
Evaluating Your Estate Plan: Powers of Attorney and Other Forms of Substitute Decision Making

An important aspect of lifetime transitions and estate planning is consideration of the times in life where it is necessary for someone to step into the shoes of another and make decisions on that individual's behalf. We never know – at any age – when we may be unable to speak and act for ourselves. With proper planning, an assortment of tools can be used for what is sometimes referred to as *substitute decision-making*. The concept of substitute decision-making generally means the provision of decision-making services by an agent (or attorney-in-fact under a power of attorney); a guardian, conservator, representative payee or a personal representative.

In Iowa, the concept of substitute decision-making is addressed in various sections of the Iowa code. In particular, Iowa Code chapter 633B contains the Iowa Uniform Power of Attorney Act (UPOAA). This Iowa UPOAA contains a comprehensive legal framework and guidance for how to create and use powers of attorney (POA). The law helps individuals and families plan for potential incapacity and avoid the difficulty and expense of going to court to establish a court-appointed conservatorship or guardianship in the event of legal incapacity.

General Power of Attorney (POA) Documents

A **power of attorney** (POA) is a legal document by which an individual (referred to as the **principal**) grants authority to another person (known as the **agent**) to manage affairs on behalf of the principal. Under prior law, the agent was referred to as an attorney-in-fact – but under the UPOAA the term agent is used. POAs are intended to grant authority for an agent to act when the principal becomes incompetent or lacks capacity. The Iowa code generally defines **incapacity** as the inability of an individual to manage property or business affairs because the individual's decision-

making capacity is so impaired that the individual is unable to make, communicate, or carry out important decisions concerning the individual's financial affairs. See Iowa Code 633B.102(7). The principal must have legal capacity at the time a POA is executed; and likewise, the POA may be revoked as long as the principal has legal capacity to do so.

The Iowa Code contains default provisions that a POA is durable and becomes effective immediately upon incapacity. The reason for this rule is that a principal who becomes incapacitated would usually prefer to have the agent designated in the POA make financial decisions for the principal, rather than a court-appointed conservator. For many people, the chief goal of executing a POA is so that a substitute decision-making plan is in place prior to the event of incapacity. However, the principal may choose to override the default rules through express language in the POA that creates a “springing” POA, contingent on a future date or an event such as the principal's incapacity. Some people prefer springing powers in the hope that they will never need a substitute decision maker.

A POA may be plenary, meaning it grants complete and unqualified authority to the agent; however, most POAs are express, which means that the POA grants specific, limited powers to the agent.

The Iowa code provides that the principal may designate one agents, or coagents in a POA. While the appointment of coagents is permitted, this is often not a good practice. Some parents are under a faulty impression that if they have more than one adult child, the parent should appoint them all to act as a group on behalf of an incapacitated parent. This concept is worth reconsideration. Where coagents are appointed, the default rule is that powers are exercised by majority rule; and if agreement cannot be reached, an agent

may petition a court to resolve conflicts or a majority of coagents may agree to some form of alternative dispute resolution. There are many potential problems associated with coagents such as difficulties in communication and conflicts between agents. It generally makes more sense to name one original agent and then one or more successor agents. The principal may also give the original agent authority to delegate the original agent's authority during periods when the agent is temporarily unavailable or unable to serve.

As indicated by the summary above, a POA is not a one-size-fits-all document. There are multiple considerations for an individual to contemplate when drafting and executing a POA. Some individuals would seek to find a do-it-yourself form for a POA. This is not advisable. Rather, it is prudent to consult with an attorney who can explain the options, and assist in advising what is best based on the needs and desires of the individual – as well as that person's partner or family members. Discussion of goals and family communication are vital to arriving at a substitute decision-making plan that will achieve good results in the long term.

[Iowa Code chapter 633B](http://www.legis.iowa.gov/docs/code/633B.pdf), www.legis.iowa.gov/docs/code/633B.pdf, contains specific language for a statutory POA document that complies with the provisions of the code. At Iowa Code section 633B.301, the language is found which provides that, "A document substantially in the following form may be used to create a statutory power of attorney that has the meaning and effect" as prescribed by Iowa law. Again, this information is provided for the reader's education and is not intended to substitute for advice from an attorney. The code itself advises that, "If you have questions about this power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form."

