

Power of Attorney (POA)



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MontGuide

- www.montana.edu/estateplanning



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Why have a POA?

- To designate another person to act on your behalf, if necessary



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Definition Terms

- **Principal**
- **Agent**
- **Entities**



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Example: Sara, a homebound elderly mother



- **Wants her daughter to have authority to:**
 - **Write checks on her behalf**
 - **Make other financial decisions in the future**

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Montana Uniform Power of Attorney Act

- **Effective October 1, 2011**
- **Provisions for Creation provides Safeguards**



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Form



- **Montana Statutory Power of Attorney**
- **Agent's Certification as to the Validity of Power of Attorney and Agent's Authority**

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Naming an agent

- **Only the principal can decide who should serve as agent**
 - **Must be trustworthy to fulfill the responsibilities of POA**



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Avoid Naming an Agent

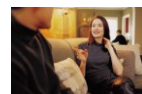
- **Ill**
- **Difficulty managing money**
- **Inexperienced with financial matters**



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Responsibilities of Agent

- **Principal should inform agent what authority (*power*) has been given in the POA form**



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Important Information for Agent

- **Agent's Duties & Circumstances**
- **Potential liability for any losses caused by agent's violations**



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The Montana Uniform Act provides:

- **List of transaction categories that can be included in the agent's general authority**
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List of Transaction Categories

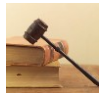
- **Real property**
- **Tangible personal property**
- **Stocks & Bonds**
- **Commodities & Options**
- **Banks & other financial institutions**



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List of Transaction Categories, cont'd.

- **Operation of entity or business**
- **Insurance & Annuities**
- **Estates, trusts & other beneficial interests**
- **Claims & Litigation**



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List of Transaction Categories, cont'd.

- **Personal & family maintenance**
- **Benefits from government programs**
 - ✓ **Civil or Military Service**
- **Retirement Plans**
- **Taxes**



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Additional Powers

- **Create, amend, revoke, or terminate a *revocable living trust***
- **Make a *gift***
- **Create or change *right of survivorship***



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Additional powers con'd.

- Waive the principal's right to be a beneficiary of a joint and survivor annuity
 - Including survivor benefit from retirement plan
- Disclaim property



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Agent is **not** permitted to:

- Write a will
- Represent the principal in court



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Authority to more than one person?

- Principal may designate two or more persons to act as:
 - Coagents
 - Use authority independently



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Consequences of giving authority to coagents

- Disagree about action
- May result in attorney's fees & court costs



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Successor Agent

- Principal may designate a *Successor Agent*, if the original agent:
 - Resigns
 - Dies
 - Becomes incapacitated
 - Is not qualified to serve
 - Declines to serve



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Successor Agent Authority

- Has same authority that was given to the original agent



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Should the same POA be used to give an agent authority to make health care decisions?



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Authority for Health Care Decisions



- If same person is to serve both capacities:
- Principal could use one POA

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Example of Health Care POA

- Montana Department of Public Health & Human Services
 - www.dphhs.mt.gov/sltc



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What makes a POA valid?



- Signed by:
 - Principal
 - By another individual within the principal's presence who is directed to sign the principal's name

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Notarized Form

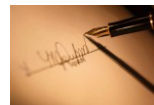


- Genuine signature
- Acknowledged signature before notary public

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When is a POA effective?

- When it is signed
 - Unless the principal provides instruction otherwise



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Springing Power



- “Springs into” existence upon the conditions stated by principal

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How long does POA last?

- Until principal’s death



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Does an agent get paid?

- Yes, unless the POA states otherwise
 - Reimbursement of expenses
 - Reasonable compensation



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District Court Review

- Agent who is found liable for breaching duties is responsible for:
 - Restoring its value
 - Repayment of attorney’s fees & court costs



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Guardianships Conservatorships POAs



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Court-appointed

- Guardian
 - Takes care of the incapacitated person
- Conservator
 - Manages the financial affair of incapacitated person



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Appointment of a guardian and/or conservator



- Is not automatic
- Hearing must be held in district court
- More costly than POA

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Durable Power of Attorney



- POA is considered durable unless the document specifically states otherwise

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Revoke a POA



- Signing a document that indicates that POA is revoked
 - "I hereby revoke my Power of Attorney dated January 12, 2012, naming John Jones as my agent"

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Prior POAs

- Should be destroyed because signing a new POA does not automatically revoke a previous one



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Revocation



- A revocation statement could be added to:
 - *Special Instruction Section of POA*

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Financial Entities

- Notified of the POA revocation
- Principal may be legally bound by agent's actions



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What if a POA was signed before the Montana Uniform POA Act became effective on Oct. 1, 2011?

- **Still effective if:**
 - **Met requirements of previous law**



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Is a POA written in another state valid in Montana

- **Yes if,**
 - **Complied with laws of the other state**



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Method for Agent to Prove Authority

- **Form**
 - **Agent Certification as to the Validity of Power of Attorney & Agent's Authority**



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What if Entity Refuses to Honor POA?

- **After presented by agent, entity is required to accept the POA:**
 - **No later than 7 business days**



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Social Security Benefits under POA

- POA is **not** accepted for the management of Social Security beneficiary benefits
- SSA recognizes only a *representative payee*



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Social Security Booklet

- **A Guide for Representative Payees**
- **Call**
 - **1-800-772-1213**
- **Online:**
 - **www.ssa.gov**



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Summary



- POA can provide a low-cost private alternative to guardianship or conservatorship

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Summary



- A POA should be reviewed annually to assure that it meets the principal's needs

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