



LEGAL AID
SOCIETY OF HAWAI'I



POWER OF ATTORNEY (POA)

This brochure provides answers to commonly-asked questions about Powers of Attorney.



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Aloha United Way

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What is a power of attorney (POA)?

A power of attorney (POA) is a signed and notarized document that lets one person give another the power to do certain things. The person giving a POA and powers to someone else is called the *principal*. The person who is receiving a POA and certain powers is called the *agent* or *attorney-in-fact*. Depending on what a POA says, an agent can be given very broad powers, or only very limited powers. There can also be an *alternate agent* in case the first agent can't handle the responsibilities.

Who can sign a POA?

Any competent adult can sign a POA and give someone else the power to handle their personal affairs. Someone is considered competent if they understand the POA, and understand the powers and rights they are giving away.

What kind of powers can an agent obtain?

A POA can give an agent a number of different powers. For example, an agent may be able to buy or sell the principal's property, to cash and write checks from the principal's bank account, to hire people for the principal, to take care of the principal's children (e.g., make medical, educational, and other decisions), and/or to interact with government and other agencies (like the Department of Human Services) on the principal's behalf.

Can the principal still act independently after giving someone else a POA?

Yes. Giving someone else a POA doesn't stop the principal from being able to make decisions him/herself. The principal is still allowed to handle his/her day-to-day issues, as long as he/she is competent to do so.

Are there any risks involved with giving someone a POA?

Yes. Depending on what a POA says, an agent may obtain broad powers to make decisions about the principal's children, bank accounts, property, etc. Also, an agent can usually act without talking to the principal first. However, agents are supposed to act in the principal's best interest, and agents are not allowed to use the principal's property for their own benefit unless the POA specifically says so. POAs should only be given to someone the principal completely trusts to act in his/her best interest. The principal should also think carefully about what powers he/she is giving to an agent and why. For example, any time someone places his/her children with a caretaker, there is a risk that the other parent (or the caretaker him/herself) may challenge the principal's right to custody.

Do others have to accept POAs?

No. POAs do not have to be accepted by others. Before establishing a POA, talk to the other people and agencies with whom the principal commonly interacts (e.g., schools, banks, doctors, and government agencies). Some agencies will have specific forms or language that they want the principal to use.

Note: The Social Security Administration (SSA) usually does not accept POAs. Instead, they require an agent be appointed directly by them as the principal's *Representative Payee*. You may contact Social Security for more information at 1-800-772-1213.

When does a POA start?

A POA can be written either to start immediately, or to start in the future. If it starts in the future, it may take effect on a set date, or whenever a certain event happens.

How does a POA end?

A POA should directly state what can end it. A POA can usually end a number of different ways. A POA ends automatically (1) if the agent dies or becomes incapacitated (e.g., becomes comatose), (2) if the principal dies, (3) if the principal revokes/cancels the POA, (4) whenever the document itself says it ends, (5) in one year for care or custody of minor children, or (6) if the principal become incapacitated (unable to make decisions for him/herself). However, if the POA is a Durable Power of Attorney (DPOA), then it does not end when the principal becomes incapacitated.

A POA cannot be used to state the principal's wishes for after his/her death. If the principal wants to plan for his/her death, then he/she needs to make a will or some other estate plan instead.

How can the principal revoke (cancel) a POA?

Usually a POA itself will say what the principal needs to do to revoke it. The most common – and safest – way to end a POA is for the principal to give written notice to both the agent and any third parties relying on the POA that the POA is revoked/canceled. Sometimes the principal can revoke a POA just by orally telling the agent that he/she is revoking the POA. Sometimes the principal also can end a POA by destroying the document itself (e.g., by burning it).

Advance Health Care Directives (AHCDs)

An Advance Health Care Directive (AHCD) is a way to give someone else the power to make health care decisions on your behalf. It is similar to a *living will*, as it lets you put certain health care decisions in writing so that doctors and family know what you want if you become incompetent (e.g., brain damaged or comatose).

Durable powers of attorney (DPOAs)

Regular POAs end automatically if the principal becomes incompetent. However, a durable power of attorney (DPOA) is a special kind of POA that does not end if the principal becomes incompetent. For example, if the principal has a DPOA and falls into a coma, the agent can still take care of the principal's day-to-day responsibilities (e.g., paying rent, collecting welfare benefits, etc.). To be valid, a DPOA must be signed before the principal becomes incompetent. Some DPOAs take effect right away and then stay in effect when the principal becomes incompetent. Some DPOAs take effect only if and when the principal becomes incompetent. A *guardianship of an incapacitated person* can be an option if someone is already considered incompetent.

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