



before executing such a document. State-provided sample forms may be too limited in scope or purpose, particularly for health care powers of attorney. Unfortunately, these limitations often become evident only when it's too late to revise the documents.

## The Role of an Elder Law Attorney

The advice of a qualified elder law attorney is critical to protect the principal's rights when creating a POA for medical or financial affairs. These attorneys have specialized experience in drafting and enforcing POAs, and their guidance is crucial for both the principal and the agent.

Legal representation may be necessary if the POA's validity is challenged or if an agent is accused of wrongdoing. In such cases, a court proceeding may be required to enforce or interpret the POA, and experienced legal counsel will be indispensable. When selecting an attorney for POA matters, ask about their experience drafting, defending, and enforcing these documents.

## National Academy of Elder Law Attorneys

The National Academy of Elder Law Attorneys (NAELA) is a professional association of more than 4,000 attorneys dedicated to improving the quality of legal services provided to older adults and people with disabilities.

The information in this brochure is provided as a public service and is not intended as legal advice. Such advice should be obtained from a qualified elder law attorney.

For more information about NAELA and a directory of NAELA attorneys in your area, go to [www.NAELA.org](http://www.NAELA.org).



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The Law and Aging

# Durable Powers of Attorney



## The Issues

As America's population ages, issues affecting older adults — including abuse, neglect, and exploitation — have become increasingly prevalent. Abuse, neglect, and exploitation are usually defined by state legislation, and the definitions may vary significantly. Typically, however, the terms may be defined as follows:

- **Abuse:** Physical, emotional, or sexual harm.
- **Neglect:** The failure to provide necessary care when there is a legal duty.
- **Exploitation:** Financially taking advantage of an older person or a person with disabilities.

Because state law plays a central role in preventing abuse, neglect, and exploitation, protections differ significantly from one state to another. Although some general principles apply nationwide, consulting local authorities or an elder law attorney for specific guidance is essential.

## What You Need to Know

Legal authority is required to perform tasks on behalf of an incapacitated adult. This authority may be granted by a court — such as through the appointment of a guardian — or privately through a document called a **Power of Attorney** (POA). A POA must be executed before the individual becomes incapacitated. A properly drafted POA can prevent the need

for court action, save significant legal fees, and preserve privacy.

A POA is a legal document that grants authority to another person to act on behalf of the principal (the person giving the authority). The individual receiving the authority is called the **agent** or **attorney-in-fact**. If the POA is **durable**, it remains effective even if the principal becomes incapacitated. If not, the agent's authority is suspended during the principal's incapacity.

The agent under a POA has an ethical duty to act in the principal's best interest. Examples of everyday tasks an agent may handle include health care, financial matters, and legal matters.

## Durable Powers of Attorney for Health Care

Each state allows some form of **durable power of attorney** for health care. However, the specific requirements, such as witness or language provisions, vary between states. In some jurisdictions, these documents may be referred to as **health care powers of attorney**, **medical directives**, or **advance directives**.

A health care POA may include instructions regarding end-of-life treatment. These are often combined with documents like a **living will** to ensure that the principal's wishes are followed in critical situations. State laws regulate the use of health care powers of attorney, so it's important to consult a professional to ensure compliance.

## Durable Powers of Attorney for Financial Matters

Most states also provide guidance or sample forms for financial powers of attorney. However, the powers granted must often be specific to ensure third parties will honor them. For example, real estate transactions, tax filings, or government bond transfers might be problematic if the POA doesn't explicitly authorize such actions. The agent's authority is limited to the specific tasks listed in the POA. They typically sign on the principal's behalf while referencing the document. The agent is prohibited from benefiting personally unless explicitly allowed by the POA.

*A properly drafted POA can prevent the need for court action, save significant legal fees, and preserve privacy.*

## Accountability of the Agent

The agent under a POA is accountable to the principal for all actions taken. If the principal becomes incapacitated, the agent may be required to report to a court, particularly in guardianship or criminal proceedings. An agent found to have abused their power can face criminal prosecution under elder abuse laws.

## Where to Go for Help

While POA forms are widely available, consulting an elder law attorney is essential