

Financial Powers of Attorney

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Financial Power of Attorney

- AKA “Durable Power of Attorney.”
- Allows named agent to take care of declarant’s financial affairs—bank and investment accounts, paying bills, real estate transactions, etc.
- Tex. Est. Code ch. 751–752.
 - Durable powers of attorney in general are addressed in ch. 751.
 - Statutory Durable Power of Attorney form is addressed in ch. 752.

Grant of Powers

- Powers granted to the agent are potentially very broad.
- Principal initials next to the powers to be granted. In the estate planning context, generally “O” is chosen, which grants all powers listed in A through N. This allows the agent to take care of all potential financial issues.

Revocation

- The agent's authority continues until the principal revokes the POA, agent resigns or is unable to act, or a guardian of the estate is appointed.

Agent Selection and Compensation

- The principal should choose someone who is both trustworthy and competent with financial affairs.
- Co-agents may be appointed and may act independently unless otherwise specified. This can be convenient for the co-agents but also has the potential to create conflict. Consider the principal's particular circumstances with regard to family and friends.
- If a trust company or bank is chosen as agent, allow for compensation.

Power to Make Gifts

- Common reasons to grant the agent power are to allow gifts up to the annual exclusion amount and to help the principal become eligible for Medicaid.

Grant of Specific Authority (Optional)

- Must initial any powers to be granted.
- May cross out any powers principal does not want to grant.

Effective Immediately vs. On Principal's Disability or Incapacity

- Must cross out the selection not chosen.
 - Ex: POA takes effect immediately → cross out B.
 - Ex: POA takes effect only on principal's disability or incapacity → cross out A.
- Note that agents often have difficulty having banks and other entities accept POAs that are not effective immediately. Banks may ask for proof of the principal's disability or incapacity, which can make the agent's job more difficult.
- On the other hand, executing a POA with immediate effect gives the agent broad powers. Agents may abuse their powers by moving money out of the principal's accounts, changing beneficiary designations, and the like.
- Care should be taken in making this selection, with due consideration given to the principal's particular circumstances regarding the agent selected and family/friend dynamics.
- A compromise may be to choose to make the POA effective immediately but to keep the original and all copies in a safe place, not in the possession of others.

“Important Information for Agent”

- Notifies agents that they are fiduciaries and advises them of their duties.

Execution Requirements

- Must be notarized.
- See also Bill Pargaman's video presentation called "A Guide to Executing Estate Planning Documents in Uncertain Times."

Other Considerations

- Divorce or annulment disqualifies a spouse named as agent.
- Tex. Est. Code ch. 751 and 752 contain many relevant provisions. Ex:
 - If a POA is used in certain real property transactions, the POA must be recorded within 30 days of the filing of the real property transaction. Tex. Est. Code § 751.151.
- Also: a POA used in a transaction to finance a home equity line of credit must be executed in the office of the lender, the office of a title company, or an attorney's office. *See* Tex. Const. art. XVI, § 50(a)(6)(N).

Free Access to the Texas Guardianship Manual Online

- The Statutory Durable Power of Attorney is available in the Texas Guardianship Manual Online.
- TexasBarBooks is providing all State Bar members free access to the Texas Guardianship Manual Online. The manual includes forms and instructions for creating guardianships, advance directives, end-stage planning, and other topics.
- To request access to these resources, email books@texasbar.com with your name, bar card number, and preferred email address. Complimentary access to the manual extends until May 31, 2020.