Essentials to a Power of Attorney

Utah Legal Services

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LEGAL SERVICES CORPORATION

ESTATE PLANNING



WHY DO I NEED AN ESTATE PLAN: To protect your property, assets and selecting someone to make decisions for you should you become unable to make decisions on your own.



ULS helps with 3 basic documents to address these issues:

WILL AND TESTAMENT

POWER OF ATTORNEY (POA)

HEALTHCARE DIRECTIVE/ADVANCE DIRECTIVE

Breaking Down Legalese: Terms to Know

- **Principal:** a person who appoints another person (the agent) to exercise authority to act on their behalf in legal and financial matters.
- **Agent:** a person appointed and granted authority to act for a principal.
- **Beneficiary:** a person who receives the benefit when a power of attorney is exercised.
- **Incapacity:** when a person is unable to manage property or business affairs because the individual: (a) has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or (b) is: (i) missing; (ii) detained, including incarcerated in a penal system; or (iii) outside the United States and unable to return.

What does a Power of Attorney do?

- A power of attorney is a legal document which gives another person authority to act on another's behalf.
- This can be very broad and can include things like:
  - Handling bank accounts
  - Selling real property
  - Running a business
  - Applying for public benefits
- Specifics need to be included in the written document.
- A POA does not work for medical decisions



What Makes a Power of Attorney Legal? 75a-2-101

- The principal must have “capacity”
  - At the time that power of attorney is executed, the principal must understand they are appointing an agent to handle their financial affairs.
  - The principal does not need to understand *how* an agent will manage the principal’s affairs.
  - The principal needs to understand that they are appointing an agent to handle the principal’s financial affairs.
- The principal **cannot** name someone to be an agent who is an owner, operator, health care provider, or employee of the hospital, assisted living facility, skilled nursing, or similar residential care facility of the principal
  - Exceptions: if the agent is the spouse, legal guardian, or next of kin of the principal or the power of attorney is strictly limited to assisting the principal to establish eligibility for Medicaid.
- A power of attorney must be signed in front of a notary.

When Does a Power of Attorney go into Effect?



- The power of attorney is valid once it has been signed and notarized.
- A power of attorney executed in a different state is valid in Utah if it complied with the law within that different state.
- A photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

Revoking (ending) a Power of Attorney

- The principal can revoke or change a power of attorney at any time.
    - Must comply with the requirements of the original power of attorney document.
    - It must be in writing, signed, notarized, and at the time of the change, the principal must understand they are appointing an agent to handle their affairs.
- The revocation needs to be dated and signed but does **not** need to be notarized.
    - The agent needs to receive a copy of the revocation.
    - Anyone who has relied on the previous power of attorney should be notified of the change.



Automatic Termination of a Power of Attorney

Occurs when:

- The principal dies.
- Upon the principal's incapacity if the power of attorney is not durable (not done properly).
- The power of attorney provides that it terminates.
- The purpose of the power of attorney is accomplished.
- The principal revokes the agent's authority, or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.



Instances where the Agent's Authority may terminate:

- an action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides

What Does it Mean to be an Agent?



- An agent is the person appointed by the principal to handle the duties stated in the power of attorney document.
- The agent **must** act at all times for the benefit of the principal and not for him or herself.
- An agent has the following fiduciary duties:
  - Respect the principal's wishes and act only in his or her best interests.
  - Involve the principal in the decision making as much as possible.
  - Manage all assets carefully and remember that the assets belong to the principal.
  - Keep good records of everything spent or received.
  - Keep the principal's funds separate from the agent's own.
  - Act only within the scope of authority granted in the power of attorney.
  - Comply with the terms of the power of attorney.
- The agent will be able to access the principal’s private health care information and communicate with the principal’s health care providers unless the power of attorney specifically restricts that authority
  - They **do not** have authorization to make health care decisions for the principal.

What Does it Mean to be an Agent? Continued.



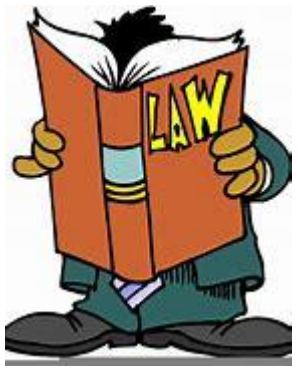
- Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and is entitled to compensation that is reasonable under the given circumstances.
- The agent needs to act in good faith in order to avoid liability for not following a principals wishes.
- Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated: (1) to the guardian, if one has been appointed for the principal, and a co-agent or successor agent; or (2) if there is no person described in Subsection (1), to: (a) the principal's caregiver; (b) another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or (c) a governmental agency having authority to protect the welfare of the principal.

