

9. Powers of Attorney

A “power of attorney” (POA) is a powerful tool available to you to help manage your property in the face of deportation. Because a POA can be an invaluable first step in protecting assets, we provide an in-depth discussion of the tool. This section answers the questions:

[What Is a “Power of Attorney” \(POA\)?](#) > [What Does a POA Look Like?](#) > [Why Would Someone Facing Deportation Grant a POA?](#) > [How Should You Choose the Kind of POA to Grant?](#) > [How Should You Choose an Agent?](#) > [How Long Does a POA Last, and Can It Be Changed?](#) > [How Do You Draft a POA?](#)

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

What Is a Power of Attorney (POA)?

A power of attorney (POA) is a written document that allows a person (who will be called the “principal” in the POA) to choose someone else (who will be called the “agent” in the POA) to act on his or her behalf with respect to finances, business, or a child’s care. A POA is especially useful for people facing deportation or detention who simply may not have the time to get everything done before leaving the country or getting detained. For example, a POA can give an agent the power to sign checks from your bank account, make decisions about your child’s schooling and healthcare, or use your money to buy or sell major items like a car.

While the term “power of attorney” might sound like something related to an attorney, such as an immigration attorney, it is not. It is simply a legal term used for the document that gives one person the legal right to act on behalf of another. Neither person needs to be an attorney. However, consulting with an attorney, where possible, can help you ensure the POA is effective and that the powers granted by the POA match your wishes.

What Does a POA Look Like?

Generally, a POA starts with a paragraph identifying the state and county where you are when you are signing the form, giving the names of the principal and the agent. The next paragraph is usually a list of possible powers a principal can give an agent. You will check off all the powers you would like the agent to have. Again, these can range from authority over your bank account to authority to make decisions regarding your child’s health or education. The last paragraph typically explains whether the POA takes effect immediately or upon the occurrence of some event in the future. Finally, there are signature lines for the principal and the agent, as well as a place for a notary public or witnesses to sign.

This is a very general description of what a POA looks like. The requirements in each state differ, so before trying to write one, search the internet for a sample POA from your state or consult a local lawyer. Some sample state POA forms, current as of the time this manual was written, are provided at the end of this chapter. There are a number of websites that prepare the appropriate state form for you for a fee, for example: www.totallegal.com (\$20) or www.legalzoom.com (starting at \$39), or <https://bluenotary.us> (ranges from \$20- \$100). As discussed below, your bank may have its own POA form to cover banking transactions or access to a safety deposit box. Additionally, as discussed in the following section, many states have their own “statutory”

POA forms that you can use. Finally, organizations such as Legal Aid, local Bar Associations or Voluntary Legal Services organizations may have sample POAs that can be used as a model or may be able to draft a POA at no cost.

Why Would Someone Facing Deportation Grant A POA?

A POA can be a useful tool for someone wishing to settle their affairs before or after being deported. The first thing you may wish to do when facing deportation is to grant a POA to a trusted family member or other person that will be staying behind in the United States. If you are detained and awaiting deportation, it can be very difficult to sell a house, end a rental agreement or access a safety deposit box. With a POA, a trusted friend or family member can act on your behalf in these matters with full legal authority.

POAs can be used to accomplish many things. For example, a health care power of attorney can be created appointing an agent to act for you if you are injured or too ill to make decisions for yourself. POAs can also be used to provide for the care and education of children or to handle almost any financial or business issue, such as banking, gaining access to safety deposit boxes, entering into contracts, filing tax returns or settling legal claims.

How Should You Choose the Kind of POA To Grant?

You have to make several decisions about what kind of POA to use. First, you should decide whether the POA should grant the agent “general” authority or “special”/“limited” authority. Then you must decide when the POA will become effective: immediately or only if a particular triggering or “springing” event occurs. As explained later, you also need to decide how long the POA will last. There are advantages and disadvantages to different choices.

The “General” POA

A “general” POA gives an agent a wide range of powers, essentially enabling the agent to do almost anything on behalf of the principal. However, even with such broad powers, there are some things that an agent with a general POA cannot do. For example, an agent acting under a general POA cannot take oaths, go through marriage ceremonies, sign wills or, in some circumstances, access a safety deposit box on your behalf.

A general POA is not necessary, or even recommended, for most people who face deportation. However, it can be useful if you do not have much time before being deported and need to sell a business or have access to money when you get to your home country.

The “Special” Or “Limited” POA

A “special” or “limited” POA allows an agent to do only the specific acts listed in the POA document. It can be used for a wide range of activities. For example, a special POA can give an agent authority to access a bank account, sell a home or car, ship personal property to another country, or care for minor children.

