



Brian's 7 tips for better POAs

#1. Watch the basics.

- No power of attorney will be effective unless it meets the basic legal requirements.
- Every Georgia POA must:
 - ◆ **Contain an Agent Acknowledgment.** The law requires a POA to contain a statement that the agent named in the POA has read it and agrees to follow certain standards of conduct. Use the exact language from the statute per the Georgia Uniform Power of Attorney Act.
 - ◆ **Be properly executed.** The signer of the POA must sign and date at the end of the POA. Any POA signed on or after January 1, 2017 must be notarized and it must be witnessed by one (1) other person over the age of 18, neither of whom is the agent.
 - ◆ **Name Successor Agents.** Although not mandatory, if the first named agent dies or is unable to serve, there should be at least one (preferably two) successor agents named who can act in the first agent's place. Without a successor, someone may need to seek guardianship on the signer's behalf if something happens to the first agent.

#2. Select the right agent.

- An agent under a power of attorney serves in a position of utmost trust. It is critical that the agent be responsible, honest, and trustworthy. Choose someone who has the time and willingness to help you in your time of need. Geographical proximity also helps.
- Do not feel obligated to select a spouse or oldest child if someone else is more capable and better suited to serve in this important role.
- Always confirm with the person you are naming as your agent that he or she is willing to be your agent and let him or her know that you have named him or her.

#3. Have the right gifting powers.

- In Georgia, your agent cannot make gifts during your lifetime without explicit authorization. If you want your agent to have no gifting powers, or only limited gifting powers, state that explicitly.
- In many cases, it is prudent to give unlimited gifting powers to an agent you trust. If so, you need to state that explicitly in your POA. That could enable the agent to make asset transfers that could qualify you for government benefits sooner while protecting assets, provide for a spouse or dependent child, fund special needs trusts for a loved one, and so on.
- Consult an experienced elder law attorney for guidance in this important decision.

#4. Authorize your agent to create trusts for others.

- Like gifting powers, the ability to create, fund, and terminate trusts for others can form an important part of an estate plan or asset protection plan. Many POAs contain an authorization only to create a trust for the benefit of the signer. Given the opportunities these days to use trusts to protect assets and benefit your loved ones, you should seriously consider giving this power to your agent as well.

#5. Give authority over digital assets.

- Nowadays, people have important information, accounts, photos, and other intangible assets on computers, tablet devices, and mobile phones. Be sure your POA allows your agent to have access to those devices, and to access online user names, passwords, and similar information.

#6. Store your POA properly.

- Some attorneys give their clients the original POAs, or some clients want to keep the originals themselves. In that case, you need to secure them more carefully; keep them in a secure location that is accessible to your agent in time of emergency. A file cabinet or fireproof box in your home office generally works better than a safe deposit box at a bank, which will be closed at night, on weekends, and on holidays.
- Wherever you keep your POA, make sure your agent knows where to find it, and can get to it at all times.

#7. Make it effective.

- Many people make their POA effective immediately and keep it where the agent can find it when needed on short notice. With a trusted agent, that should work fine.
- Other people want to make the POA effective only when they lose capacity to make decisions, which is sometimes called a “springing” POA. Such a POA usually provides that it will become effective when one or more doctors verify in writing that the POA signer cannot make decisions. Be careful not to impose overly burdensome requirements, such as requiring two physicians to sign affidavits; tracking down two physicians, two notaries, and drafting their statements in affidavit form can delay your agent’s ability to help you. Springing POAs are fine, but make the effectiveness process simple.

By following these tips, you should be well on your way to having a POA that will work the way you need it to when you need it.

The information above is intended to provide general information, and is not intended as a substitute for legal advice. These tips apply to Georgia residents. Practices may vary in other states. For legal advice in a particular situation, you should consult with an attorney.