

**Durable Power of Attorney (new Nov. 2011)**  
**Concerning the law in New Jersey**

**Question: What is a durable power of attorney?**

Answer: The word “durable” simply means that the power of attorney will continue unaffected in the event of the principal’s sickness, disability or disappearance. It is a “lasting” power of attorney in that it is good until the principal dies, unless it is revoked.

**Question: How can a power of attorney be rescinded?**

Answer: A power of attorney can be cancelled by tearing up the original and notifying the agent or agents that the power of attorney is revoked. It is a good idea to send that notice by certified mail and regular mail to insure the delivery of the revocation. You should also at the same time orally revoke the power of attorney, but others may still rely on the power of attorney simply because they are not aware of your oral rescission. If someone uses the power of attorney after it has been rescinded, problems can be created, so it is important to retrieve back the original and all copies of the power of attorney.

**Question: Who is the principal?**

Answer: If it is your power of attorney, you are the principal.

**Question: Who is the agent?**

Answer: The agent is the person who is authorized to act for the principal as stated in the power of attorney or living will, as the case may be.

**Question: In New Jersey, does a copy of a power of attorney work?**

Answer: In New Jersey, the statute specifically allows for true copies of a power of attorney to be used and provided to vendors and others.

**Question: Can a principal designate an alternate on the power of attorney?**

Answer: Yes, and generally it is good practice to name an alternate in the event the first-named agent passes away, becomes ill, or has some other disability which does not allow them to serve as the agent.

**Question: Where should you keep your power of attorney?**

Answer: A power of attorney should be kept in a safe spot and it should not be left around for others to copy. At the same time, your agent should be given a copy so that he can use it in the event that the original is lost. Presumably you trust your agent.

**Question: Is a power of attorney recorded or filed with the government?**

**Answer:** No. A power of attorney is generally kept by the principal and/or agent as the case may be. (In the event of a deed transfer, the power of attorney is often filed along with the deed.)

**Question: What is a “true” copy?**

**Answer:** A true copy is an unaltered signed photocopy. Sometimes the lawyer or the principal is asked to certify that the photocopy is a “true copy” of the original.

**Question: Does the alternate power of attorney need to prove that the primary alternate is unwilling or unable to be the primary power of attorney.**

**Answer:** Yes. A death certificate of the primary agent or proof from a doctor stating that the primary agent is unable to perform the task is necessary. A primary agent may also simply resign or renounce their authority in favor of the alternate.

**Question: Is there any problem with shared designation?**

**Answer:** It depends. Sometimes it is a good idea to have shared responsibilities so that one sibling doesn't take advantage of the other. An inherent problem, however, is if you have two siblings and they disagree, you will have a “deadlock” with no way to resolve same. Generally, it is the better practice to name one person as the primary power of attorney, although there are circumstances where naming two makes more sense. You should consult with your attorney on this and all other issues regarding your power of attorney.

**Question: If there is a shared appointment in a power of attorney, do both people have to be present to make decisions?**

**Answer:** Yes. (Unless the power of attorney designates either of the two people by using the word “or”.)

**Health Care Proxy or Living Will (new Nov. 2011)**  
**Concerning the law in New Jersey**

**Question: Where is the official health care proxy or living will kept?**

Answer: Generally, the official document is kept with the principal until it is needed. Generally, health care providers will want to see an original document. You can show them the original, but never leave the original with them because you will need the original document to show to the next health care provider. After showing the health care provider the original, you can then leave a copy with them.

**Question: Should you leave a copy of your health care proxy with your primary care physician?**

Answer: Yes. It is always a good idea to give your primary care physician a true copy of your health care proxy.

**Question: Should you designate an alternate health care proxy?**

Answer: Yes, you should. This is important in the event that the primary designee has passed away or is unable to serve for any other reason.

**Question: Does the alternate designee need to prove that the primary designee is unwilling or unable to serve?**

Answer: Yes. A letter from the primary designee's doctor indicating that they are no longer capable of performing the job is needed. A signed renunciation indicating that the principal designee does not choose to serve in that capacity should also suffice.

**Question: Is there any problem with shared designation?**

Answer: With respect to a living will, it is not a good idea to name two people who share the decision-making process. If one sibling wants a feeding tube and the other doesn't want a feeding tube, you will defeat the purpose of the health care proxy.

**Question: Can the principal make their wishes clear while they are competent?**

Answer: A good health care proxy will actually describe the situation that might arise and then the principal chooses whether they want a feeding tube or the like prior to the time when the decision needs to be made.

**Question: If there is shared responsibility to two designees, do both people have to be present to make decisions?**

Answer: Yes. If the designation is for two people to make the same decision, both parties must agree or there will be problems, including possibly litigation.