

Powers of Attorneys

IMPORTANT INFORMATION - Effective September 1, 2009, as amended September 12, 2010, NYS's Power of Attorney law significantly changed. Due to the complexity of the new law, it is wise to consult with an attorney if you are considering having a Power of Attorney document prepared to: a) provide proper legal advice and counsel about powers to be delegated to an agent; b) discuss gifting authority of your agent; and c) ensure that the document is properly executed and meets all legal requirements.

What is a "Power of Attorney"?

A Power of Attorney is a legal document whereby a person delegates their legal authority over their property to another person. The person who signs the Power of Attorney is called the "Principal". The person who is receiving the legal authority to act is called the "Agent" or "Attorney-in-Fact".

Can an Agent under a Power of Attorney make medical decisions for the Principal?

No. In NYS, a Power of Attorney is only for handling a person's financial matters. To be authorized to make medical decisions on behalf of an individual, a Health Care Proxy document will need to be signed.

What are some examples of the types of authority that a Principal may give to their Agent under a Power of Attorney?

Some of the different types of authority are:

- A) Buy or sell your real property;
- B) Manage or dispose of your personal property;
- C) Conduct banking transactions (this includes making withdrawals as well as deposits from your bank accounts);
- D) Invest or not invest your money;
- E) File tax returns;
- F) File or defend a lawsuit.

This list is by no means exclusive. Due to the changes in the law, certain authority granted to an Agent has been changed or is limited in scope. You should consult with an attorney to discuss those changes and limitations that will affect what your Agent can and cannot do under a Power of Attorney.

Can an Agent be authorized to make gifts of the Principal's property to him or herself?

Yes. The gifting authority that an Agent has under a Power of Attorney significantly changed on September 1, 2009, as amended on September 12, 2010. In some cases, a separate document called a "Gift Rider" may also be required to be completed along with the Power of Attorney document. You should consult with an attorney to discuss the Agent's authority and whether a "Gift Rider" would be appropriate in your circumstance.

How does someone choose an Agent?

When selecting a person to be appointed as your Agent under a Power of Attorney, you should always choose someone whom you can trust. You should never appoint a person as your Agent under a Power of Attorney whom you do not fully trust. Signing a Power of Attorney that gives an Agent broad authority is like signing a blank check to the Agent. **Further, never allow anyone to force you into signing a Power of Attorney!**

Can more than one Agent be appointed?

Yes. You can have more than one primary agent and more than one successor agent. You have to state on your Power of Attorney that if you have more than one agent, whether they are to act jointly or separately.

Whether you decide to appoint more than one Agent and/or a Successor Agent, any agent under a Power of Attorney has the duty to act in the Principal's "best interest". An agent must keep the Principal's property separate from their own. An agent cannot commingle their bank accounts or other property with the Principal's property. An agent is also required to keep accurate records of all transactions they did on behalf of the Principal as agent and provide complete and periodic accountings to the Principal or to any other party that the Principal directs. Failure of an agent to provide such records could result in the removal of the person as agent.

Does a Power of Attorney document have to be recorded?

Unless the Agent is using his or her authority to handle a real estate transaction on behalf of a Principal, a Power of Attorney document is not required to be recorded.

Can a Power of Attorney document be revoked?

Yes. If you decide to revoke your Power of Attorney document, you should consult with an attorney for the proper revocation procedure. In addition, it is important to know whom the Agent(s) gave a copy of the Power of Attorney document to so that you can advise that person that the Power of Attorney has been revoked.

What is a "Monitor"?

A Monitor is someone appointed to oversee what an Agent is doing under a Power of Attorney. They don't have the same authority as an Agent. A Monitor can request the Agent(s) to provide an accounting of all transactions the Agent(s) did on behalf of the Principal. If the Agent(s) refuse, the Monitor can bring a legal proceeding against the Agent(s) and have the court direct the Agent(s) to provide an accounting.

Does an Agent also have to sign?

Under NYS law, for an Agent(s) authority to go into effect, they must also sign the Power of Attorney.

Does an Agent get paid?

Under NYS law, the Principal has the option of paying their Agent(s) a salary whenever they act on the Principal's behalf. If you decide to pay your Agent(s), you will need to specify: a) how much they are to be paid; b) which Agent(s) are to be paid; c) how often they are to be paid; etc. This can be quite burdensome. In addition, this could result in your Agent(s) being regarded as your "employee". In that case, you will be required to withhold income taxes, Social Security and Medicare taxes and pay unemployment taxes on the wages (monies) that you pay to your Agent(s).

Do I need an attorney to prepare a Power of Attorney document?

Since the law in NYS for preparing a Power of Attorney changed significantly in 2009, to make sure that you understand the new Power of Attorney document, you should consult with an attorney first.

For how long is a Power of Attorney in place?

The authority that you give your agent(s) under a Power of Attorney document remains in effect until you die. Once you die, the agent(s) authority under a Power of Attorney document is ended.