

DISCLAIMER

This Legal Guide was compiled by the Department of Public Health and Human Services (DPHHS), Senior and Long Term Care Division, Aging Services Bureau, Legal Service Developer Program. This publication is not intended to be a substitute for legal advice. Rather, it is designed to help families become better acquainted with some of the devices used in long-term planning and to create an awareness of the need for such planning. Future changes in laws cannot be predicted and statements in this narrative are based solely on those laws in force on the date of publication.

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Powers of Attorney



Made Easy

December - 2010

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This booklet was developed by the Legal Services Developer program with Senior and Long Term Care Division of the Montana Department of Health and Human Services.

It is intended to provide general information and should not be considered legal advice. The information presented here may not apply in certain situations. You should consult with an attorney if you have any questions.

Resources

Montana Aging Services, Legal Services Developer

www.dphhs.mt.gov/sltc
www.dphhs.mt.gov/sltc/services/aging/legal

1-800-332-2272

Area Agencies on Aging

Local office: 1-800-551-3191
State office: 1-800-332-2272

Montana State Bar Association

www.montanabar.org

406-442-7660
406-449-6577 (lawyer referral service)

Montana Legal Services Association

1-800-666-6899

www.mtlsa.org
www.montanalawhelp.org

Power of Attorney	Legal document signed and notarized which allows another person to exercise powers which you have, such as managing your money or making decisions for you. Ends if you become incapacitated and unable to handle your affairs.
Durable Power of Attorney	Continues in effect after you become incapacitated and unable to handle your affairs.
Springing Power of Attorney	Power of Attorney which does not take effect until a date or event which you specify in the document.
Durable Power of Attorney for Health Care	Power of Attorney which gives another person the power to make decisions regarding your health care and medical treatment. Not a Living Will (see <i>Advance Directives</i> pamphlet).

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The Basics

What is a Power of Attorney?

A Power of Attorney is a document which you use to give someone else power to act for you. You can use a power of attorney to give someone any or all of the powers which you have. Such powers include the power to pay a bill out of your bank account, to manage your property, collect income for you, make purchases for you, or to make important decisions (such as health care decisions). You can be as specific in the powers and instructions for your power of attorney as you wish.

How do I get one?

It is not necessary that you have a lawyer. You do need to use the correct language in your Power of Attorney. The easiest way to write your own power of attorney is to use the statutory Power of Attorney form in this brochure. The Montana legislature developed this form and though you are not required to use this form, it is advisable. The form can be modified to say exactly what you want and need.

When your Power of Attorney form is finished you must sign it in front of a Notary Public. You should then provide copies of the form to everyone who will need it (such as your family members, bank and/or doctor).

Conclusion

Be very careful about what powers you place in your Power of Attorney. Be very careful about who you give these powers. Make sure you understand *everything* about any document before you sign it. Do not be afraid to ask questions. The only stupid question is the one that goes unasked.

Read this guide carefully. If you have any questions you should speak with a neutral person who has access to legal advice, such the Area Agencies on Aging or the State Legal Services Developer (see Resources at the end of this brochure).

On the next page is a table summarizing the different types of Powers of Attorney.

some event of your choosing. For example a Springing Power of Attorney could not take effect until the day that you enter a nursing home, if and when that happens.

Medical Powers of Attorney

What is a Medical Power of Attorney?

This is a specific type of Power of Attorney. It is commonly called the Durable Power of Attorney for Health Care, and a form is included in this booklet. It gives someone power to make decisions regarding your medical treatment and health care. It must be durable because you are giving someone the power to make these medical decisions when you are incapacitated and cannot make them yourself. If you have not signed a Medical Power of Attorney then a doctor, hospital or family member may be forced to make important medical decisions for you.

Is this like a Living Will?

No, a Medical Power of Attorney is different from a Living Will. A Living Will is written to state your health care treatment wishes **only** in the event that you have a terminal illness, when life-sustaining procedures are necessary and when such treatment only serves to prolong the dying process.

What powers does my Power of Attorney give?

Your Power of Attorney only gives the powers that you write into the document. Period. Your Power of Attorney should say only precisely what you wish.

What rights and powers am I giving up?

None. You do not lose any powers or rights when you sign a Power of Attorney. When you give someone else the power to act for you, you do not give up any of those powers to act for yourself.

How is this different from a guardian/conservator?

A guardian or conservator must be appointed by a Judge in a court order. Guardians and conservators are only appointed for people who a judge decides are incapacitated and unable to care for themselves or their affairs. Unlike a Power of Attorney, a person with a guardian/conservator has had some of their powers and rights taken away.

Is a Power of Attorney permanent?

No. Your power of attorney can last as long as you like. It can begin and/or end on certain dates if you wish. You can revoke (cancel) your Power of Attorney at any time, but you must do so in writing.

A Power of Attorney ends if you become incapacitated. A *Durable* Power of Attorney, however, continues after your incapacity (see discussion below).

Can I have more than one power of attorney?

Yes, but it may not be a good idea. You may have more than one Power of Attorney document, and your Power of Attorney document may name more than one person. Having multiple powers of attorney, though, can create confusion and potential legal problems. We recommend having **alternate** powers of attorney instead.

The Forms

The five unnumbered pages in the middle of this booklet are forms for two different kinds of powers of attorney. You may fill in the blanks on the forms and use them as is, or you may modify them by adding and crossing out parts. You should initial any changes you make.

The first form is the statutory Power of Attorney form in Montana's Code. It includes language which can make it durable or not, and other provisions which you must choose between. The second form is a Durable Power of Attorney for Health Care and Medical Treatment. The third form is a revocation form which you should use if you wish to cancel a Power of Attorney after you sign it.

Before signing any form, read it carefully, make sure that you understand everything in it, and that it says exactly what you want.

Durable & Springing Powers of Attorney

What is a Durable Power of Attorney?

A Durable Power of Attorney is one that continues in effect after you become incapable or incapacitated, and language to that effect is in the statutory form included in this booklet. A Power of Attorney that is not durable, on the other hand, automatically ends when you become incapacitated. A person can become incapacitated by medical illness or injury, or through a decrease in mental ability. Incapacity means a person is mentally unable to handle their own personal or financial affairs. When this lack of capacity is not obvious, a doctor should determine whether or not a person is capable of handling their personal and financial matters.

A Durable Power of Attorney is generally a good idea. If you should become incapacitated and do **not** have a Durable Power of Attorney, then it can be very difficult for someone to step in and help. Without a Power of Attorney it will most likely be necessary to go to Court and obtain a guardianship. It is very important that you are able to completely trust the person that you are giving the Durable Power of Attorney, however.

What is a Springing Power of Attorney?

A Springing Power of Attorney is one that takes effect at a later date. It can 'spring' into effect on a certain date, but usually it 'springs' into effect upon the occurrence of