

# Arc Guide to Power of Attorney

It is best for everyone to make their own decisions about their life and what they want or need. The Arc Minnesota encourages you to ask friends and family for input when you want help making decisions.

Sometimes you may need support making decisions because severe health conditions prevent you from speaking on your behalf. This is where guardianship or a Power of Attorney (PoA) can be a consideration. A PoA is an option if legal support is needed. A PoA is inexpensive and doesn't require going to court. It allows a person to act quickly.

## Important Definitions

- *Power of Attorney (PoA)*: A document used to create a legal relationship where you choose one (or more) persons to make decisions on your behalf.
- *Principal*: A person creating a PoA document.
- *Agent/Attorney-In-Fact*: The person you give permission to make decisions on your behalf. This does not make the person a lawyer or attorney.

## A Power of Attorney Can Be:

- Created as a part of a future plan or an estate plan
- Used as a General PoA
- Gives the agent the ability to act on your behalf for a broad range of decisions
- Used as a Limited PoA
  - This gives the agent power over only what the documents assigns.
- Financial powers
- Real Estate matters
- Medical decisions
- Durable OR Nondurable
- Durable means the PoA will continue even if a you become unable to make decisions on their own

- Nondurable means the PoA will end once you become unable to make decisions on your own
- Springing
  - A PoA can be set up to be active immediately, or be 'springing'. This means the PoA is only valid once you are unable to make your own decisions. This must be written in the document.
- Canceled at any time
  - The Principal can withdraw the PoA at any time. This returns full decision-making back to the Principal.
  - The PoA can be cancelled by destroying the document, or by signing it with an end date.
  - The PoA is no longer valid when you die.

## Choosing an Agent/Attorney-in-Fact

You can choose another person or a professional as your agent.

Make sure you choose someone you **trust**. This is important! Depending on how you write the PoA, this person will have a lot of decision-making power. Choose someone who you believe will make the decisions you would want. Make sure you continue this conversation throughout the years. Your opinion or thoughts may change.

## How Does Guardianship Fit In?

The Arc Minnesota recommends that you create a PoA as a part of your future plan.

If a person is a legal Guardian, they may create a PoA to give their guardianship powers to another person temporarily. This may be needed if a Guardian is not able to make decisions on behalf of the person under guardianship for an extended period of time. This could include leaving the country, going on vacation, experiencing a medical issue, or are unavailable for more than a few days/weeks.

If you need help making decisions, but a Guardianship is too restrictive, a PoA can be a great option. You may create a PoA to describe what kind of

decisions you want help making. This is a less restrictive option than guardianship, and it does not require a court visit.

## **Creating a Power of Attorney**

A [statutory Power of Attorney short form](#) is available on the Minnesota Attorney General's Office website. This form allows you to create your own PoA document, choose which powers you want to assign to an agent, and identify the agent. Before completing the form, you should have an in-depth conversation with your agent, to be sure you trust this person to act on your behalf.

For the PoA to be legal, you must sign form in front of a notary or have it signed by two witnesses.

The Arc Minnesota also believes there is value in having an attorney, or lawyer, look over the PoA. Especially if it covers any guardianship issues or if you have any questions on its contents.

### **Resources**

[MN Courts](#)

[LawHelpMN.org](#)

[MN Attorney General](#)

[Arc Guide to Supported Decision Making \(Guardianship\)](#)

**For more information or advocacy services, contact The Arc Minnesota at 833.450.1494 or visit [www.arcminnesota.org](http://www.arcminnesota.org).** (Please note: *This document is not legal advice. No information should replace the advice of an attorney.*)