

CREATE A POWER OF ATTORNEY

The best planning will be undone if a power of attorney is invalid, so know the requirements.

There are two main types of power of attorney. The first is for property, authorizing someone to deal with your property but not allowing them to make or change your will.

If the attorney for property's authority is stated to continue in the event that you become mentally incompetent, it's called a "continuing power of attorney."

The second type is for personal care, which permits the attorney to make personal care decisions on your behalf (consent to health care treatment, admission to care facilities, shelter, clothing, hygiene, safety, and nutrition).

In both cases, you can choose at the outset how broad or limited the power of attorney will be.

GRANTOR REQUIREMENTS

You can give power of attorney for personal care when you're as young as 16 for personal care, but must be at least 18 to grant it for property. In both cases, you need to be mentally fit to grant power of attorney.

For personal care, this means showing you understand whether your proposed attorney has a genuine concern for your welfare, as well as appreciating that he or she may need to make personal care decisions for you.

For power of attorney for property, you must know the nature and value of your property and obligations to any dependents. You'll also need to understand the scope of powers granted, that those powers can be misused, and that the value of your property may decline if it is not properly maintained or invested in.

Finally, the law indicates you must also know that power of attorney is revocable and that your chosen attorney is accountable to you in terms of their management of your property.

ATTORNEY REQUIREMENTS

Your appointed attorney has to be old enough to act legally on your behalf.

And he or she can't be a person you already pay to provide you with health care and related services unless they're a partner or you're related.

FORMAL REQUIREMENTS

Both types of powers of attorney need be in writing and signed before two witnesses, who are present at the same time. Both must sign the document. Witnesses can't be the person being granted power of attorney, their partner, your partner, your children, the legal guardian of you or your property, or anyone under age 18.

And, as with all parties, he or she needs to be mentally competent.

You'll also want to give serious consideration to the moral character, availability, and expertise of whomever you choose.