

Understanding the Florida Durable Power of Attorney

An Educational Overview of the Florida Power of Attorney Act,
with Links to the Florida Statutes and Federal Law

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Laws change. The links in this report point to official or primary sources. Always confirm you are reading the most recent version.

1. What a Durable Power of Attorney Is

A **power of attorney** is a written instrument in which one person (the **principal**) gives another (the **agent**, formerly called attorney-in-fact) authority to act on the principal's behalf in financial, property, and legal matters. In Florida, powers of attorney are governed by the **Florida Power of Attorney Act**, Part II of [Chapter 709, Florida Statutes](#), which took effect October 1, 2011, and substantially changed the rules.

A power of attorney is **durable** when it remains effective even if the principal later becomes incapacitated. Under [§ 709.2104, Fla. Stat.](#), durability must be stated expressly — the document must say, in substance, that it is not terminated by the principal's subsequent incapacity. A power of attorney without that language ends the moment the principal loses capacity, which is usually exactly when it is needed. Nearly every estate-planning power of attorney in Florida is therefore durable.

The agent's authority covers **financial and legal affairs only**. Decisions about medical treatment are made under a Designation of Health Care Surrogate governed by [Chapter 765](#), a separate document. The two are routinely signed together and often name the same person, but they are legally distinct.

2. Why People Sign One — Avoiding Guardianship

If an adult becomes unable to manage finances and no one has authority to act, family members generally must petition the circuit court to appoint a **guardian** under [Chapter 744, Fla. Stat.](#) Guardianship involves a court-appointed examining committee, a hearing to adjudicate incapacity, attorney representation, a bond, annual accountings, and ongoing court supervision — and the person's civil rights are formally removed. Florida law requires courts to consider less restrictive alternatives first, and a valid durable power of attorney is the primary one ([§ 744.3115](#) and [§ 744.331\(6\)\(b\)](#)). A properly drafted durable power of attorney lets a trusted person pay bills, manage accounts, deal with insurers, handle real estate, and file tax returns without a court ever being involved.

3. Requirements to Be Valid in Florida

Under [§ 709.2105, Fla. Stat.](#), a Florida power of attorney must be:

- **Signed by the principal** (or by another adult at the principal's direction, in the principal's presence);
- Signed in the presence of **two subscribing witnesses**; and
- **Acknowledged before a notary public**.

All three are required. A power of attorney with witnesses but no notary, or with a notary but only one witness, is invalid. The agent must be an adult (18 or older) or a financial institution with Florida trust powers.

Springing powers are no longer permitted

Before 2011, Floridians could sign a “springing” power of attorney that took effect only upon a future incapacity. For documents executed on or after October 1, 2011, a **springing power of attorney is ineffective**; the only exception is for a deploying servicemember's power contingent on deployment. See [§ 709.2108, Fla. Stat.](#) A Florida durable power of attorney is therefore **effective the moment it is signed**. The practical protection against misuse is choosing the right agent and controlling who holds the document, not a triggering event.

Copies and documents from other states

A photocopy or electronically transmitted copy of a properly executed power of attorney has the **same effect as the original** ([§ 709.2106\(5\)](#)). A power of attorney validly executed in another state is honored in Florida, though a third party may ask for an opinion of counsel confirming its validity ([§ 709.2106\(3\)](#)). Powers of attorney used to **convey or encumber real estate** must be recorded in the official records of the county where the land lies, along with the deed or mortgage.

4. What the Agent May Do — Authority Must Be Spelled Out

Florida departs from many states here. Under [§ 709.2201, Fla. Stat.](#), an agent may exercise **only the authority specifically granted** in the document. A general statement such as “my agent may do anything I could do” grants **nothing**; each category of authority — real property, banking, investments, insurance, retirement accounts, taxes, claims and litigation, government benefits, personal and family maintenance, digital assets, and so on — must be described. Well-drafted Florida powers of attorney are long for this reason. The statute allows banking and investment powers to be incorporated by reference to [§ 709.2208](#), which lists them in detail.

“Superpowers” that must be separately initialed

Certain powers are so consequential that [§ 709.2202, Fla. Stat.](#), requires the principal to **sign or initial next to each one** individually, in addition to signing the document. Without that separate mark, the agent does not have the power. They are the authority to:

- Create an inter vivos (living) trust;
- Amend, modify, revoke, or terminate a trust the principal created (and only if the trust instrument allows it);
- **Make gifts** — limited to the federal annual gift-tax exclusion amount per recipient unless the document expressly authorizes more;
- Create or change rights of survivorship on accounts or property;
- **Create or change a beneficiary designation** (life insurance, retirement accounts, annuities, payable-on-death accounts);
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; and
- Disclaim property or a power of appointment.

These powers are where the risk of financial abuse is greatest. A principal who wants the agent to be able to do Medicaid planning, continue a lifetime gifting program, or fund a trust must grant them; a principal who does not want the agent rearranging the estate plan should leave them un-initialed.

