



# FREQUENTLY ASKED QUESTIONS

## Delaware Powers of Attorney (POAs)

### 1. What is Power of Attorney or POA?

*Answer: a Power of Attorney or POA is created when a person (called the “principal”) voluntarily authorizes, in writing, another individual (called an “agent”) to take action on the principal’s behalf. POAs may be revoked in writing at any time by the principal, provided the person is able to understand what they are doing at that time (must be witnessed and notarized). You should make sure that whoever you choose to serve as your agent through a POA is someone you trust and who knows and will respect your wishes. It is very important that the POA meet all statutory requirements, including having an agent certification, notarization, and witnesses.*

### 2. Can the person appointed to make decisions in a POA (the agent) forfeit their right to do so if he no longer wants that responsibility?

*Answer: POAs do not impose a duty on the agent to exercise the powers granted via the POA. However, the agent is required to exercise due care to act in the best interest of the principal and according to the POA when the agent is exercising powers granted in the POA. So no, the agent is not compelled to continue to act via the POA. BUT, if he does act under the POA, he must do so with due care, in the best interest of the principal, and according to the language of the POA.*

### 3. What happens if the agent does decide he no longer wants to serve as the principal’s agent under the POA?

*Answer: the POA document may designate someone else to act if the first agent no longer wants to act on behalf of the principal. With POAs where there is a first agent and a second agent (also called a “successor agent”), the next agent can take over. If there is no successor agent and the principal is competent to appoint someone else, a new POA can be drafted. Also, a competent principal can always revoke a POA in writing (must be witnessed and notarized).*

### 4. What if the principal in a POA is no longer capable of making her own decisions?

*Answer: it depends on whether the POA is a durable POA or not. If it is a durable POA it will clearly state so in the document and generally in the title of the POA itself. If the POA is a durable power of attorney that document will survive the principal’s incapacity and the agent can continue to act under the POA, provided they act with due care, in the best interest of principal, and according to the POA. It is important to note that if the power of attorney is not designated as durable, it does not survive the principal’s incapacity. Meaning, if the POA is not a durable POA and the patient is now incompetent, the POA is no longer valid.*

### 5. What is an Advanced Health Care Directive (AHCD) or “Power of attorney for health care?”

*Answer: AHCDs are documents that are created so that an individual can authorize another person to make health care decisions on the individual’s behalf, if the individual loses the ability to make those decisions in the future. In order for an AHCD to be effective, the person’s physician must declare that the person is not able to make or consent to healthcare decisions.*

### 6. What if there is no POA, no AHCD, and decisions need to be made after a person is no longer competent?

*Answer: if the decisions that need to be handled are healthcare decisions, there is a process called healthcare surrogacy where a patient, while competent, can designate someone to act as their surrogate, or, if they are not competent, their doctor can designate a willing person (typically a relative) according to a statutory process. If the patient needs help with financial or legal matters and is not competent to appoint someone to help them, then guardianship is a possibility.*

***This handout is not a substitute for legal advice and is meant for informational purposes only.***