Although this type of POA is called “limited,” in many instances it can actually be more useful and effective than a general POA. Banks, doctors or school officials may be more likely to accept limited POAs because the acts that the agent can undertake are clearly specified, giving a clearer idea of the your intent. This type of document is therefore considered more trustworthy.

The General Rule: POA Effective Immediately

Generally, a POA becomes effective as soon as it is signed.

The Springing POA: POA Effective in The Future

In many states, a general, special, or limited POA can be written as a “springing” POA that becomes effective only after a certain event occurs. These types of POA are sometimes used for sick people who want the POA to become effective only if they become too sick to make decisions. In the immigration context, a springing POA might be used to make the POA effective only if you are detained or deported.

A springing power of attorney may be a good option if you want to ensure that a potential agent cannot take action on your behalf unless a specific condition occurs. It has the advantage of ensuring that an agent cannot use a POA to influence or coerce you before the triggering condition occurs.

However, there are disadvantages to using a springing a POA:

1. Under a regular, non-springing POA, the agent is required to execute your wishes, so a trustworthy agent should not take action using a general POA under any circumstances that do not match your wishes. If you feel you

cannot trust a potential agent to act in accordance with your wishes under a general POA, you should consider naming a different agent.

2. Second, many institutions may be unwilling to accept a springing POA as a matter of policy, because they are not accustomed to seeing this type of document, or because they feel they cannot adequately verify that the triggering event has occurred.
3. Third, in the immigration context, a springing POA may be difficult to use in circumstances where your incapacity may not be permanent, such as if you are detained but not yet deported.

If you wish to use a springing power of attorney, the POA should be very clear about what the triggering event is, and how the agent will prove that it has occurred.

- Some state POA forms may have a “special instructions” or “agent’s certification” section that can be used to explain the triggering event and how the agent must prove it.
- One option could be to state that the POA becomes effective if the principal (you) is deported from the United States, and that this must be proven by having a specific person swear to that fact before a notary public. For example, the designated person would write “I [name] declare that [yours name] has been deported.” Then, if you are deported, that person would then sign and date the piece of paper and attach it to the power of attorney. The POA would be effective as of that date.
- Some states may also require specific language to make effective the declaration that a springing event has occurred. For example, California requires the statement: “I certify (or declare) under penalty of perjury that the foregoing is true and correct.”⁴

Remember, however, that many institutions may be hesitant to honor a springing POA, so making the required proof of triggering more official may help make the POA more effective. Consider consulting an attorney to identify types of formal proof that may be available to show that deportation or another triggering event has occurred, then stating, in the POA, that the proof must be attached to the POA in order to be effective.

⁴ Cal. Prob. Code § 4129(b) (West, Westlaw through Ch. 4 of 2017 Reg. Sess.).

How Should You Choose an Agent?

It is very important to choose the right agent. POAs can be abused, especially if you are detained or have been deported and cannot monitor the agent's actions.

An agent must be a legal adult (18, 19 or 21 years old) depending on the state), but otherwise you have a very wide range of choices when picking agents for a POA. It is not necessary that the agent speaks English or has any kind of educational qualifications. It is also not necessary to include the agent's contact information or proof of identity when drafting the POA (though for practical purposes it may be useful to include the agent's address on the document).

When choosing an agent, you should consider:

- A person who resides in the same state where the POA will be used, since different states may have different requirements for writing a valid POA;
- A person who can be trusted to act wisely and in accordance with your wishes;
- A person willing to expend the time and effort necessary to manage your financial assets;
- A person who is comfortable dealing with banks and other financial institutions and who has a basic understanding of financial issues; and
- A person who has the necessary documentation to be in the United States legally or who will not otherwise be subject to detention or deportation in the near future, if possible.

Note: You should take caution in choosing a spouse or intimate partner as your agent. Especially in abusive relationships, the parties' interests often become quickly opposed if there is a divorce or breakup. Many service providers have seen immigration status used as a means of control and coercion by abusive partners.

It is possible to draft several different POAs and to choose different agents to do specific things. For example, you could write one POA naming your business partner as agent and give that business partner the power to sell your interest in the business or to run the business on your behalf. You could then also write a second POA naming, for example, your sister and brother-in-law as agents to take care of your minor children.

In some states, it is also possible to draft a POA that names more than one agent. Unless the POA specifies that the agents are authorized to do different things or otherwise do not have to act jointly, this will mean that both agents must authorize any action under the POA. This can ensure that no single agent can use or abuse the POA, but can also make it difficult to use the POA by requiring the presence of two people for any action.

