

You've got the Power

FINANCIAL POWER OF ATTORNEY



WHAT IS A POWER OF ATTORNEY?

A power of attorney is a legal document that allows another person to act on your behalf. The individual who gives the power is called the principal, and the designated person who is given the power is known as the agent or attorney-in-fact. The agent does not have to be an attorney and can be anyone you choose. It is advisable to make sure to choose an agent who is trustworthy, honest, and competent.

The classification of a power of attorney will vary based on the amount of authority given to the agent as well as on the timing of duties for the agent. The four classifications include limited or special power of attorney, general power of attorney, durable power of attorney, and springing power of attorney.

Limited or Special Power of Attorney gives the agent authority over certain tasks or in certain circumstances specified by you (the principal). This type of power of attorney is also limited in time and will specify when the agent's authority will end. For example, you may give the agent the power to pay your household bills while you are on military deployment. If you become incapacitated or die, the power will cease.

General Power of Attorney gives the agent greater authority than any other power of attorney. The agent has the authority to do anything you may do, including the power to access and manage your financial resources. If you become incapacitated or die, the power will cease.

Durable Power of Attorney allows the agent to act on your behalf even if you become incapacitated. However, your death will cause the power to cease.

Springing Power of Attorney allows the agent to act on your behalf when a certain event occurs which will "spring" the authority into action. This springing event is typically when a doctor determines that you are no longer capable of making decisions on your own (incapacitated). If the event ends or you die, the agent's power will cease.

A power of attorney for health care and financial power of attorney deal with different matters. Information regarding the financial power of attorney can be found below. The power of attorney for health care has become a combined document with a living *will* and is known as the Georgia Advanced Directive for Health Care (see *You've Got the Power: Living Will and Health Care Power of Attorney* publication).

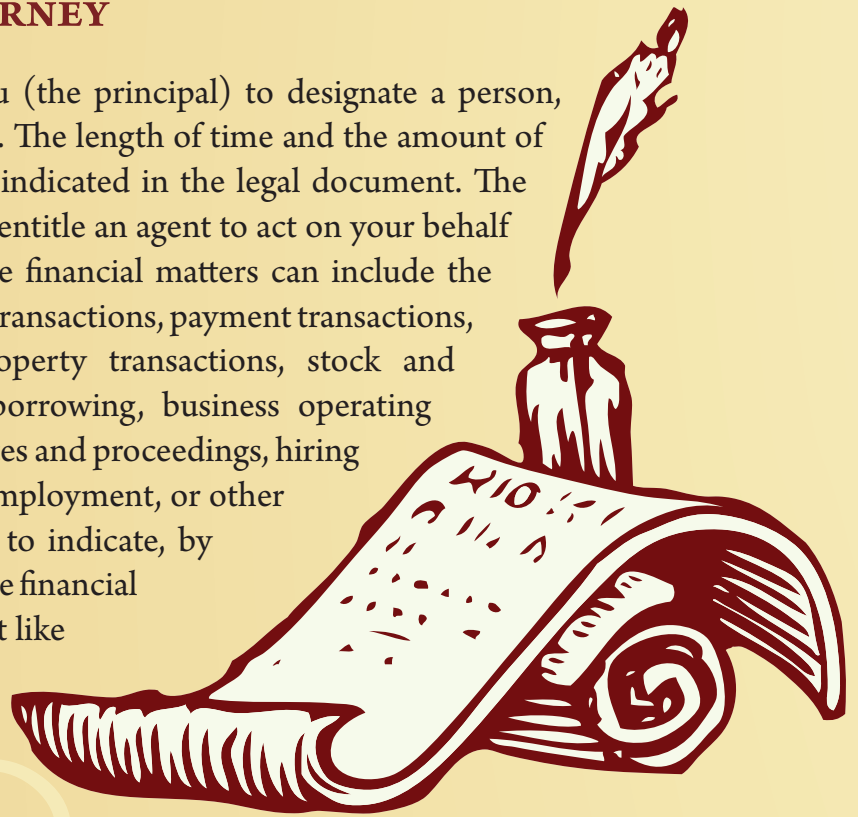
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A financial power of attorney entitles you (the principal) to designate a person, the agent, to handle your financial matters. The length of time and the amount of authority will be determined by you and indicated in the legal document. The financial power of attorney document can entitle an agent to act on your behalf for many different financial matters. These financial matters can include the financial areas of banking and credit union transactions, payment transactions, real property transactions, personal property transactions, stock and bond transactions, safe deposit boxes, borrowing, business operating transactions, insurance transactions, disputes and proceedings, hiring representatives, taxes, Social Security, unemployment, or other broad powers. The document allows you to indicate, by initialing and crossing out financial areas, the financial areas over which you would and would not like the agent to have authority.