What an agent can never do

Regardless of the document, an agent may not **make or revoke the principal's will**, vote in a public election, exercise personal services the principal contracted to perform, make an affidavit as to the principal's personal knowledge, or exercise powers the principal holds as a trustee or fiduciary for someone else ([§ 709.2201\(3\)](#)). Health care decisions are outside the document entirely (Section 1).

5. The Agent's Duties

An agent is a **fiduciary**. Under [§ 709.2114, Fla. Stat.](#), the agent must act only within the scope of authority granted, act in good faith, act **loyally for the sole benefit of the principal**, avoid conflicts of interest, preserve the principal's estate plan to the extent known, **keep records** of all receipts, disbursements, and transactions, keep the principal's property separate from the agent's own, and cooperate with any health care surrogate. The agent may not delegate authority to someone else except as the document allows. An agent who breaches these duties is personally liable to restore the loss ([§ 709.2117](#)), and the principal, a guardian, a health care surrogate, a family member, or any interested person may petition the court for review of the agent's conduct ([§ 709.2116](#)).

Co-agents and successor agents

A principal may name **co-agents**, who may act independently unless the document requires them to act jointly ([§ 709.2111](#)), and **successor agents** who take over if the first agent dies, resigns, or becomes incapacitated ([§ 709.2113](#)). Naming at least one successor is standard practice; naming co-agents who must act jointly can make routine tasks difficult.

Compensation

A “qualified agent” — a family member, a Florida-licensed attorney or CPA, or a financial institution — may receive reasonable compensation; other agents may be reimbursed for expenses but not paid unless the document provides otherwise ([§ 709.2112](#)).

6. Third Parties: Banks Must Accept or Explain Why Not

A frequent frustration with powers of attorney is a bank or brokerage that refuses to honor one. Florida addresses this directly. Under [§ 709.2119](#), a third party who accepts a power of attorney in good faith is protected, and may request the agent's **affidavit** that the power is in effect and the principal is alive and has not revoked it, an English translation, or an opinion of counsel. Under [§ 709.2120, Fla. Stat.](#), a third party presented with a power of attorney must **either accept it or reject it within a reasonable time** — for a financial institution, **four business days** — and if it rejects, must **state the reason in writing**. A third party may not refuse simply because the document is not on its own preferred form. A third party that unreasonably rejects a valid power of attorney may be ordered by a court to accept it and to pay the agent's attorney's fees and costs.

Federal agencies are the exception

- **Social Security** does not recognize powers of attorney for benefit management. An agent who needs to handle a principal's Social Security or SSI payments must apply to be appointed **representative payee**. See ssa.gov/payee.
- **The IRS** requires its own **Form 2848**, Power of Attorney and Declaration of Representative, for tax matters, though a durable power of attorney with tax authority may be attached to it. See [IRS Form 2848](#).
- **The Department of Veterans Affairs** uses its own fiduciary program for benefit payments ([38 C.F.R. Part 13](#)).

7. How a Power of Attorney Ends

Under [§ 709.2109, Fla. Stat.](#), a power of attorney terminates when:

- The **principal dies** — the agent's authority ends immediately, and the personal representative or successor trustee takes over. An agent who continues to act without knowledge of the death is protected, but the authority itself is gone;
- The principal becomes incapacitated, **if** the power is not durable;
- The principal **revokes** it (Section 8);
- The document provides that it terminates on a date or event;
- The purpose is accomplished; or
- The agent's authority terminates and no successor is named.

Two Florida-specific rules deserve attention. If the agent is the principal's **spouse**, the agent's authority ends automatically when either files for **dissolution or annulment** of the marriage, unless the document says otherwise. And if a petition to determine the principal's incapacity or to appoint a **guardian** is filed, the power of attorney is **suspended** until the petition is dismissed or the court rules — the agent may not act during that time except as the court allows ([§ 709.2109\(3\)](#)).

8. Revoking or Changing a Power of Attorney

A principal with capacity may revoke a power of attorney at any time by a **subsequent written instrument**; no particular form is required, though a notarized revocation is good practice. Signing a new power of attorney does **not** automatically revoke the old one unless the new document says so. See [§ 709.2110, Fla. Stat.](#) To be effective against third parties, the principal should **notify the former agent in writing** and notify every institution that received a copy. If a power of attorney was recorded in the official records (for real estate), the revocation should be recorded as well. A power of attorney cannot be “amended” by marking it up; changes are made by signing a new document with full formalities.

9. Choosing an Agent — Points Frequently Discussed

- **Trust and competence over seniority.** The agent will have immediate, unsupervised access to everything granted. Financial reliability and willingness to keep records matter more than birth order.
- **Proximity and availability.** An agent who lives nearby can handle a bank visit or a real estate closing; a distant agent may need to rely on copies and remote notarization by third parties.
- **Name a successor.** A single agent who dies or becomes ill leaves the principal with nothing.
- **Decide on the superpowers deliberately** (Section 4). Granting gift and beneficiary-change authority to a child who is also a beneficiary creates an obvious conflict; sometimes it is nonetheless the right choice (for example, to permit Medicaid planning). The document can require accountings to other family members.
- **Preneed guardian.** A principal may also sign a **declaration of preneed guardian** under [§ 744.3045](#), naming who should be appointed guardian if one is ever required despite the power of attorney.
- **Where to keep it.** Because copies are as effective as the original and the document is effective immediately, many principals keep the signed original and give the agent a copy or tell the agent

where it is, rather than handing it over at signing. Others give it to the agent at once so it is available in an emergency. Both are legitimate choices.

