

## Power of Attorney

For more information call the LREP toll-free Legal Helpline  
at 800-876-6657 or 505-797-6005 (Albuquerque area)  
[www.nmbar.org/public/LREP](http://www.nmbar.org/public/LREP)

### **What is a Power of Attorney (POA)?**

You, the principal, are giving someone else the power to act on your behalf. That person is called your agent or attorney-in-fact.

### **Why do I need to give someone POA?**

The POA is a very important document in financial planning. If you become too ill to handle your affairs, you will probably need someone to make financial decisions for you and to help you with your financial affairs. Without a POA your family may need to apply to the court for guardianship or conservatorship. The process for guardianship or conservatorship can be expensive and time-consuming.

### **Can anyone give a POA?**

Anyone, 18 years of age or older, who understands both what they are doing and the contents of the document they are signing can give a POA.

### **Who should I choose as my agent?**

A POA gives the person you name as your “agent” a great deal of power over your affairs. The person you choose as your agent should be someone you trust implicitly to act in your interests instead of in his or her own interest. Your agent should be someone who will try to make the same decisions you would have made for yourself. You can make a relative or friend your agent, or you can hire a bank or corporation to act as your agent. The most important thing is to choose someone who is trustworthy.

### **How can I be sure my agent follows my wishes?**

When you make someone your agent through a POA, you should talk to them about what you want them to do. For example, you should inform your agent about your bills and bank accounts and make



sure they know where you keep your records and important papers.

### **Can my agent use my money for personal gain?**

Your agent has a fiduciary duty to act in your interest and try to do what you would do for yourself if you were able. Third parties will presume the person is acting on your behalf. There have been agents who have used their power for their own benefit, so it is very important that you choose someone you trust.

### **How can I hold my agent accountable?**

You can ask your agent to provide an accounting. This means that the person acting as your agent provides a record of all money spent from your assets. The accounting can be made annually, semi-annually, quarterly, or monthly. You should specify in the POA document how often and to whom your agent must provide an accounting.

### **What can I do if someone is trying to force me to sign a POA?**

You should not sign a POA if you are not comfortable doing so. Call your lawyer or Legal Resources for the Elderly (LREP) if someone tries to persuade you to sign any documents against your will.

### **What powers should I grant to my agent?**

A power of attorney can be specific or it can be general. You may want to give powers such as health decisions (using an Advance Health Care Directive), to one person and give a financial POA to someone else to make financial decisions. If your agent is going to transfer real estate, pay taxes, or purchase and sell stocks and bonds, your POA should specifically state that you grant your agent this authority. If your agent ever uses the POA to transfer real estate, the agent will need to record the POA with the county clerk in the county where the real estate is located.

### **How long does a POA stay in effect?**

A POA can specify that it is effective for specific period of time or that it is to remain in effect until it is revoked. A POA can also be “springing,” which means that it will only become effective if you become incapacitated.

### **What is a durable POA?**

A durable POA states in the document that it remains in effect even after you (the principal) become incapacitated. This is important, because without the “durable” clause, the power of attorney will be void just when you need it the most.

### **Can my agent use the POA after I die?**

No. Your agent’s power ends upon your death. If your agent knowingly uses the POA after your death, he or she is committing fraud.

### **How do I revoke a POA?**

You can revoke a POA at any time as long as you are of sound mind. One way to revoke a POA is to

tear up the document and all copies. Otherwise, the revocation must be in writing and signed in the presence of a notary. If the original POA was recorded, then the revocation must also be recorded. A copy of the revocation should be given to banks, stockbrokers, your doctor, or anyone else who might be relying upon the POA.

### **Is my POA made in another state valid here in New Mexico?**

Probably. However, it is wise to update your POA because requirements vary from state to state.

### **Would my spouse need a POA?**

A husband or wife will need POA to transfer property held jointly. For example, if you and your spouse are joint owners of your home, and your spouse becomes incapacitated, you would need your spouse’s POA to sell or refinance the home.

### **Do I need a lawyer to draw up a POA?**

Not necessarily. There is a statutory form that has been approved by the New Mexico State Legislature. However, you should proceed with caution because a POA is such an important document. A lawyer can ask about your specific needs and include provisions in the POA to fit those needs. LREP recommends that you consult an attorney before signing a POA.

### **Do I need witnesses?**

The POA must be signed in the presence of a notary public to be valid. New Mexico law does not require a POA to be witnessed, but witnesses may strengthen the validity of the document if it is challenged.