The language contained within the Iowa code lists a broad range of specific powers that the principal may grant to the agent. The principal

may grant general authority over all the subjects, or the principal may choose to grant specific authority over selected subject areas. The subjects tend to focus on financial and business decisions. Examples include selling property, paying debts, maintaining bank and other financial accounts, paying taxes, voting on corporate matters, and making gifts or donations. As noted above, the default option is that the POA becomes effective immediately upon signature and acknowledgment unless the principal states otherwise in a special instructions section. Those who wish to execute a general POA should consult with an attorney to prepare and properly execute a document that meets the legal requirements in Iowa, and covers specific needs and desires.

Substitute Decision-Making Documents Related to Health Care

Pursuant to Iowa Code, the Iowa State Bar Association has prepared several forms which can be used for substitute decision-making purposes related to health care decisions. These forms will be identified and discussed here. It is vital to not rely on forms alone for legal advice and decisions. Such forms frequently do not fit an individual's needs and wishes in the event of incompetency or incapacity to manage one's own affairs. Individuals, couples and families should consider and discuss specific needs with one another and with legal professionals.

A Declaration Relating to Use of Life-Sustaining Procedures (also known as a Living Will) (Form 122) is not a POA. However, the information contained in this form can be used by a family or by an agent (or attorney-in-fact) under a health care POA to understand the principal's wishes in the event the principal is unable to express those wishes. This form is provided online through the [Iowa State Bar Association](http://www.iowafindalawyer.com/guide/57b36776e4a99453b4000018/Living+Wills), www.iowafindalawyer.com/guide/57b36776e4a99453b4000018/Living+Wills. This Living Will document should be shared with family and provided to attending physicians or other health care providers.

Both a **Durable Power of Attorney for Health Care Decisions** (also known as a Medical Power of Attorney) (Form 121) and a **Combined Living Will with Medical Power of Attorney** (Form 123) can be found through the [Iowa State Bar Association](http://www.iowafindalawyer.com/guide/57b37bb7e4a99453b700008c/Power+of+Attorney), www.iowafindalawyer.com/guide/57b37bb7e4a99453b700008c/Power+of+Attorney. The purpose of the Durable Power of Attorney for Health Care Decisions is to designate another person (an agent) to make health care decisions for a person when that individual is unable to make these decisions or to speak for oneself. The combination document (health care POA plus Living Will) is provided for the convenience of those who wish to execute both documents.

Do Not Resuscitate (DNR) orders may be issued in two settings – either in-hospital, or out-of-hospital. An in-hospital DNR directs health care providers in the hospital setting to not attempt resuscitation of a terminally-ill individual. An out-of-hospital DNR allows emergency care providers and others in settings outside of a hospital to rely upon a physician-issued DNR order for an adult individual in a terminal condition. An attending physician must certify that the patient is over age 18, has a terminal diagnosis and that after consulting with the patient, it is the patient's wish (and the physician's order) that health care providers, including qualified emergency medical services (EMS) personnel shall withhold or withdraw certain life-sustaining procedures. Any person considering a DNR should consult with their physicians, legal advisers and communicate with family members.

Iowa Physician Orders for Scope of Treatment (IPOST)

In 2012, the Iowa legislature enacted law which is now contained in Iowa Code chapter 144D. Advocates sought to promote coordinated, advanced healthcare planning and provide a streamlined and easily-accessible way for Iowans to communicate individual patient care choices

across the healthcare continuum. The result was a double-sided, one-page document that allows a person to communicate preferences for key life-sustaining treatments. These may include the general scope of treatment, resuscitation, artificial nutrition and more. IPOST may be used by any individual, including those who are frail elderly, have chronic, critical medical conditions or terminal illness. The IPOST form is not intended to take the place of other documents previously summarized, such as health care directives and medical POAs. However, the IPOST is a tool to consider if other planning has not taken place, or to supplement other plans. Use of the IPOST form should be discussed with legal and healthcare providers. The IPOST form can be found on the [Iowa Department of Public Health website](https://idph.iowa.gov/ipost/form), <https://idph.iowa.gov/ipost/form>.