- **Review after life events** — marriage, divorce, a named agent's death or move, a change in the principal's assets, or a move to another state.

10. Do Your Own Research — Primary Sources

Each link below goes to an official or primary source. If you are reading a printed copy, the full web address is shown.

[Chapter 709, Fla. Stat. — Powers of Attorney and Similar Instruments \(Part II: Florida Power of Attorney Act\)](https://www.flsenate.gov/Laws/Statutes/2025/Chapter709)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter709>

[§ 709.2104 — Durable power of attorney](https://www.flsenate.gov/Laws/Statutes/2025/709.2104)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2104>

[§ 709.2105 — Qualifications of agent; execution of power of attorney](https://www.flsenate.gov/Laws/Statutes/2025/709.2105)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2105>

[§ 709.2106 — Validity of power of attorney; copies; other states](https://www.flsenate.gov/Laws/Statutes/2025/709.2106)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2106>

[§ 709.2108 — When power of attorney is effective \(no springing powers\)](https://www.flsenate.gov/Laws/Statutes/2025/709.2108)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2108>

[§ 709.2109 — Termination or suspension of power of attorney or agent's authority](https://www.flsenate.gov/Laws/Statutes/2025/709.2109)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2109>

[§ 709.2110 — Revocation of power of attorney](https://www.flsenate.gov/Laws/Statutes/2025/709.2110)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2110>

[§ 709.2111 — Co-agents](https://www.flsenate.gov/Laws/Statutes/2025/709.2111)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2111>

[§ 709.2112 — Reimbursement and compensation of agent](https://www.flsenate.gov/Laws/Statutes/2025/709.2112)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2112>

[§ 709.2113 — Successor agents](https://www.flsenate.gov/Laws/Statutes/2025/709.2113)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2113>

[§ 709.2114 — Agent's duties](https://www.flsenate.gov/Laws/Statutes/2025/709.2114)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2114>

[§ 709.2116 — Judicial relief; conflicts of interest](https://www.flsenate.gov/Laws/Statutes/2025/709.2116)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2116>

[§ 709.2117 — Agent's liability](https://www.flsenate.gov/Laws/Statutes/2025/709.2117)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2117>

[§ 709.2119 — Acceptance of and reliance upon power of attorney](https://www.flsenate.gov/Laws/Statutes/2025/709.2119)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2119>

[§ 709.2120 — Liability for refusal to accept power of attorney](https://www.flsenate.gov/Laws/Statutes/2025/709.2120)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2120>

[§ 709.2201 — Authority of agent \(must be specifically granted\)](https://www.flsenate.gov/Laws/Statutes/2025/709.2201)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2201>

[§ 709.2202 — Authority that requires separate signed enumeration \(“superpowers”\)](#)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2202>

[§ 709.2208 — Banks and other financial institutions; investments](#)

<https://www.flsenate.gov/Laws/Statutes/2025/709.2208>

[Chapter 744, Fla. Stat. — Guardianship](#)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter744>

[§ 744.3045 — Preneed guardian](#)

<https://www.flsenate.gov/Laws/Statutes/2025/744.3045>

[§ 744.3115 — Advance directives; guardianship](#)

<https://www.flsenate.gov/Laws/Statutes/2025/744.3115>

[§ 744.331 — Procedures to determine incapacity \(less restrictive alternatives\)](#)

<https://www.flsenate.gov/Laws/Statutes/2025/744.331>

[Chapter 765, Fla. Stat. — Health Care Advance Directives \(separate document for medical decisions\)](#)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter765>

[Social Security Administration — Representative Payee Program](#)

<https://www.ssa.gov/payee/>

[IRS Form 2848 — Power of Attorney and Declaration of Representative](#)

<https://www.irs.gov/forms-pubs/about-form-2848>

[38 C.F.R. Part 13 — VA Fiduciary Activities](#)

<https://www.law.cornell.edu/cfr/text/38/part-13>

[26 U.S.C. § 2503\(b\) — Federal annual gift-tax exclusion \(limit on agent gifting\)](#)

<https://www.law.cornell.edu/uscode/text/26/2503>

[Rules Regulating The Florida Bar, Chapter 10 — Unlicensed practice of law; nonlawyer form assistance \(Rules 10-2.1 and 10-2.2\)](#)

<https://www.floridabar.org/rules/rrtfb/>

[In re Amendments to Fla. Family Law Rules of Procedure and Rule Regulating The Florida Bar 10-2.2, No. SC2026-1262 \(Fla. Sept. 10, 2026\) — nonlawyer form-assistance disclosure](#)

https://flcourts-media.flcourts.gov/content/download/2495059/opinion/Opinion_SC2026-1262.pdf

11. Required Disclosures

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Respectfully prepared for your education,

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