



Powers of Attorney

Basics That All Investors Should Know and Consider¹

A Power of Attorney, commonly referred to as a POA, allows for the management of your financial affairs in an orderly way, even if illness or disability impacts your ability to manage these affairs yourself. Through a POA, you confer authority to another person (commonly referred to as an attorney-in-fact) to act for you, in the event you cannot act for yourself or in any other instance you may stipulate.

Although it can be an uncomfortable topic to think about, preparing for situations where you may not be in a position to make sound investment decisions for yourself is an important aspect of managing your financial affairs. Whether from cognitive decline or from an unexpected accident, a well-drafted POA facilitates a stable transition of the power to make financial decisions from you to whomever you grant the power. You choose the criteria triggering that transition under the terms of your POA.

Because a POA allows your attorney-in-fact to manage your financial affairs, great care should be taken when appointing someone to that role.

The discussion about whom to appoint and how to appoint your attorney-in-fact is best had with your legal counsel.

Having said this, we are providing an overview of some basic points to consider before executing a POA.

Who is the right person to appoint as your attorney-in-fact?

Choosing the right person to act for you when you cannot act for yourself is critical. Some questions you should consider before the appointment are:

- Is the person willing to take on the role?
- Is the person financially knowledgeable and responsible with money?
- Are you confident the person will act in your best interest?
- Is this person legally able to take on the role? (Some jurisdictions may have laws prohibiting certain classes of people from acting in the role, for example, minors or someone with an undischarged bankruptcy.)
- Does the person have the time to dedicate to the task?
- Does the person have the ability, given their current life circumstances, including location and other family obligations, to take on the task?
- Have you considered alternates if that person is unable to serve?

¹ This informational guidance is provided by the Senior Issues and Diminished Capacity Committee of the North American Securities Administrators Association (NASAA). It is not legal advice, and it does not necessarily represent the views of NASAA.

What is the right form of POA?

Including the appropriate provisions in a POA is just as important as whom you choose to act as your attorney-in-fact. Here are some questions to consider:

- Are there protective measures you might consider putting in your POA? For example, do you wish to limit the financial decision-making authority of the attorney-in-fact? Do you wish to set out restrictions on any gifts the attorney-in-fact can make under the POA?
- Should you require a second signature or co-agent for larger transactions?
- Do you want to consider compensating the attorney-in-fact for the time taken to act on your behalf?
- Should you limit your attorney-in-fact's ability to change your beneficiary designations?
- Should you consider a provision that would allow for a periodic, third-party audit or your designee's actions, perhaps by an appointed accountant or family member?

Disclose the existence of the POA to interested persons

Once you make the decision to designate an attorney-in-fact, to optimize the use of the POA, consider the following tips:

- Be sure that the person designated as the attorney-in-fact fully understands your wishes and their role
- Tell family members that you chose to create a POA and tell them who the attorney-in-fact is so that it is not a surprise to the family if and when the POA is triggered
- Make certain that you tell your financial advisor, and other professionals that you work with, about the existence of the POA, so that they can contact the person you trust to handle your financial decision-making when you are unable to do this for yourself
- Provide to these same professionals a copy of the POA for their files, and
- Introduce your attorney-in-fact to your financial professional

By communicating your wishes to your attorney-in-fact, your family and the people providing professional services to you will avoid surprising the interested parties. This will enhance the likelihood of a seamless transition to the attorney-in-fact, which is the purpose of the POA, and allow your financial professional to work collaboratively with your designee and others.

In most cases, your financial professional will be focused on the following aspects of your POA document:

- The triggering events for the POA and the proof that the attorney-in-fact will have to be present to show that the POA is effective and that they have authority to act.
- Whether the POA is limited or grants broad authority for all financial matters.
- Whether there is more than one attorney-in-fact, and,
- Whether the POA names an alternate attorney-in-fact if the first is unable or unwilling to assume the role for your benefit.

Other considerations

It is possible that your financial services firm may request that you use their “form” POA document and in some instances may state that the firm will only accept POAs using these forms. If you already have a duly executed POA, particularly one that has been drafted by legal counsel, signing the firm’s form document could impact the efficacy of your existing POA. For instance, there may be conflicting provisions in the two POAs. Should this issue arise, you should consult with your legal counsel.

Last, in most cases, POA documents can be changed at any time. If you designate someone whom you no longer trust, has passed away, or who has indicated that they are no longer suited for the role, you should promptly confer with your legal counsel to discuss changes to the terms of your POA.

Conclusion

Planning for the orderly management of your financial affairs in the event of incapacity is important. As explained above, informed decisions about the scope of the POA and who should serve as your attorney-in-fact and clearly communicating your intentions about the use of the POA to family, financial advisors, and other interested persons, enhances the probability that the POA will serve its purpose in meeting your needs and expectations. As you consider whether to execute a POA, be sure to consult with your trusted advisers and legal counsel to make sure you understand all of the aspects of how the POA will work.

About NASAA:

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