

Do You Need a Durable Power of Attorney?



5600 Harrison Avenue
Cincinnati, Ohio 45248
513.251.4900
www.niehauslaw.com

A Durable Power of Attorney is strongly advisable for most people.

What is a Durable Power of Attorney?

A Durable Power of Attorney (POA) is a legal document in which you designate an agent (usually a trusted family member or friend), and give that agent the power to handle your legal and financial affairs during your lifetime. That agent can speak to banks and investment companies on your behalf, write checks for you, sell property, and sign your name to other legal and financial documents.

If your bank accounts are joint with your spouse, do you still need a POA?

Even couples with many joint assets would need to use a power of attorney if one became incapacitated. You cannot sell real estate without the signature of your spouse. Similarly, you would be unable to withdraw funds from a 401(k) or IRA held in your spouse's name. If named as an agent in your spouse's POA, you can accomplish both of these tasks, should the need arise.

What happens if you do not have a POA?

If you were to become incapacitated or unable to handle your affairs and you do not have a power of attorney, an individual would have to obtain guardianship over you through probate court in order to write checks on your behalf, sell your property, and handle other financial and legal matters.

In the context of nursing home Medicaid planning, not having a power of attorney with a gift provision can limit options for you and your family. If you are unable to transfer assets on your own, your family members would not have the power to take assets out of your name, and thus could not possibly set aside assets for your use during life and for a spouse/other family members after your death.

How often should you update your POA?

It is important to keep your power of attorney current – we recommend updating it every five years. Financial services companies, such as banks, are not legally required to accept a power of attorney. We find that institutions are increasingly likely to reject a power of attorney if it is more than three to five years old. Moreover, continual changes in the law make it advantageous to keep this document up to date. If you are over age 80, we recommend updating this document every three years, since you are more likely to need someone to act on your behalf.