

Can one person give some else the power to make health care decisions for her/him? Yes. A document called an Advanced Health Care Directive (AHCD) is a way for people to give someone else the power to make health care decisions for them. An AHCD is like a POA because it lets individuals choose someone else to make health care decisions for them. It is also like a Living Will because it lets individuals put certain health care decisions in writing so their doctors and family know what they want in case they become incompetent (e.g. brain damaged or comatose).

What is a Durable Power of Attorney? Regular POAs end automatically if the principal becomes incompetent. However, a Durable Power of Attorney (DPOA) is a special kind of POA that does not end if the principal becomes incompetent. For example, if the principal has a DPOA and falls into a coma, the agent can still take care of the principal's day-to-day responsibilities (such as paying rent, collecting welfare benefits, etc.). To be valid, a DPOA must be signed before the principal becomes incompetent. Some DPOAs are effective right away and stay in effect when the principal becomes incompetent. Some DPOAs only take effect if the principal becomes incompetent.

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LEGAL AID SOCIETY OF HAWAI'I



POWER OF ATTORNEY

THIS BROCHURE
PROVIDES ANSWERS TO
COMMONLY ASKED
QUESTIONS ABOUT
POWERS OF ATTORNEYS.

What You Need to Know About a Power of Attorney ...

What is a Power of Attorney (POA)? A POA is a written, notarized, and signed document that lets one person give another person the power to do certain things. A POA is one way we can give another person the power to help us with our day-to-day responsibilities. The person giving the POA and powers to someone else is called the “principal.” The person who is getting the POA and certain powers is called the “agent” or “attorney-in-fact.” Depending on what the POA says, the agent can be given very broad powers or very limited powers. There can be more than one agent (for example, an alternate agent in case the first agent can’t handle the responsibilities.)

Who can sign a POA? Any competent adult can sign a POA and give someone else the power to handle their personal affairs. A competent person is someone who understands the POA, and understands the powers and rights s/he is giving away.

Are there any risks involved with giving someone a POA? Yes. Depending on what the POA says, the agent may get broad powers to make decisions about the principal’s children, bank accounts, property, etc. Also, the agent can usually act without talking to the principal first. Agents are supposed to act in the principal’s best interest, and agents are not allowed to use the principal’s property for their own benefit unless the POA says so. *POAs should only be given to someone the principal completely trusts to act in her/his best interest.* The principal should also think carefully about what powers s/he is giving to the agent. *Anytime you place your children with a caretaker there is a risk that the other parent (or the caretaker) may challenge your right to custody.*

Can the principal still act independently after giving someone else power of attorney? Yes. Giving someone else a POA doesn’t stop the principal from being able to make decisions her/himself. The principal is still allowed to handle her or his day-to-day issues, as long as s/he is competent to do so.

When does a POA start? A POA can be written either to start immediately or in the future. If it starts in the future, it may take effect on a set date, or whenever a certain event happens.

How does a POA end? If there’s already a POA, it should state what can end it. A POA can usually end a number of different ways. A POA ends automatically (1) if the agent dies or becomes incapacitated (e.g. comatose); (2) if the principal dies. A POA can’t be used to state the principal’s wishes for after her/his death. If the principal wants to plan for her/his death, then s/he needs to do a will or some other estate plan; (3) if the principal revokes (cancels) the POA; (4) whenever the document itself says it ends; (5) in one year for care or custody of minor children; and (6) if the principal become incapacitated (unable to make decisions for her/himself). However, if the POA is a Durable Power of Attorney (DPOA), then it doesn’t end when the principal becomes incapacitated.

What kind of powers can an agent get? A POA can give an agent a number of different powers: buy or sell the principal’s property, cash and write checks from the principal’s bank account, file lawsuits for the principal, hire people for the principal, take care of the principal’s children (make medical, educational, and other decisions), deal with government and other agencies (like Department of Human Services).

Do others have to accept POAs? No. POAs do not have to be accepted by others. Before doing a POA, talk to the other people and agencies who the principal commonly deals with (schools, banks, doctors, government agencies, etc.). Some agencies have forms or language that they want the principal to use. **Note: Social Security Administration (SSA)** usually does not accept POAs. Instead, SSA wants the agent to be appointed as the principal’s Representative Payee. Contact SSA for more information: 1-800-772-1213.

How can the principal revoke (cancel) the POA? Usually the POA itself will say what the principal needs to do to revoke it. Sometimes the principal can revoke it just by telling the agent that s/he is revoking the POA. Sometimes the principal can end it by destroying the document itself (burning it). The most common, and safer, way to end a POA is for the principal to give written notice to the agent and any third parties who have been relying on the POA.