If you have bank accounts or other property in several states, it may be necessary to write a POA for different agents who reside in each of those states.⁵

A NOTE TO AGENTS

It is possible that a third party (like a bank or a school) will refuse to honor a POA, regardless of its legality or specificity. If an agent encounters this type of problem, they should contact a lawyer for advice. The agent may be able to bring a lawsuit against the third party to enforce the POA. While the rules surrounding such lawsuits vary from state to state, the case would likely focus on whether the third party is acting reasonably or unreasonably. To avoid these issues, entities with whom you do business may have approved forms for your use.

Additionally, to protect the agent's personal assets, you may want to write in the POA that if the agent has to bring a lawsuit to enforce the POA, the attorney's fees will be paid from your money.

- ➔ An agent will need to use the original POA, and you should keep a copy for your records.
- ➔ An agent is legally obligated to act in the principal's best interests. Among other duties:
 - An agent must keep his or her money separate from the principal's money;
 - An agent must not stand to profit from any transaction where they are acting as the principal's agent;
 - An agent must not give or transfer the principal's money or property to the agent, unless the POA specifically allows the agent to do this; and
 - An agent should keep clear records of his or her activities as agent under a POA.

⁵ Please also review the "How do you draft a POA?" section below for information on how to draft a POA granting authority to an agent that will be valid in most, if not all, of the states where it may be used.

How Long Does a POA Last, and Can It Be Changed?

You may see a POA referred to as a “durable” power of attorney. Most POAs are “durable,” meaning that the POA is effective even after the principal becomes “incapacitated”—unable to act on his or her own behalf. For this reason, a durable POA may be especially important for those who are facing the possibility of deportation. In most states, the POA must say that it is durable to have this effect; however, in a strong minority of states, if the POA is silent on the issue, it will be deemed to be durable. For example, California, New York, Arizona, and Florida are in the majority of states that require durability to be explicitly stated, while Nevada, Colorado, Pennsylvania, and New Mexico are in the minority.

A POA generally lasts until it is revoked in writing or until the principal dies (or for a POA that is not durable, until the principal becomes incapacitated). In some circumstances, a POA may terminate earlier. For example, in some states, a POA that designates the principal’s spouse as an agent may terminate if the couple divorces.

A principal can also specify in the POA that it ends on a certain date or upon the happening of a certain event. A POA with a set ending point may be considered more trustworthy than one without an ending point. However, if you decide to put a time limit on your POA, you should be sure to give your agent enough time to finish everything that needs to be done.

On the other hand, one disadvantage to having a POA with no ending point is that POAs can be difficult to cancel. You can cancel a POA by signing a separate piece of paper that says the POA is cancelled, sending a copy of the paper to the agent and to anyone (such as a bank) that had dealings with the agent, and physically taking back the original POA and all copies that have been given to anyone. Despite your best efforts, it may be hard to tell everyone that a POA has been cancelled, and this can lead to unwanted results. For example, if your property gets sold after the POA has been cancelled, but neither the buyer nor the buyer’s creditor was aware of the cancellation, it will be difficult to get the property back.

You can change a POA (for example to give an agent a new task or to take away one of the agent's tasks) by canceling the original POA and making a new one. This can be done with one document, as long as the new POA says that all previous POAs are cancelled. Many statutory form POAs already contain this language. Statutory form POAs are discussed in further detail in the following section. However, for the same reasons that it is hard to cancel a POA, it is also hard to change POAs. It is hard to know whether anyone is still relying on the original POA, so, it is important that all recipients of the original POA receive notice of the cancellation or new POA. Also, as noted in the next section, modifying or cancelling a POA while detained can be especially challenging, so when crafting a POA it is important to consider your current situation and wishes, as well as how those could change in the future.

If you want to amend the POA from your home country, you should review the section below about drafting POAs after deportation. In addition to following these rules, once the new POA is created, you should have your agent in the United States collect and destroy all copies of the original POA to avoid any confusion.

How Do You Draft A POA?

For Non-Detained Immigrants

Different states have different rules for how to properly execute a POA. In general, a POA must always be in writing, and may have to be witnessed by one or more persons, notarized or recorded at the county courthouse, depending on where, and for what purpose, the POA is being used.

Some states, such as New York, have a “statutory form,” which is a model POA form written in a statute created by the state legislature.⁶ These forms often contain instructions on exactly what actions are required to make the POA valid. Statutory form POAs are often widely recognized and accepted at banks and other institutions within the state.