Utah Advance Health Care Directive 75-2a-117



- A principal selects an agent to make medical decisions, when an individual cannot speak for themselves or make decisions.
- A principal must grant additional access if they want the agent to have access to their medical history.
- The more specific an advanced health care directive the better.

Finalizing an Advanced Healthcare Directive



- The directive needs to be signed in front of a witness. It **does not** need a notary.
- The witness **cannot** be:
  - Related to the principal by blood or marriage;
  - Entitled to any portion of the estate according to the laws of intestate succession of this state or under your will or codicil;
  - The beneficiary of a life insurance policy, trust, qualified plan, property or other accounts, or coownership registration with the right of survivorship;
  - Financially responsible for the principal's support or medical care;
  - A health care provider who is providing care to the principal or an administrator at a health care facility in which the principal is receiving care; or
  - An appointed agent or alternate agent for the principal.

Ways to Revoke an Advanced Healthcare Directive

- Writing "void" across the form, or burning, tearing, or otherwise destroying or defacing this document or directing another person to do the same on their behalf
- Signing a written revocation of the directive, or directing another person to sign a revocation on their behalf
- Stating that you wish to revoke the directive in the presence of a witness who: is 18 years of age or older; will not be appointed as an agent in a substitute directive; will not become a default surrogate if the directive is revoked; and signs and dates a written document confirming the principal's statement; or
- Signing a new directive. (If you sign more than one Advance Health Care Directive, the most recent one applies.)

Power of Attorney vs. Medical Directive

Power of Attorney

- Must be notarized.
- Only deals with material items.

Medical Directive

- Does not need to be notarized.
- Only deals with medical decisions.

WILL AND TESTAMENT

- A Will, also called a "last will and testament," can help you protect your family and your property. You can use a will to:
  - leave your property to people or organizations;
  - name a personal guardian to care for your minor children
  - name a trusted person to manage property you leave to minor children, and;
  - name a personal representative, the person who makes sure that the terms of your will are carried out.
- You do not need an attorney to create a Will but it is advised to seek legal assistance, especially if you have assets to protect.

WILL AND TESTAMENT, cont.

- In Utah, if you die without a will, your property will be distributed according to state "intestacy" laws.
  - Your property goes to your closest relatives, beginning with your spouse and children.
  - If you have neither a spouse nor children, your grandchildren or your parents will get your property.
  - This list continues with increasingly distant relatives based on blood or marriage.
  - If you have surviving children from partners other than the one you are currently married to, your surviving spouse will get $75,000 and half of the remaining estate. The rest will be divided among your surviving children.
- If the Court exhausts this list to find that you have no living relatives by blood or marriage, the State of Utah will take your property.

Who Do We Serve?

Utah Legal Services (ULS) serves the entire state with offices in Salt Lake City, Ogden, Provo and St. George.

We are excited to announce the opening of an office Logan in 2027.



Types of Cases Handled by ULS

We can provide legal help in the following types of civil legal issues.

- Family Law
- Public Benefits
- Housing
- Consumer
- Senior Citizen
- Agricultural Workers
- Native American
- Expungement
- Pro Bono (additional issues / cases not handled in-house but assisted by pro bono attorneys facilitated through our office)

Who Qualifies?

For most cases, we use three main criteria to determine if someone is eligible for our services.

- **Citizenship/Legal Residency.** In general, an applicant must be a citizen or have legal residence, **unless** their legal issue is a result of domestic violence, such as in protective order cases.

- **Financial.** Applicants must be a low-income to qualify for our help. At 200% or below the federal poverty line.

