

What's the difference between the two types of power of attorney?

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When drafting your estate plan, you and your attorney must account for what happens to your children and your assets after you die. But your plan must also spell out your wishes for making financial and medical decisions if you're unable to make those decisions yourself. A crucial component of this plan is the power of attorney ("POA").

ABCs of a POA

A POA appoints a trusted representative to make medical or financial decisions on your behalf if an accident or illness renders you unconscious or mentally incapacitated. Without it, your loved ones would have to petition a court for guardianship or conservatorship, a costly process that can delay urgent decisions.

POAs in action

A POA is a document under which you, as "principal," authorize a representative to be your "agent" or "attorney-in-fact," to act on your behalf. Typically, separate POAs are executed for health care and finances.

A health care POA authorizes your agent — often, a spouse, child or other family member — to make medical decisions on your behalf or consent to or discontinue medical treatment when you're unable to do so. Depending on the state you live in, the document may be known as an advance health care directive, medical power of attorney, health care proxy or "living will".

A POA for property appoints an agent to handle your legal and financial affairs, manage your investments, pay your bills, file tax returns, continue your practice of making annual charitable and family gifts, and otherwise handle your finances, subject to limitations you establish.

To spring or not to spring

Generally, POAs for property come in two forms: *nonspringing* (that is, effective immediately) and *springing* (that is, effective on the occurrence of specified conditions). Typically, springing powers take effect when the principal becomes mentally incapacitated, comatose, or otherwise unable to act for himself or herself.

Nonspringing POAs offer several advantages. Because they're effective immediately, they allow your agent to act on your behalf for your convenience, not just if you become incapacitated. In addition, they avoid the need to make a determination that you've become incapacitated, which can result in delays, disputes or even litigation.

A potential disadvantage to a nonspringing POA is the concern that your agent may be tempted to abuse his or her authority or commit fraud.

Given the advantages of a nonspringing POA, and the potential delays associated with a springing POA, it's usually preferable to use the nonspringing type and to make sure the person you name as agent is someone you trust unconditionally.

If you're still uncomfortable handing over a POA that takes effect immediately, consider signing a nonspringing POA and have it delivered to your agent when needed.

Please contact us with questions.

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