A financial power of attorney may be put in place for several reasons. One reason may be that you want to choose who will act on your behalf if you become unable to take care of your finances because of incapacity (with a durable or springing power of attorney) or other reasons. Without a financial power of attorney, your family members will have to go to court and the court will appoint a guardian over your finances and property. Having a financial power of attorney will avoid these extra costs and time in dealing with your financial assets. Another reason may be to have an agent act on your behalf for a specific financial task. A limited power of attorney may be put in place if you have to deal with some financial matters but are unable to be present.

To validate the document, it requires your signature as well as witnesses and a notary in certain cases. There must be at least two witnesses and one of those witnesses cannot be related to you. The document will only need to be notarized if you give the agent authority over financial matters involving real property transactions (selling, renting, or mortgage of a property).

A financial power of attorney may be considered invalid under certain circumstances. If you revoke the power of attorney, while being in a competent state of mind, the financial power of attorney is no longer valid. To revoke a financial power of attorney, you should write, sign and date a letter of revocation and give it to your agent. The letter should also be given to anyone who has relied upon the power of attorney and dealt with the agent. Without notifying these persons, the agent could possibly continue to act on your behalf. If this happens, you should consult an attorney to determine what action to take against the agent.

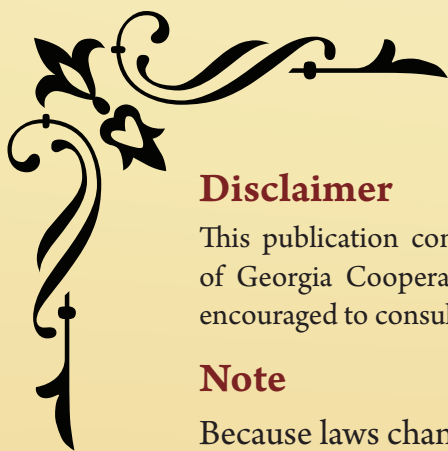


The document is still considered valid if you get a divorce and your former spouse is the designated agent for a durable power of attorney. You should consider revoking the financial power of attorney and creating a new one if you wish to change the named agent. A court may invalidate the document if there is reason to believe that you were not in a competent state of mind when you signed the document. If the agent is no longer alive, the document is invalid. There is an option to designate an alternate agent in case the original agent is unable to perform the duties necessary. A person is not required to accept the role of an agent, but if the role is accepted, he or she may be required to sign accepting the appointment.



CONCLUSION

Designating a specific person to act on your behalf in regards to your finances is an important decision to make. Without having a financial power of attorney, there may be many costs and lost time trying to get a person appointed as the guardian over your assets. The financial power of attorney enables you to take charge and choose who can have authority over your finances as well as specify how long and how much authority is given. However, it is important for you to make this decision, not someone else. Never allow anyone to force you into creating a financial power of attorney or choose who will be your agent. If you do not understand any portion of the financial power of attorney, consult with a lawyer to have him or her explain it to you before signing the document.

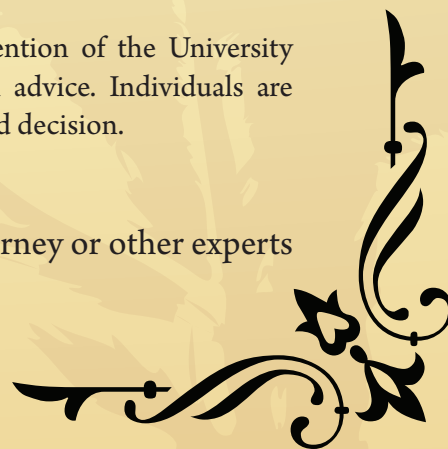


Disclaimer

This publication contains general information. It is not the intention of the University of Georgia Cooperative Extension to provide any specific legal advice. Individuals are encouraged to consult professionals to help them make an informed decision.

Note

Because laws change, it is important to check with an attorney or other experts to be sure this information is current.



SOURCE

Dalton, M. A., & Langdon, T. P. (2014). *Estate planning for financial planners* (8th ed.). St. Rose, LA: Money Education



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