
Financial Durable Power of Attorney

Dolores M. Coulter

8341 Office Park Dr. Ste C, Grand Blanc, MI 48439

Phone: (810) 603-0801, Fax: (810) 603-0804

Email: coulterdm@sbcglobal.net

What is a Financial Durable Power of Attorney?

A financial power of attorney is a document in which one person (called the principal) gives another person (called the agent or attorney-in-fact) the authority to manage some or all of his/her financial affairs or property. A durable power of attorney continues in effect after the person becomes incompetent. The agent has a legal obligation to manage the money or property for the benefit of the principal and not for the agent's personal benefit.

What type of financial matters can be included in a power of attorney?

A financial power of attorney can be written very broadly to cover a wide range of financial matters, including handling bank accounts, real estate, stocks, bonds, making investments, managing rental property, applying for government benefits, filing tax returns, making gifts, or establishing trusts, or it can be written very narrowly, such as giving someone the authority to sell property that you own in another state. The power of attorney should be written to fit your individual circumstances. Most powers of attorney written for estate planning purposes are written to give the attorney-in-fact very broad powers, but this is not a situation where "one size [form] fits all".

When does a Financial Power of Attorney take effect?

Most financial powers of attorney are written as presently effective durable powers of attorney, which means that they become effective immediately and will continue to be effective if you later become incompetent to handle your affairs. Some are written as springing powers of attorney, which means that they take effect only when you become incompetent. A springing power of attorney document has to include a provision for

determining when it becomes effective (for example, when two doctors certify that the person is no longer competent).

What can I do if I want to change or revoke a power of attorney?

You can change or revoke a power of attorney at any time as long as you are competent to do so. In order to revoke a power of attorney you simply sign a statement that you are revoking the power of attorney. You should give the revocation to the person you named as your attorney-in-fact and any person or institution that the attorney-in-fact was dealing with on your behalf.

Can my attorney-in-fact handle my estate after my death?

No. The power of attorney expires at the time of your death. The personal representative (formerly called the executor) that you name in your will is responsible for handling your estate after your death. If you do not have a will, one of your heirs can file a petition in Probate Court for the appointment of a personal representative of your estate.

Can a bank or other financial institution refuse to honor a power of attorney?

Yes. Third parties are not required to honor a power of attorney. In some instances, a bank or brokerage firm may require you to use their own power of attorney form.

What is the difference between a power of attorney and a conservator?

A conservator is a person appointed by the Probate Court to manage your financial affairs after the Court has made a finding that you are no longer able to manage your financial affairs effectively. The conservator may have to post a bond, and must file an annual accounting with the Probate Court. A power of attorney does not involve any court proceeding or any court oversight of the person who is handling your financial affairs. The person you name as your attorney-in-fact has a legal duty to manage your

money or property wisely and solely for your benefit, but if he/she fails to do so, you may find it difficult or impossible to recover the money that you have lost.

If my spouse and I own everything jointly, would I need a power of attorney?

Yes. If you become incapacitated your spouse would still be able to sign checks and make withdrawals on a joint bank account. However your spouse would not be able to handle assets just in your name, such as an IRA or annuity, or sell jointly-owned investments or sell or mortgage your jointly-owned real estate, because he/she would not have the legal authority to sign for you.

Does my attorney-in-fact have any financial responsibility for my support?

No, the person you name as your attorney-in-fact does not take on financial responsibility to use his/her own money for your support.