If you have particular bank accounts (or other accounts) that you want the agent to be able to access, you should look online or contact the institution to determine whether it has a particular POA form for customer use. Although banks and other institutions should honor other POA forms that are valid, the easiest way to make sure that an institution will honor a POA may be to use any specific forms that it suggests.

As noted above, if you have property in several states, it may be valuable to have separate POAs executed according to the rules of each relevant state. However, if you are facing deportation, you may not have the time or resources to make valid POAs for several states. In those circumstances, you may want to execute one POA that complies with the strictest requirements for POAs in the United States. This would require your signature and the date, the signatures of two witnesses, the signature of a notary public and acknowledgements by the agent(s).

For special POAs, the document should be as detailed as possible. For example, the POA should list all relevant bank account numbers over which the agent may have control, as well as the name of the bank(s) and the addresses of your local United States branch. If the POA gives the agent authority to sell a house or car, the property for sale should be described in detail, including any identifying marks or numbers, such as serial and

⁶ Statutory form POAs for several states can be found at the end of this chapter. These forms are valid as of March 2025. For subsequent years, try running searches on the Internet for “statutory form power of attorney” and the relevant state.

registration numbers. Other terms, such as a minimum-selling price, that are important to you should also be included.

Note: People who wish to use a POA to carry out real estate transactions almost always need to “record” or “file” the POA with the local clerk or land records office, and should check local requirements.

For Detained Immigrants

It is possible for you to prepare POAs while in detention, though it may be difficult to have the documents properly witnessed and notarized. If you are detained, it is advised to contact a lawyer to help with this process, preferably one familiar with the regulations of the detention center where you are being held (e.g., visiting hours, rules regarding making telephone calls and mailing letters and other details about how a detention center is staffed and organized). If an attorney’s help is not available, one option is to hire a notary who agrees to come to the detention facility. Such notaries can usually be found on the Internet by searching for “notary” and “prison” or “detention.” During visiting hours, a notary, agents and any witnesses can work with you to execute the POA forms.

For Deported Immigrants: The “Apostille” Process

It is also possible to prepare or amend a valid POA after deportation. The most straightforward way to do so is for you or a notary public (or similar official in your home country) to draft the POA, have the notary notarize the POA, and then have the POA “apostilled.”

An “apostille” is a way to authenticate or legalize documents so that they will be honored in another country. The process is recognized by every country, including the United States, that has signed the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of 1961 (the ‘Convention’). Thus, a document, like a POA, that has been properly apostilled in Mexico will be recognized in the United States. To get a document apostilled, you must take it to one of the designated people in your home country for signature. The link below provides information about where to find those individuals in several countries:

<https://www.hcch.net/en/instruments/conventions/authorities1/?cid=41>

Sample apostille forms in several languages are available online here:

<https://www.hcch.net/en/publications-and-studies/details4/?pid=3198&dtid=28>

If the POA and any accompanying documents, including the apostille, are not in English, it is recommended that an English translation be attached. If possible, the translation should be certified as true and correct. Generally, this can be done by having the translator sign a statement that they believe the translation is accurate and complete, then getting the statement notarized by a Notary Public. This signed, notarized statement, sometimes called a "Certificate of Accuracy," should be attached to the POA and the translation.

If you are deported to a country that is not a signatory to the Convention, such as China,⁷ Jamaica, Canada, Vietnam, or most of the Middle East, you should seek the advice of local lawyers or the local United States embassy or consulate about how to properly authenticate locally notarized POAs so that they will be valid in the United States.

⁷ While China is not a signatory to the Convention, the Convention does apply in the special administrative regions of Hong Kong and Macau.

Checklist: Powers of Attorney

- Consider whether you want the POA to be **“general”** or **“special”/“limited.”** You can grant a general power of attorney to one agent who can handle all of your matters, but you may want to grant separate powers of attorneys to different people for different purposes. For example, you might grant a power of attorney to your aunt to make decisions regarding your children and a separate one to your brother to handle financial matters such as managing your bank account or selling your car.
- Consider whether you want the POA to take effect immediately, or to become effective at some point in the future (a “springing” POA).
- Be careful in choosing an agent, especially if he or she will have access to your bank account. You should consider the following criteria:
 - A person who resides in the same state where the POA will be used, since different states may have different requirements for writing a valid POA;
 - A person who can be trusted to act wisely and in accordance with your wishes;
 - A person willing to expend the time and effort necessary to manage your financial assets;
 - A person who is comfortable dealing with banks and other financial institutions and who has a basic understanding of financial issues; and
 - A person who has the necessary documentation to be in the United States legally or who will not otherwise be subject to detention or deportation in the near future, if possible.
- Make a list of all of the financial matters you would need an agent to help you handle.

