

Powers of Attorney

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APSIL

This webinar is sponsored by the Adult Protective Services Program at the Illinois Department on Aging under a grant awarded by the Administration on Community Living.

Trained case workers at local provider agencies conduct investigations and provide support in resolving reports of abuse, neglect, financial exploitation, or self-neglect involving adults with disabilities (age 18 – 59) and other older adults (age 60+) living in community-based (non-institutional settings).



Disclaimer

- This presentation is provided for general information purposes only and does not constitute legal or professional advice.
- The views expressed in this presentation are those of the speaker and may not necessarily represent the policy interpretations and procedures issued by the Adult Protective Services Program at the Department on Aging.

Session Objectives

- Define a “power of attorney” and other key terminology
- Clarify the authority and duties of the agent
- Introduce the Illinois Statutory Short Forms, 755 ILCS 45:
 - Power of Attorney for Health Care
 - Power of Attorney for Property

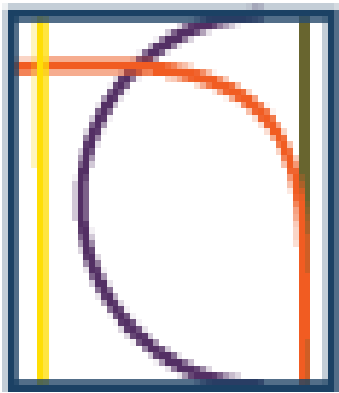


Overview

- Situations may arise where law enforcement encounters someone who claims authority as a “power of attorney” to justify financial transactions.
- Law enforcement may need to address criminal misuse of authority to prevent abuse, neglect, and financial exploitation.
- This session will discuss common questions about powers of attorney.

“Ms. Merrick” Video

Twin Cities Public Television



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What is a Power of Attorney (POA)?

- A POA is a type of advance directive a person may use to prepare for the possible need for a substitute decision-maker in the future.
- The **principal**, appoints another trusted individual, the **agent** (or **attorney-in-fact**), to perform certain acts on their behalf, which usually relate to **health care** and/or **financial/property** decisions.
- This legal document sets forth the conditions under which it becomes active and the powers being delegated.
- Oversight is limited because POAs are not filed with the courts in Illinois or monitored by any governmental body.



Capacity of the Principal

- The principal must have decision-making capacity to create, revise, or revoke a POA. (A POA-Health may be revoked at any time.)
- Under a springing durable POA, the agent may act only when the principal no longer has decision-making capacity.
- Guardianship may be needed to revoke a POA if an agent abuses or misuses authority and the principal no longer has decision-making capacity.

Durable and Springing Powers of Attorney

Durable:

- Effective and active at execution
- Principal often still acts on own accord, but may choose to rely on agent to handle decision-making

Springing:

- Effective at execution, but not active until a triggering event, usually incapacity of principal as determined by a medical practitioner
- Principal is no longer able to act due to incapacity

Both types remain effective after incapacity and last until death unless revoked at an earlier point in time.

When a POA Terminates

POAs terminate:

- A POA terminates on death of principal or revocation of POA.

Exception:

- A POA-Health may extend beyond the principal's death if necessary to permit anatomical gifts, an autopsy, the disposition of remains, or access to medical records. See: 755 ILCS 45/4-3.

Fiduciary Duties of an Agent



Act in good faith under the authority delegated for the best interests of the principal.



Exercise due care, competence, and diligence.



Keep an accounting to record actions undertaken on behalf of the principal.



Statutory Short Form Power Of Attorney for Property 755 ILCS 45/Art. III

This form includes the following parts:

- Notice to the Individual Signing the Illinois Statutory Short Form Power of Attorney for Property,
- Illinois Statutory Short Form Power of Attorney for Property, and
- Notice to Agent

Statutory Short Form (2)

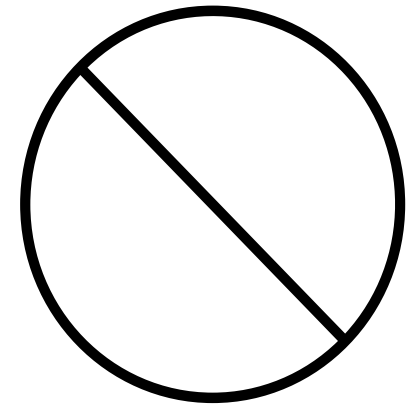
The minimum legal requirements for properly completing this form include:

- names of the principal and the agent(s)/attorneys-in-fact,
- list of powers being delegated,
- date of execution,
- signature by the principal before at least one witness, and
- notarization

Notice to Agent – Limitations under POAs (1)

An agent shall not:

- undertake any actions that exceed the delegated powers in the POA document.
- act in any manner that creates a conflict of interest with agent's fiduciary duties.
- continue to act once a POA is revoked or other circumstances in which authority is terminated.