Declaration of Designee for Final Disposition

At the time of death, some families may not agree on the arrangements for the deceased person's body, or may have differing opinions on whether or what type of funeral or other ceremony should take place. In 2008, the Iowa Legislature enacted law which is now contained in Iowa Code chapter 144C – the Final Disposition Act. This law allows a living person with legal capacity to make a declaration appointing a person (designee) who “shall have the sole responsibility and discretion for making decisions concerning the final disposition of the declarant's remains and the ceremonies planned after the declarant's death.” This declaration may also name one or more alternate designees. Based on this law, the Iowa State Bar Association has designed a form to be used for this purpose – the Declaration of Designee for Final Disposition – Form 363. This form is not available online, but it is readily available from an attorney or an Iowa funeral director. It is extremely important to note that this is not a standalone form, rather, it must be attached to an existing durable power of attorney for health care under Iowa Code Chapter 144B.

Agency POAs and Authorizations

Selected government agencies frequently provide POA or similar authorization forms that may allow another person to make decisions, obtain information and sign documents on their behalf. Several examples follow:

Iowa Department of Revenue Power of Attorney

The Iowa Department of Revenue requires that its Form 2848 be on file before the department will discuss confidential tax information with any person other than the taxpayer. This POA is available on the [department's website](https://tax.iowa.gov/forms), <https://tax.iowa.gov/forms>, or from a tax professional or attorney. The Department requires this POA when the taxpayer wishes to authorize another person to receive copies of notices, documents or checks as well as making other requests from the department or to represent a taxpayer in meetings, hearings or appeals before the department.

Internal Revenue Service (IRS) Power of Attorney and Declaration of Representative

The IRS Form 2848 allows an individual to authorize another person to receive and inspect confidential tax information and to perform acts that the taxpayer could perform with respect to the tax matters before the IRS. Examples include authorization for the representative to sign tax returns; or agreements, consents, or similar documents with the IRS. The [IRS Form 2848](https://www.irs.gov/pub/irs-pdf/f2848.pdf) is available on the IRS website, www.irs.gov/pub/irs-pdf/f2848.pdf.

Social Security Administration

There are two circumstances where an individual may wish to appoint someone to represent their interests with the Social Security Administration (SSA). First, an individual may wish to appoint someone to represent them and communicate their interests with the SSA about a claim or a benefit.

[The SSA provides a form](https://www.ssa.gov/forms/ssa-1696.pdf) (SSA1696, www.ssa.gov/forms/ssa-1696.pdf) for this purpose. The second situation is where an SSA beneficiary is incapable of managing their Social Security or Supplemental Security Income (SSI) payments. In these situations, a Representative Payee (RP)

may be appointed. The RP may be an individual, agency, organization or other institution appointed by the SSA to receive and manage funds on behalf of the beneficiary. The RP is responsible to meet essential needs of the beneficiary for food, shelter, clothing, medical care and other basic needs. After those needs are met, the RP is responsible to manage and conserve the beneficiary's Social Security funds in terms of meeting past debts and planning for future needs. Appointment of a Representative Payee is a less restrictive alternative to a conservatorship. More information about the Representative Payee system can be found on the [SSA website](https://ssa.gov/payee), ssa.gov/payee.

Medicare

It is not uncommon for people who are on Medicare (generally over the age of 65) to need assistance in dealing with claims and related questions, and these matters are generally directed to the Center for Medicare and Medicaid Services (CMS). A [form is available on the Medicare.gov website](https://www.medicare.gov/MedicareOnlineForms/PublicForms/CMS10106.pdf), www.medicare.gov/MedicareOnlineForms/PublicForms/CMS10106.pdf, to authorize another individual to represent the beneficiary, and allows CMS to disclose information. The authorization may be for a particular claim, or for all information over an indefinite period of time. An individual who is already appointed as an agent under a POA is requested to submit a copy of the POA documents along with this form.

USDA Farm Service Agency (FSA) Power of Attorney

As farmland is being transferred to the next generation – either by ownership or management – it is increasingly common that owners may be spread out across the country. In many cases, tracts of land now have multiple owners, and some may find it difficult to visit a county office personally because of work schedules, distance, health, or other reasons. The USDA Farm Service Agency (FSA) has a POA form that enables a landowner to designate another person to conduct business and sign documents at the FSA office. The FSA specifically prefers this document over

other POAs. The FSA-211 provides options for specific powers and is valid for certain programs and actions offered by the FSA as well as the Commodity Credit Corporation (CCC) and the Federal Crop Insurance Corporation (FCIC). The landowner must have their signature witnessed by an FSA employee or notarized by a Notary Public. The form is available at any FSA office or the [FSA website](https://forms.sc.egov.usda.gov/efcommon/eFileServices/eFormsAdmin/FSA0211-0211A_050726V01.pdf), https://forms.sc.egov.usda.gov/efcommon/eFileServices/eFormsAdmin/FSA0211-0211A_050726V01.pdf.