- Write the document authorizing the power of attorney. Consider the following when writing it:
 - ➔ Determine how long the power of attorney should last. Different states have different rules on how long POAs last if it is not explicitly stated in the document, so you should make sure to make your intentions clear;
 - ➔ Try to provide as many details about the assets as possible. For example, list the names of the banks, the account numbers, the car registration numbers and the locations of assets; and
 - ➔ Find out the legal requirements for a power of attorney in your state. If you have already left the U.S., a power of attorney can be drafted from abroad; however, this may require an authentication process depending on which country it is drafted in.
- Give the original power of attorney to the agent you have chosen (perhaps several signed copies). Keep a copy of your records.
- Circulate the POA to all third parties who you think would need to rely on it. This is to provide notice to those who will be impacted by the POA. Keep a list of the parties to whom the POA was circulated, as any change to or cancellation of the POA would need to be circulated to them.
- Ask the agent to keep clear records of all the actions he or she takes as your agent under the power of attorney. If another person refuses to accept your agent's power of attorney, contact a lawyer.
- When making any changes to or cancelling a POA, make sure you use certified mail or some other method that provides a record of receipt.

Powers of Attorney by State

State	Document	Hyperlink
Alabama	Durable Power of Attorney	Durable Power of Attorney
Alaska	Durable Power of Attorney	Durable Power of Attorney
Arizona	Power of Attorney	Power of Attorney
California	Uniform Statutory Power of Attorney	Uniform Statutory Power of Attorney
Colorado	Statutory Form Power of Attorney	Statutory Form Power of Attorney
Connecticut	Statutory Long Form Power Of Attorney	Statutory Long Form Power Of Attorney
Connecticut	Statutory Short Form Power Of Attorney	Statutory Short Form Power Of Attorney
Delaware	Durable Personal Power of Attorney	Durable Personal Power of Attorney
District of Columbia	Statutory Power of Attorney	Statutory Power of Attorney
Florida	Durable Power of Attorney	Durable Power of Attorney
Georgia	Financial Power of Attorney	Financial Power of Attorney
Idaho	Durable Power of Attorney for Financial Affairs	Durable Power of Attorney for Financial Affairs
Illinois	Statutory Short Form Power of Attorney for Property	Statutory Short Form Power of Attorney for Property
Iowa	Statutory Power of Attorney	Statutory Power of Attorney
Kansas	General Durable Power of Attorney	General Durable Power of Attorney
Louisiana	Durable Power of Attorney	Durable Power of Attorney
Maryland	Statutory Form Personal Financial Power of Attorney	Statutory Form Personal Financial Power of Attorney

Maryland	Statutory Form Limited Power of Attorney	Statutory Form Limited Power of Attorney
Michigan	Durable Power of Attorney for Finances	Durable Power of Attorney for Finances
Minnesota	Statutory Short Form General Power of Attorney	Statutory Short Form General Power of Attorney
Montana	Statutory Form Power of Attorney	Statutory Form Power of Attorney
Nebraska	Power of Attorney	Power of Attorney
Nevada	Statutory Form Power of Attorney	Statutory Form Power of Attorney
New Mexico	Statutory Power of Attorney	Statutory Power of Attorney
New York	Statutory Short Form Power Of Attorney	Statutory Short Form Power Of Attorney
North Carolina	Statutory Short Form of Power of Attorney	Statutory Short Form of Power of Attorney
North Dakota	General Durable Power of Attorney	General Durable Power of Attorney
Ohio	Statutory Form Power of Attorney	Statutory Form Power of Attorney
Oklahoma	Statutory Form Power of Attorney	Statutory Form Power of Attorney
Rhode Island	Statutory Short Form Power of Attorney	Statutory Short Form Power of Attorney
Texas	Statutory Durable Power of Attorney	Statutory Durable Power of Attorney
Utah	Statutory Form Power of Attorney	Statutory Form Power of Attorney
Vermont	General Power of Attorney Financial Affairs	General Power of Attorney Financial Affairs
Washington	Durable Power of Attorney for Finances	Durable Power of Attorney for Finances
West Virginia	Statutory Form Power of Attorney	Statutory Form Power of Attorney
West Virginia	Durable Power of Attorney	Durable Power of Attorney

Wisconsin	Statutory Power of Attorney for Finances and Property	Statutory Power of Attorney for Finances and Property
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