

What if my bank does not honor the power of attorney?

If the power of attorney complies with statutory requirements, any financial institution that does not honor it may be liable for damages as if they have refused to accept your own authority to act on your own behalf.

There is a statutory form power of attorney, which requires that it not be modified for it to have the effect of the statute. A modification to a statutory form converts the statutory power of attorney to a common law power of attorney. Your power of attorney remains valid, but lacks the acceptance and liability attributes of the statutory form.

This pamphlet contains general information and not legal advice. It is based on Minnesota law in effect at the time of writing. An O'Brien & Wolf lawyer can advise you about how the law applies to your specific situation.

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*The lawyers and staff at O'Brien & Wolf, L.L.P.
want to help you with all your legal needs. Please
contact us.*

Power of Attorney


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Why should I have a power of attorney?

A power of attorney can be used when you are not capable of making your own decisions such as a health crisis, or when you simply cannot be available to make the decisions on your own behalf. For example, people often sign a power of attorney when they buy or sell real estate delegating the authority to sign documents on their behalf to their attorney, spouse or a realtor so that the closing can proceed even though the person cannot be present in person.

What is meant by the term “durable power of attorney”?

A durable power of attorney is one which continues in effect during periods of your disability, incapacity or incompetency. In other words, if for medical or psychological reasons you are not able to appropriately manage your business affairs, your designated agent, also known as an "attorney-in-fact" will have the power to pay your bills and otherwise manage your business affairs.

How can I revoke a power of attorney?

A power of attorney can be revoked in writing signed by you and acknowledged in the presence of a witness. A written revocation is presumed valid. It is not effective, however, without actual notice of revocation, which is different under certain circumstances. In other words, society wants to make sure the innocent third parties that make decisions based on someone who appears to have a power of attorney are not penalized for not knowing the power of attorney was revoked.

What if the person I appoint as my power of attorney is not doing a good job with my affairs? Can my other family members regain control of my business affairs?

Yes. Others who look out for your interests can petition the court to create a guardianship or conservatorship on your behalf. In that instance, once the guardianship or conservatorship is created, the guardian or conservator can revoke the power of attorney, demand an accounting and have any objections heard by the court. Your attorney-in-fact will then be held accountable to the court.

What if I do not want to vest someone with power of attorney unless it becomes necessary?

Many people think that a power of attorney becomes effective only upon incompetency. That is not the case. Your power of attorney is effective on execution. If you are uncomfortable delivering the power of attorney before you become incapacitated, hold the power of attorney in your own papers, tell the attorney-in-fact where it is, but do not give any originals or copies while you are able to manage your own affairs. This makes revocation simple and allows you to be in control of your business affairs. At the same time, if for some reason you are not able to manage your business affairs, your attorney-in-fact knows where the power of attorney is and hopefully can get access to it so they can make decisions on your behalf.