

POWER OF ATTORNEY REPRESENTATIVE PAYEES CONSERVATORSHIPS



OUR ATTORNEYS HELP SOLVE CIVIL LEGAL PROBLEMS AT NO
COST FOR STRUGGLING INDIVIDUALS AND FAMILIES.

BECAUSE NO ONE SHOULD HAVE TO FACE A LEGAL PROBLEM ALONE.



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WHAT IS A POWER OF ATTORNEY?

A power of attorney is a written document you sign, when you have the capacity to understand what you are signing, that allows another person to make decisions for you. There are two basic types of power of attorney.

1. A power of attorney for finances allows another person to handle financial matters and conduct business. This should be durable, to last beyond your disability. It will end at your death.

2. A health care power of attorney allows another person to make health care decisions when you cannot. It does not end at your death, as this person can also make the decisions about the disposition of your remains.

WHO NEEDS A POWER OF ATTORNEY?

1. Someone who is getting older or disabled and wants to appoint a trusted individual to manage his or her financial affairs.

2. Someone who has money and property which may need to be managed in the future. Anyone can use a power of attorney, but they generally are more useful for individuals who have broad range of assets that need managing in case of incapacity or inability to manage one's own affairs.

WHO NEEDS A HEALTH CARE POWER OF ATTORNEY?

Anyone who wants to choose who will make his or her health care decisions when he or she cannot. You should also complete a living will or advance care plan that tells your health care providers how you want to be treated if you are terminally ill or permanently unconscious.

I WANT TO GIVE SOMEONE POWER OF ATTORNEY, BUT I DON'T KNOW WHO TO TRUST, WHAT SHOULD I DO?

She can sign a power of attorney for finances that becomes effective only if she becomes disabled or incapacitated. This is called a "springing" power of attorney and is only valid when the disability/incapacity is certified by a doctor's statement attached to the power of attorney document. However, there are advantages to making your power of attorney effective immediately. A power of attorney can be revoked as long as you have capacity to do so.

IF I AM APPOINTED ATTORNEY IN FACT FOR MY MOTHER, AM I LIABLE FOR MY MOTHER'S DEBTS?

No. If you have power of attorney, you are acting on behalf of your mother. Be sure to sign all documents with your mother's name by power of attorney and your name last. Make very clear to her creditors that you have power of attorney.

MY BROTHER HAS POWER OF ATTORNEY FOR MY MOTHER, AND I THINK HE IS CHEATING MY MOTHER, WHAT CAN I DO?

You can petition the court to require a bond of the person who has power of attorney (your brother). You would need to contact a lawyer to begin this action. This process is found at T.C.A. §34-6-106. If your mother is competent, she can revoke her current power of attorney and sign a new power of attorney. If your mother is incompetent, you may need to file a petition for conservatorship. Contact a lawyer.

I WANT TO GET POWER OF ATTORNEY OVER MY MOTHER NOW THAT HER MIND COMES AND GOES. WHAT DO I DO?

It's too late for a power of attorney. Your mother is the one who has to sign the document giving you the power of attorney. She has to do this while she is of sound mind and able to enter into an contractual relationship.

WHAT DO I DO IF IT'S TOO LATE FOR MY MOTHER TO SIGN THE POWER OF ATTORNEY?

Determine what financial matters you are unable to handle. If you are on her bank accounts, then you can continue to pay bills as a joint tenant. If your mother's only asset is Social Security, you can go to the Social Security office and ask to become the representative payee over your mother's check. The Social Security Administration will send a form to your mother's doctor to verify her incapacity. If your mother is mentally or physically incapacitated and she has numerous assets which cannot be reached, you will need to contact an attorney to file a petition for conservatorship.

WHAT IS A CONSERVATORSHIP, AND WHAT DO I HAVE TO DO?

The term "conservatorship" means a court-supervised administration of the assets, and sometimes of the person, of an individual incapable of managing his or her estate and/or person. To obtain a conservatorship, you would need to hire a lawyer and petition for a conservatorship. Your lawyer would file a petition with a doctor's affidavit giving your mother's diagnosis. Your mother would be given a copy of the petition. Before a hearing on the petition, she would be informed by a court-appointed lawyer (guardian ad litem) why the petition is being brought against her. She could object and ask for her own lawyer to be appointed. The court also notifies all close relatives.

There is a hearing before a judge and evidence is presented as to your mother's incompetence and/or inability to manage her affairs. If the conservatorship is granted, then the court will appoint a conservator to manage your mother's affairs. That conservator would be bonded and account each year for how your mother's money is being spent. If the conservatorship is granted, all court costs and filing fees are paid by your mother's estate. If for some reason the conservatorship is not granted, you would be charged with the court costs, filing fees and attorney fees. This can be expensive.

MY ONLY ASSET IS MY HOME. SHOULD I JUST GO AHEAD AND PUT MY DAUGHTER'S NAME ON THE DEED?

Be very careful about putting anyone on a deed with you, since the only way he or she can be removed is by having that person agree to be taken off your deed. Once you put someone on the deed with you, that person's creditors can file a lien against your property. If you are low income (under \$10,000 per year) you would no longer be eligible for property tax relief as an elderly or disabled person. Also, as a joint tenant, your daughter could file a suit for partition that the property be divided or sold, and usually these are granted. You could lose the right to get Medicaid. If you go into a nursing home and need Medicaid to pay for it within five years after you give away your home, the government might not give you Medicaid for a period of time. Be careful.

LAET'S OFFICES ARE OPEN MONDAY THROUGH FRIDAY FROM 8:30 AM TO 5:00 PM

GENERAL OFFICES

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(800) 572-7457

JOHNSON CITY

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(800) 821-1312

CLEVELAND

(423) 303-2266
(800) 572-7457

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This pamphlet is intended for general information only. The circumstances of every case are different and need to be dealt with on a case-by-case basis. This is not a substitute for the advice of a lawyer. Also, the law may change and may be different from county to county.

