

Checklist for Completing a Power of Attorney

1.	Consult an attorney about whether you need a Power of Attorney, what you want a Power of Attorney to accomplish, what are the potential hazards of having one, what is the process to create one.	
2.	Think carefully about who you want to designate as your Agent. Talk to that person and ask if he or she is willing and able to be your Agent. If you decide you need a Power of Attorney, are willing to accept the risks, and have a willing	
3.	Select a primary Agent. You may also select successor Agents in case the primary Agent is unwilling or unable to act as your Agent.	
4.	Review and identify which powers you want your Agent to have. This about different possibilities of what kind of help you might need in the future and what	
5.	Execute the Power of Attorney by signing it in the presence of a Notary Public.	
6.	Monitor all of your Agent's transactions. He or she should be providing with you records of all transactions made on your behalf.	
7.	If you have questions or concerns contact your attorney, or if you are age 60+ and a West Virginian you may contact West Virginia Senior Legal Aid for assis-	

Financial Powers of Attorney can be abused.

It is a crime for an Agent to take your money or property for him or herself, but it can be difficult to get your money back once the crime has been committed. Protect yourself from financial exploitation by :

- choosing wisely,
- asking questions,
- checking bank statements,
- staying socially active and avoiding isolation,
- never signing things you don't understand, and
- asking for help when you aren't sure.



Financial Powers of Attorney in WV

What is a Power of Attorney?

A power of attorney is a document that grants authority to another person to handle certain decisions in the place of the principal.

There are different types of Powers of Attorney. The most common are medical and financial. This brochure is only about financial Powers of Attorney according to the 2012 Uniform Power of Attorney Act.

What is a Principal?

A Principal is the person who grants authority, gives power, to another person (Agent) to handle money and property.



What is an Agent?

An Agent is the person who receives the authority to act on Principal's behalf to handle certain types of financial transactions from the Principal. An Agent was called "attorney-in-fact" under our old law.

What is a "Durable" Power of Attorney?

"Durable" means that the grant of authority continues even after the principal has lost capacity to do those things herself. It is a common myth that a Power of Attorney only becomes effective after the Principal becomes incapacitated. Actually the Agent's authority is effective immediately when the document is created. All financial Powers of Attorney created under the new law are durable unless clearly stated otherwise. Powers of attorney created before June 2012 are only durable if they contain specific language that makes them durable.

Am I giving away control of my finances when I execute a Power of Attorney?

No. The Agent shares authority with you for your finances. As long as you have the capacity to manage your finances and do financial transactions you still have the right to do so, but your Agent also has authority to do transactions.

Is there a fill-in-the-blank form for Financial Power of Attorney?

Yes. There is a statutory form that may be used to create a power of attorney, though you are not required to use that form to create a power of attorney. Some protections built into the new law only apply if you use the statutory form.

Beware, completing the form without advice and counsel from an attorney can result in someone else getting power related to your money and property that you never intended. It is also easy for financial exploiters to obtain documents that appear legitimate. Executing a financial Power of Attorney is a choice and not every person needs one.

What authority can be delegated with a Power of Attorney?

An Agent can only do the things that the Principal gives him or her the authority to do. Examples of things an agent can be authorized to do under a Power of Attorney include:

- make withdrawals and

write checks from bank accounts

- manage, repair, or even get rid of personal property
- purchase insurance for principal and deal with insurance coverage
- file tax forms, pay taxes from principal's money
- file lawsuits on behalf of principal
- receive and manage income for principal
- support principal's family with principal's money and property



Who is suitable to be my Agent? Who should I choose?

Choose someone who is trustworthy and good with money. You are giving the agent a share in control over your financial assets, choose wisely. Sadly, many adult West Virginians are financial exploited by family, friends, people who gained their trust, and people who offered them help. Don't worry about hurting someone's feelings, choose a person who would not exploit you or abuse the authority.

What's the difference between Power of Attorney and Guardianship ?

The Principal chooses the agent for a power of attorney and executes the document. The court chooses the Agent for a guardianship or conservatorship and issues a court order.

What if I Already Have a Durable Power of Attorney under the old law?

Financial powers of attorney must be notarized and signed in the presence of the notary, but require no witnesses, no court order, and no recording at the courthouse. If your previously executed power of attorney was valid at the time it was created, it is still valid now. There are some new obligations however. Agents must now keep records of all transactions, among other things.

Principals: What You Need to Know

What is a Principal?	A Principal is the person who grants authority to an agent through a power of attorney.
How do I become a Principal? - How do I give someone Power of Attorney?	By executing a power of attorney document and signing it in the presence of a notary public. We recommend that you consult with an attorney before you execute a power of attorney to ensure the validity of the transaction, to prevent exploitation, and to be sure it's what you want.
What is an Agent? - Who can I appoint as my Agent?	An agent is the person(s) who is granted the authority to act for you under a power of attorney. You can appoint any person you choose to be your agent. You may choose more than one person or you may choose successors to take over if the initially chosen agent declines to accept or resigns from the authority.
What powers am I assigning to the Agent?	Your attorney should discuss your specific circumstances with you and review the powers that can be delegated through a power of attorney. You only give the powers that are explicitly stated in the power of attorney document. There is a completely different form for Medical Power of Attorney, those powers are not included here.
Can I revoke an Agent's authority?	Although your agent's authority becomes effective immediately after execution, you are still free to exercise those powers yourself at all times. You are also free to revoke the power of attorney or select a new agent at any time. If you are revoking a power of attorney or selecting a new agent you should notify the old Agent(s).
Am I protected from financial exploitation?	Not necessarily. An Agent can abuse a Power of Attorney. But the new law provides that the Principal, the Agent, the Principal's guardian, conservator, healthcare decisionmaker, spouse, parent, descendant, heir, beneficiary, caregiver, or some others may ask the court to review the conduct of an Agent.
What is Incapacity? - What happens if I become Incapacitated to handle my money and property?	Under the UPOAA, "incapacity" means the inability of an individual to manage property or business affairs because the individual: Cannot receive and evaluate information, or communicate decisions even with technological assistance, is detained, including incarcerated in a penal system, or is outside of the United States and unable to return. A power of attorney created now is durable unless it specifically states that it is not. This means that if you become incapacitated, the agent's authority continues.
SYNOPSIS	As a Principal you may delegate as much or as little authority to your Agent as you choose. You can appoint multiple co-agents, or successor Agents. You can revoke your Agent's authority at any time.