Guardianships and Conservatorships

The Iowa Legislature passed significant revisions to the law governing guardianships and conservatorships which became effective in January 2020. Anyone considering such procedures should consult with an attorney familiar with the new law. Guardianships and conservatorships are fairly complicated, expensive processes that generally can be avoided with planning. Persons who have made arrangements and executed POA documents have already thought about who they would like to have make decisions for them if they are unable to do so. When these plans are in place, the court procedures to establish and supervise a guardianship or conservatorship may be unnecessary. When guardianship or conservatorship must be established, the law requires that a petition be filed in the district court in the county of residence of the person believed to be incompetent. Specific standards must be proven for a court to establish a guardianship or conservatorship – that the person’s own decision-making capacity is so impaired that the person is unable to care for his or her own personal safety or to provide for necessities. The person must be at actual, serious risk of physical injury or illness. The court will not establish a guardianship or conservatorship just because a person makes poor decisions. If legal incompetency is shown, the court will establish the least restrictive guardianship or conservatorship possible in the

spirit that people should be free to make their own decisions, even if other people disagree with those decisions. In some circumstances, guardianship and conservatorship proceedings may be combined into one court action, and one person may be appointed to be both guardian and conservator.

Conservatorship

A conservatorship is a court-appointed and supervised system wherein a person(s) is designated to have custody and control of the property of an incompetent person (referred to as a “ward”). In a full or general conservatorship, the conservator is given authority by the court to make all financial decisions on behalf of the ward, except for certain decisions that require prior court approval. In some cases, a limited conservatorship may be established for specific duties, leaving other decisions in the hands of the ward. Generally, a conservator’s duties focus on financial matters such as reviewing and maintaining records, making payments (such as for healthcare, housing and other basic needs) and executing documents on behalf of the ward. A conservator is considered to be an officer of the court and must file inventories and annual reports with the district court. A court order is required to revoke or amend a conservatorship.

Guardianship

A guardianship is another court-appointed and supervised process wherein a person(s) is designated to have custody of an incompetent person. While a conservatorship focuses on financial matters, a guardianship focuses on personal decisions. Examples include where the ward lives, meals, healthcare decisions, recreation and other personal services as needed. Similar to a conservatorship, a guardianship may be general and give the guardian authority to make all decisions for the ward; while a limited guardianship specifies particular areas of decision-making and leaves other decisions to the ward. The guardian is considered an officer of the court and must file annual reports with the district court.

Additional Resources Related to Substitute Decision-Making in Iowa

[Estate Planning Terms](#) includes definitions of terms related to substitute decision-making, AgDM File C4-50, www.extension.iastate.edu/agdm/wholefarm/html/c4-50.html.

[Estate Planning Attorneys: Finding One Who Can Work for You](#) discusses the methodology for establishing a relationship with a local attorney, AgDM File C4-61, www.extension.iastate.edu/agdm/wholefarm/html/c4-61.html.

[Guardianship and Conservatorship in Iowa from Iowa Legal Aid](#) (2020), www.iowalegalaid.org/files/A3ED30CF-AFFE-7431-9310-0D521E4312AF/attachments/8486CD3F-AE8C-41DB-A781-8D6694B78268/01-what-is-guardianship-1-2020.pdf

[Guardianship and Conservatorship in Iowa from the Iowa Developmental Disabilities Council](#) (2020), <https://iowaddcouncil.org/documents/cms/docs/Guardianship-and-Conservatorship-in-Iowa-2020.pdf>

[Iowa Guardianship and Conservatorship Handbook](#), Iowa State Bar Association (2016), www.iowafindalawyer.com/guide/57b35a03e4a9941fa1000209/Guardianship+and+Conservatorship+Handbook

[The Gift of Peace of Mind -- Guide to Writing Advance Directives in Iowa](#), the Drake University Center for Health Issues (2000), <http://publications.iowa.gov/3378/1/GiftofPeaceofMind.pdf>

[Substitute Decision-Making Laws, Publications and Resources](#), University of Iowa National Health Law Policy and Resource Center, <https://nhlp.law.uiowa.edu/substitute-decision-making-laws-publications-and-resources>

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