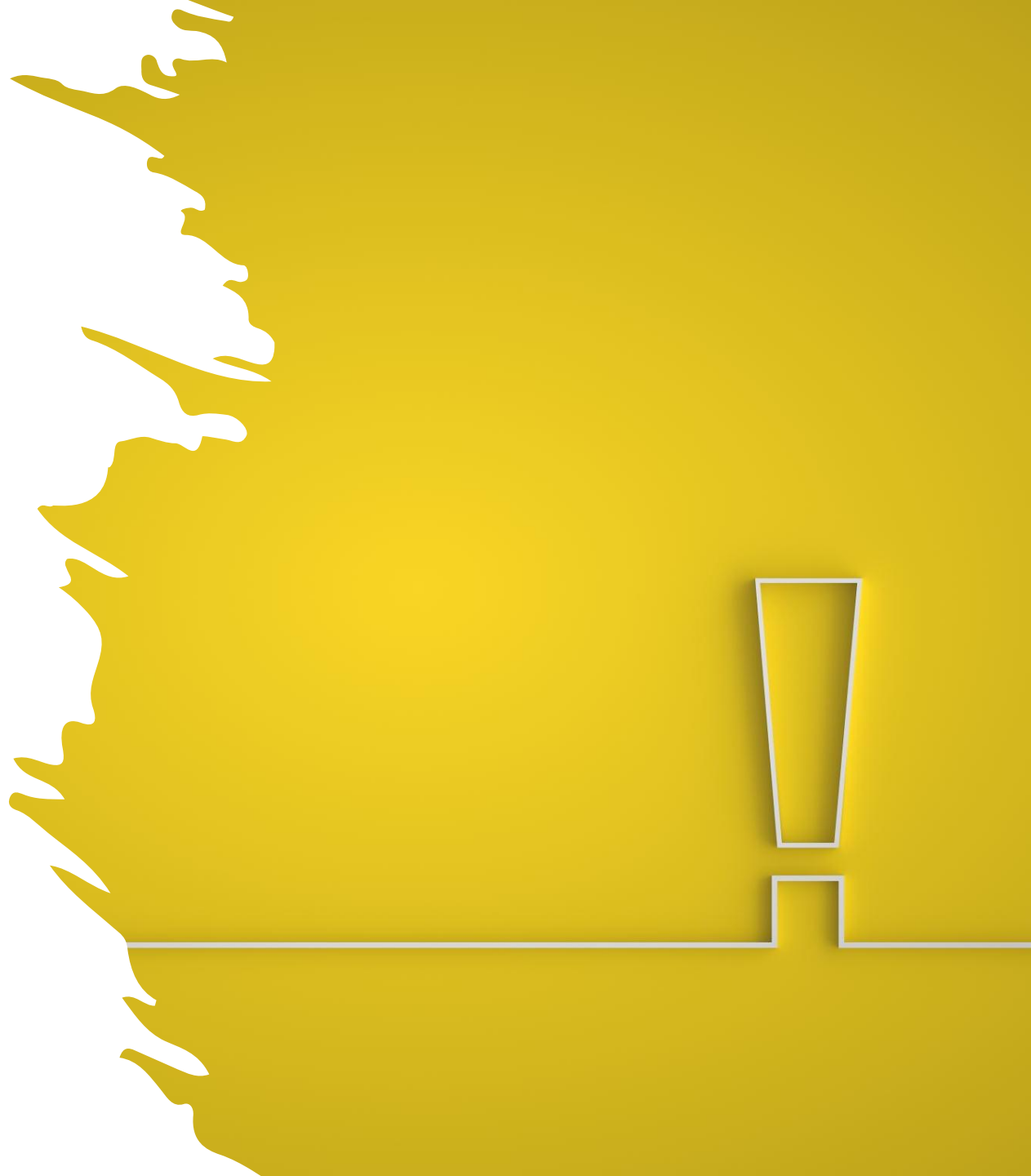
- **Type of case.** Because the need for our services is so great, we must limit the types of cases we take. If you call in you will at the very least speak with an attorney and get some advice. We just might not be able to provide full representation.

Veterans may also receive services if: meet minimum service length requirement, characterization of service is other than dishonorable, and is either *homeless* or *at risk of homelessness*. No financial threshold.

Who Qualifies? Exceptions to the Rule

We can help clients in the following areas, regardless of their household income or assets.

- Protective orders.
- Stalking injunctions.
- Senior citizens, which is anyone 60+; however, if they are not financially eligible, our services will be limited to advice only.



Intake Process

All applicants must complete an intake prior to receiving services.

- New clients are screened between 9:00 AM and 2:00 PM Monday – Friday
- By telephone or chat
- Online application available 24/7. Must collect income/asset information

