



FITZWATER
L A W

6400 SE Lake Road, Suite 440 | Portland, OR 97222
503.786.8191

Estate Planning Group

[Melanie Marmion](#)

[Theresa Hollis](#)

[Wesley D. Fitzwater](#)

[Andrea Bachhuber](#)

[Emily Hogan](#)

[Emily Pringle](#)

What is a Power of Attorney?

A 'Power of Attorney' usually refers to a Durable Power of Attorney for Finances. This is a legal document in which you delegate to another (your 'agent' or 'attorney-in-fact') the authority to deal with your finances and assets. Usually, a Power of Attorney becomes effective when you sign it, although you may indicate that it is not to be used unless you ask your agent to use it, or unless you become incapacitated.

The Power of Attorney document describes the powers you are giving to your agent, and your agent does not have any authority to act on your behalf outside the scope of such powers. Sometimes a Power of Attorney only allows the agent to deal with a specific matter, such as the sale of a particular piece of real estate. This is known as a 'Limited Power of Attorney.' In contrast, a 'General Power of Attorney' gives your agent very broad authority to deal with your assets and finances.

Most standard forms of General Powers of Attorney do not include optional provisions, such as the right to make gifts on your behalf, that in certain appropriate situations might be very useful. For instance, if spouses gave each other a Power of Attorney that included provisions allowing assets to be transferred into just one of the spouse's names, and one spouse becomes ill and needs Medicaid to assist with his or her long-term care expenses, the healthier spouse could use the Power of Attorney to transfer assets into the healthier spouse's name alone. This would help to preserve assets for the healthy spouse, while allowing the ill spouse to more easily plan for Medicaid. Or, if an individual has a taxable estate and has been making annual gifts in order to reduce the potential for estate taxes upon his or her death, the individual's agent could continue to make such annual gifts on his or her behalf if such gifting power were specifically granted in the Power of Attorney. In these examples, having appropriate language in your Power of Attorney could potentially save you thousands of dollars. We can help you decide which optional provisions should be included in your Power of Attorney.

In Oregon, a Power of Attorney for Finances is 'durable' unless specifically stated otherwise in the document. This means that the Power of Attorney remains valid even if you become incompetent. However, a Power of Attorney is only valid during your lifetime. When you die, the Power of Attorney dies with you.

For further information on managing finances and assets during incapacity, please see the section on Planning for Incapacity.

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