

Power of Attorney

This fact sheet provides a brief description of powers of attorney and discusses some of the ways in which a power of attorney might be used.

What Is a Power of Attorney?

A **power of attorney** is a written document in which one person grants to another the power to act on his or her behalf. Powers of attorney may grant broad decision-making power or they may be limited to a specific set of decisions or circumstances. For example, powers of attorney are often specifically limited to decisions or actions related to either managing an individual's property and finances or the health care to be provided to them if they become ill.

- A **power of attorney** for finances grants another person the power to act for an individual with respect to his or her property and finances.
- A **power of attorney** for health care grants another person the power to make health care decisions for an individual. Health care powers of attorney are discussed in more detail in UT Extension publication, "Advance Directives" (SP 734-C).

The power of attorney can also specify exactly what powers are granted. For example, a financial power of attorney could grant the power to pay bills and handle bank deposits but not sell or trade real estate or other assets.

Similarly, the circumstances in which the power of attorney becomes effective can be either general or limited.

- A **durable power of attorney** becomes effective when signed and remains in effect until the person granting the power either revokes it or dies. A durable power of attorney differs from a traditional power of attorney in that it continues the relationship beyond the incapacity of the principal until death.
- A **springing power of attorney** takes effect only after some future event, such as the individual granting the power of attorney becoming mentally incapacitated. While a springing power of attorney may sound attractive, the process of determining if and when the powers are granted may not be straightforward and could require a public hearing in a court, resulting in legal fees.

Who Needs a Power of Attorney?

While anyone can use a power of attorney, they are more important for those who are older or otherwise have a higher likelihood of becoming incapacitated as well as for individuals with assets that will need to be managed should they become incapacitated. Powers of attorney also may be appropriate in special circumstances, such as when one is about to undergo major surgery or leave the country for an extended period of time.

What Is the Risk of *Not* Granting a Power of Attorney?

If an individual is unable to manage his or her affairs and no one else has the authority to do so, then a court can appoint a conservator. Generally, however, it is best to avoid this process as it requires public hearings, may drag on for months, and can result in significant legal fees and court costs. Also, a power of attorney can be granted only by mentally competent individuals, so the risk of waiting to grant a power of attorney is that the person will become incapacitated, meaning they cannot legally grant a power of attorney, and a conservatorship will be required.

A power of attorney can protect your health care and financial interests if you become ill.

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Selecting a Power of Attorney

It may seem common for people to select a spouse or relative to be appointed as a power of attorney, but the person does not have to be a relative. The person selected should be someone who is trusted to make the decisions and exercise the powers granted by the power of attorney. While the power of attorney is not authorized to use the power granted for personal gain or in a way that does not serve the interests of the individual who granted it, selecting someone who can be trusted to make the proper decisions is still important.

How Can a Durable Power of Attorney Be Revoked?

A power of attorney can be revoked in any one of three different ways:

- Upon the death of the individual who granted the power. At death, the probate process takes over and the individual's will, or state law if there is no will, governs the disposition of his or her assets.
- By court order.
- At any time by the person who granted it, as long as that person is mentally competent. A person who gives a power of attorney can revoke it by having it returned and then destroying it, or by giving the individual to whom the power was granted a written statement revoking it.

If it is suspected that an appointed power of attorney is abusing the powers or misrepresenting the person who selected them as power of attorney, one can contact a lawyer and petition the court to require a bond of the person who has power of attorney. This process is found in the Uniform Durable Power of Attorney Act (Tennessee Code Annotated §34-6-106).

Legal assistance may be helpful when appointing a power of attorney to ensure it conveys the specific intentions for the family situation and also complies with Tennessee law. The appointment of a power of attorney and the powers granted should be reviewed annually to ensure that it still meets one's needs.

A person asked to be a power of attorney should be aware of the responsibilities and any potential liabilities for any losses caused by actions taken outside the authority given by the principal. They may wish to seek legal advice if there are questions or concerns about the duties as power of attorney. To read more about the specific duties of the power of attorney, see the Uniform Durable Power of Attorney Act (Tennessee Code Annotated §34-6-109).

This fact sheet is intended for general information only and should not be used as a substitute for the advice of an attorney. The circumstances of every case are different and need to be dealt with on a case-by-case basis.

The Tennessee Farmland Legacy Partnership "Planning Today for Tomorrow's Farms"

On Feb. 16, 2010, 12 organizations and Gov. Phil Bredesen officially formed the Tennessee Farmland Legacy Partnership with the purpose of serving as an authoritative resource, providing information and assistance, and encouraging both farm-level and community planning that promotes the preservation and viability of working farms in Tennessee.

The University of Tennessee is a member of this partnership and provides many resources related to farm succession and estate planning. To find out more about these resources or the partnership, visit <http://www.farmlandlegacy.org>.

The person you select as your power of attorney should be trustworthy and committed to protecting your interests.