The New Iowa Power of Attorney Act: Frequently Asked Questions

Brought to you by

AARP Real Possibilities in Iowa

The National Health Law and Policy Resource Center
The University of Iowa College of Law
What is a financial power of attorney (POA)?

A financial power of attorney (POA) is a legal document in which one person, called the principal, gives the authority to make decisions with respect to the management of his or her financial affairs to another person, called the agent.

What are the advantages for Iowans of having a POA?

A POA allows a person to plan for potential incapacity resulting in an inability to manage his or her financial affairs. Specifically, it allows a person to name someone to act on his or her behalf in the event incapacity actually occurs. If a person who becomes incapacitated does not have a POA, often the only alternative is for someone to request the probate court to appoint a conservator to manage the person's financial affairs. But establishing a court-ordered conservatorship takes time and involves expense, and the court rather than the incapacitated person decides who gets to manage the person’s financial affairs.

What does the new Iowa Uniform Power of Attorney Act (POA Act) mean for Iowans?

In contrast to prior Iowa law, the new Iowa Power of Attorney Act (POA Act) establishes a comprehensive legal framework for the creation and use of POAs. It furnishes guidance to and protection for principals and agents and guidance and protection to banks and other financial institutions regarding acceptance of a POA from agents.

A major purpose of the POA Act is to reduce the serious problem of POA abuse. For example, some agents may use the principal’s money and property for their own benefit rather than the benefit of the principal. POA abuse affects many older Iowans, especially those who become incapacitated due to Alzheimer’s disease as well as other illnesses and conditions.

What are the legal requirements for a valid POA?

A POA must be signed by the principal, or by another person in the principal’s presence and at the principal’s direction, and acknowledged by a notary public.

When does the POA begin and when does it end?

A POA is effective immediately and remains effective if the principal becomes incapacitated unless the POA expressly states otherwise. A competent principal can revoke a POA at any time. A POA automatically ends when the principal dies.
Who can serve as an agent?

- The principal may designate any competent adult or an organizational entity such as a bank as an agent. The agent may be either a relative or a non-relative.

What are characteristics of a good agent?

- The principal should choose an agent very carefully. The ideal agent should be:
  - Trustworthy
  - Sufficiently knowledgeable and experienced to make needed financial decisions
  - Willing to handle the responsibility
  - Available now and in the future to serve as agent
  - Located not far from principal
  - Willing to carry out the principal’s wishes and preferences, not his or her own
  - Able to manage possible conflicts among family members and others.

May the principal designate co-agents and successor agents?

- A principal may designate more than one person as an agent. When there are co-agents, however, difficulties in communication and conflicts between them can arise.

A principal can designate a successor agent or agents to serve if the original agent declines to serve, resigns, dies, becomes incapacitated, or is not qualified to serve. Unless the POA states otherwise, a successor agent has the same authority as that given to the original agent.

What can an agent do?

- The principal can give the agent very broad general powers or narrow specific powers. The principal should carefully consider what powers to give to the agent.

There are certain powers that an agent can exercise only if they are expressly stated in the POA. The exercise of these powers pose a particular risk to the principal’s property and estate plan and are susceptible to POA abuse. They are: creating, amending, revoking or terminating an inter vivos trust; making a gift; creating or changing a beneficiary designation; designating authority granted under a power of attorney; waiving the principal’s right to be a beneficiary of a joint and survivor annuity; exercising fiduciary powers that the principal has authority to delegate; and disclaiming property.

What are an agent’s duties?

- Iowa’s POA Act furnishes clearer guidelines than prior Iowa law as to the nature and extent of the agent’s duties and responsibilities. They include (but are not limited to) acting in accordance with the principal’s reasonable expectations to the extent known and, if unknown, in the principal’s best interest; acting in good faith; and acting within the scope of authority granted in the POA.
Can an agent’s misuse of authority be challenged? How? By whom?

- To reduce POA abuse, the POA Act allows an agent’s actions to be challenged. The Act lists a number of persons who can request a court to review the actions of an agent if they believe the agent is misusing his or her authority. The listed persons include anyone who can demonstrate “sufficient interest in the principal’s welfare.”

An agent may be held liable for losses resulting from violation of his or her duties and responsibilities under the Act.

Must a bank or other financial institution accept a POA?

- The POA Act creates a broad mandate (subject to a few exceptions) for banks and other financial institutions to accept a POA presented by an agent provided the POA has been “purportedly” acknowledged before a notary public. They may not require an additional or different POA form unless one of the exceptions applies. If banks or financial institutions refuse to honor a POA, they may be subject to a court order requiring acceptance, and they may be liable for attorney fees and costs.

Does the POA Act apply to a health care POA?

- The POA Act does not apply to a health care POA. Chapter 144B of the Iowa Code authorizes and governs health care POAs in which a person gives the authority to make health care decision on his or her behalf to another person. A principal may name different persons or the same person to act as his or her agent under a financial POA and a health care POA.

Is there a form that can be used to create a POA?

- The POA Act contains a form to use in the creation of a POA. But the use of this form is not required.

  A person who has questions or concerns about the form as well as about the creation of a POA should seek legal advice. Likewise a person asked to serve as an agent, who has questions or concerns about the form as well as his or her responsibilities as an agent, should seek legal advice.

  In some situations the use of the statutory form may well be appropriate. In other situations, a customized form may be advisable. For example a person who has farm property, a business, or other major financial assets should consider consulting a lawyer about drafting a customized form.

The optional statutory form is available at: http://states.aarp.org/category/iowa/; and http://blogs.law.uiowa.edu/nhlp/
Is a POA created before the POA Act became effective still valid?

A POA prepared and executed before the POA Act became effective on July 1, 2014 is still valid provided it met the requirements of Iowa law at the time of its execution. But a competent person who currently has a POA may replace it with a new POA that is consistent with the POA Act.