

## An Overview of Powers of Attorney: Health Care and Property

Type of POA	Must the Principal Have Decision-making Capacity to Create a POA?	When Does an Agent Have Authority to Act?	Does the Principal Continue to Have Authority to Act?	Does a POA Terminate with the Principal's Incapacity? <sup>1</sup>	Can the Principal with Decision-making Capacity Revoke a POA? <sup>2</sup>	Notes
<b>General</b>	Yes	Immediately	Yes	Yes	Yes	Potentially broad in scope
<b>Limited</b>	Yes	Immediately	Yes	Yes	Yes	Limited to a specific time or transaction
<b>Durable</b>	Yes	Immediately	Yes	No	Yes	
<b>Non-Durable</b>	Yes	Immediately	Yes	Yes	Yes	
<b>Springing</b>	Yes	Only upon triggering event	No, once triggering event occurs	No	Yes	But once triggering event occurs, which is often a finding of incapacity, the Principal cannot revoke, execute, or modify a POA

## Notes

See 755 ILCS 45, Illinois Power of Attorney Act. Article III sets forth the Statutory Short Form Power of Attorney for Property. Article IV sets forth the Statutory Short Form Power of Attorney for Health Care.

"Incapacitated", when used to describe a principal, means that the principal is under a legal disability as defined in Section 11a-2 of the Probate Act of 1975 (755 ILCS 5/11a-2), which relates to guardianship proceedings for an adult who is adjudicated to be a "person with a disability".

A "person with a disability" means a person 18 years or older who (a) because of mental deterioration or physical incapacity is not fully able to manage his person or estate, or (b) is a person with mental illness or a person with a developmental disability and who because of his mental illness or developmental disability is not fully able to manage his person or estate, or (c) because of gambling, idleness, debauchery or excessive use of intoxicants or drugs, so spends or wastes his estate as to expose himself or his family to want or suffering, or (d) is diagnosed with fetal alcohol syndrome or fetal alcohol effects. See 755 ILCS 5/11a-2.

A principal shall also be considered incapacitated if: (i) a physician licensed to practice medicine in all of its branches has examined the principal and has determined that the principal lacks decision making capacity; (ii) that physician has made a written record of this determination and has signed the written record within 90 days after the examination; and (iii) the written record has been delivered to the agent. See 755 ILCS 45/2-3(c-5).

<sup>1</sup> For duration of POA-Property, see 755 ILCS 45/2-5. For duration of POA-Health, see 755 ILCS 45/4-6. Also note: The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked. This clause is included in both of these Statutory Short Forms.

<sup>2</sup> For a POA-Health, unless the principal elects a delayed revocation period, the agency may be revoked and amended by the principal at any time, without regard to the principal's mental or physical condition. See 755 ILCS 45/4-6.

For abuse/misuse of a POA, see 755 ILCS 45/2-10, Agency-court relationship.