The attorney-in-fact is that “someone else”. It’s important to note that, despite the naming “attorney”, there is no requirement for the attorney-in-fact to be a lawyer in Minnesota or any other state.



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### Why would I want a Power of Attorney?

There are many reasons why you may want a Power of Attorney. Some people become overwhelmed with their finances and want the help of someone they trust. Others don't enjoy dealing with financial issues and want to focus on other aspects of their lives.

Most typically and perhaps most crucially, individuals may become concerned about losing their mental capacity in the future. In these cases, he or she may appoint a trusted friend or family member to be an attorney-in-fact to manage their finances to avoid a court-designated financial manager (a Conservator).

### What decision-making rights do I keep when granting a Power of Attorney?

You keep all of them. Assigning powers to an attorney-in-fact in no way reduces or eliminates your rights to make financial decisions for yourself. Creating a Power of Attorney simply allows another person or persons to make decisions regarding your finances as well.

### When does the Power of Attorney start?

A Power of Attorney can be made to start immediately when the document is drafted and executed. Alternatively, a Power of Attorney can be made to start with some future event. This is known as a "springing" Power of Attorney. A typical event is mental incapacity of the principal.



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### What's the difference between a Durable and Non-Durable Power of Attorney?

By default, a Power of Attorney expires if the principal loses mental capacity to make decisions for him or herself. This is an example of a non-durable Power of Attorney. In this situation, if the principal has lost mental capacity to manage his or her finances and there is no Power of Attorney assigned, it is highly possible that the State of Minnesota will intervene and appoint a Conservator to the principal. A Conservator is a court-appointed individual who makes financial decisions for someone else. This person may or may not be someone of the principal's choosing.

However, a Power of Attorney can be created which specifies that it is to continue even if the principal becomes incapacitated. This is known as a "durable" Power of Attorney. This option allows you, and not the state, to assign who will have financial decision-making capacity for you if you become incapacitated.

### What kinds of limitations can I place on my attorney-in-fact?

A Power of Attorney is an extremely flexible document. The principal can give as much or as little power to the attorney-in-fact as the principal feels necessary to get his or her financial needs met.

### Can I change or revoke a Power of Attorney?

Yes, so long as you are mentally competent, you can change or revoke your Power of Attorney at any time. You may do this by completing a form revoking the Power of Attorney and signing it in front of a notary. Your attorney-in-fact and any entity that has a copy of the original Power of Attorney form should be given a copy of this revocation form.



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### How should I choose my attorney-in-fact?

You should decide very carefully. Even if you grant your attorney-in-fact with limited powers, these can still have significant implications for you and your property. Ideally you will choose someone you trust both to be diligent with financial decisions and to make them with your wishes and interests in mind.

### Why would I want to use a lawyer to make a Power of Attorney?

A lawyer will discuss specific issues with you to tailor the form to your individual needs. Remember that a Power of Attorney form can have great flexibility, with many different options at your disposal based on your needs and preferences.

A lawyer will make sure the Power of Attorney form is legally valid. A lawyer will draft the Power of Attorney in accordance with the statutes of the State of Minnesota. A good lawyer will also instruct you on the formalities you need to complete and maintain the document.

A lawyer provides insulation against potential misuse of the power by your attorney-in-fact. An attorney-in-fact may have a large range of authority with a Power of Attorney document. A lawyer will help you restrict what powers the attorney-in-fact receives based on your expressed preferences and comfort level.



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Thank you for downloading this guide. If you have more questions about powers of attorney in Minnesota or would like to use my firm to draft a Power of Attorney for you, please visit me at:

[www.majeskilaw.com](http://www.majeskilaw.com), email me at [mattmajeski@majeskilaw.com](mailto:mattmajeski@majeskilaw.com) or give me a call at 651-207-6162. If I'm unavailable, please feel free to leave a voicemail.

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