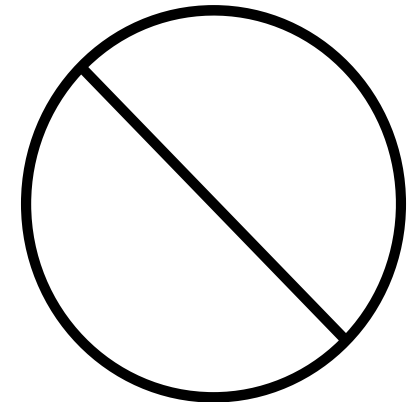
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Notice to Agent – Limitations under POAs (2)

An agent shall not:

- make gifts or borrow funds or other property unless authorized by the principal.
- commingle funds or other financial business with those of the principal.
- engage in self-dealing at the expense of the principal and the principal's estate.



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Recognition of Out-of-State POAs

A POA lawfully created and executed in another state or country is valid in Illinois.

See: 755 ILCS 45/2-10.6.



Abuse/Misuse of a POA Can Be a Crime!

Examples:

- Stealing money
- Pre-inheritance takings
- Creating joint accounts
- Charging excessive fees for services
- Changing estate plans

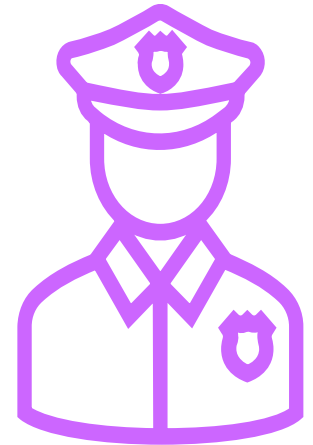
Related Crimes:

- Embezzlement
- Financial Exploitation
- Forgery
- Fraud
- Theft

A POA is not a license to steal — assets still belong to the principal.

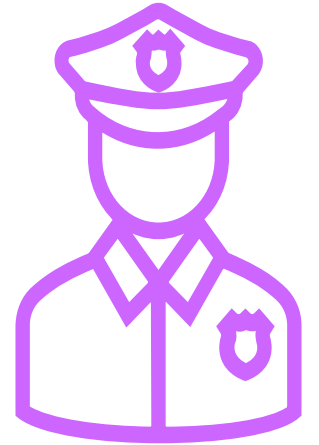
Law Enforcement: Working with Victims (1)

- Fully document the call because what at first seems like a civil matter may develop into a criminal case.
- Attempt to obtain a copy of the POA, review its terms, and check into the circumstances relating to its execution since there may be more than one document.
- Determine the personal/professional nature and duration of the relationship between the principal and the agent.



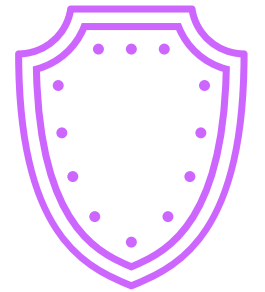
Law Enforcement: Working with Victims (2)

- Ask if the principal revoked the POA and provided any notice of this action to the former agent/attorney-in-fact and those who may have been involved in any dealings.
- Check for possible reports to Adult Protective Services.



Suggested Questions: Perpetrators (1)

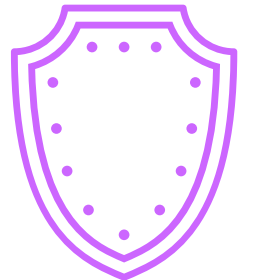
- Request the agent to produce an accounting or copies of receipts and records showing how the assets of the principal have been used.
- Check about the availability of financial resources to provide care if there are signs of neglect because family members sometimes try to avoid expenditures to preserve a potential inheritance.



Suggested Questions: Perpetrators (2)

- Consider whether there have been any recent changes relating to:
 - delivery of health care and supportive services;
 - banking and spending practices;
 - financial and legal documents, such as estate plans (trusts and wills) or payee designations for various public benefits and title to property (disability, Medicare/Medicaid, pension, Social Security); and
 - access to and visitation with the principal.

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Suggested Referral Resources for Victims

To find additional assistance for victims, consider contacting:

- Local APS Provider

<https://webapps.illinois.gov/AGE/ProviderProfileSearch>

- Senior Helpline: 1-800-252-8966

- Area Agencies on Aging that support legal services

https://www2.illinois.gov/aging/forprofessionals/Pages/aaa_list.aspx

- Eldercare Locator: 1-800-677-1116

Other Presentations

Segments on:

- Abuse, Neglect, and Exploitation of Older Adults and Adults with Disabilities
- Tips for Interviewing Older Adults and Adults with Disabilities: Overview and Rapport Building
- Medical Issues in Abuse/Neglect: Bruising and Medications, Pressure Ulcers, and Strangulation and Suffocation
- Capacity and Consent
- Abuse Investigation Case Study



For More Information

To report abuse, call:

1-866-800-1409, Adult Protective Services Hotline (24-Hour)

Additional Resources:

- <https://www2.illinois.gov/aging/ProtectionAdvocacy/Pages/abuse.aspx>
- <https://www2.illinois.gov/aging/Engage/Pages/default.aspx>



**Thank you for the work you do
to investigate allegations of
abuse to protect older adults
and adults with disabilities!**