



# THE DIFFERENCE BETWEEN POWERS OF ATTORNEY AND GUARDIANSHIPS

As we age, decision-making about money or health care can get harder as physical or mental conditions change. Powers of attorney or guardianships provide different ways to plan for making important choices in case a person loses the capacity to make big decisions. Understanding the differences between them can help make sure a senior and their property are well taken care of as they get older or become unable to make decisions for themselves

## What is a Power of Attorney?

A power of attorney (POA) is a written document that authorizes another person to act in an individual's place. The individual must have legal capacity when they sign the POA – they must be able to understand that they are giving up the power to make certain decisions to someone else. A *durable* POA permits another person to act for an individual even if the individual loses that ability to understand the purpose of the POA after signing the document. Durable POAs can be used to permit a trusted person to make decisions about money or health care for an individual.



POAs should be drafted by a lawyer or a person familiar with the law of POAs to make sure they are valid where the individual lives.

### **What is a Guardianship?**

In a guardianship, a person is appointed by the court to make personal decisions for another individual. When a guardian is chosen, the individual becomes a “ward” of that person and loses many of their rights. For this reason, a guardianship should be a last resort reserved for cases where individuals did not get a durable power of attorney when they were able to. A guardian can be appointed only after the court finds that the individual is incapacitated based on evidence. Any person who meets the requirements (including a criminal background check) can be appointed a guardian.

### **What’s a Conservatorship?**

A court may also appoint a conservator, who makes decisions related to the financial situation and property of the ward. Any person who meets the requirements (including a criminal background check and bonding) can be appointed a conservator.

### **How do I know whether a POA or Guardianship is suitable?**

Whether a power of attorney or a guardianship is appropriate depends on the ability of the individual to understand and make decisions. If an individual still has the ability to understand and make decisions, and has someone to appoint to help act for them, a durable POA is the right choice. Durable POAs allow an individual to keep more decision-making power and should be obtained while the individual is still legally able to do so. A guardianship places significant limits on an individual’s ability to act and decide for oneself and is only appropriate if the individual has already lost the ability to make and understand decisions. Also, a judge may choose to appoint an independent attorney rather than a family member or friend, and the attorney takes payment from the individual. Additionally, guardianships are more costly and time-consuming and often take a greater emotional toll on the family. In any situation, only a trusted, reliable person without a criminal record should be appointed to act under a durable POA or appointed as a guardian or conservator.

**If a senior in your life is age 60 or over and is interested in creating a power of attorney, or you are interested in filing for a guardianship or conservatorship for them, call LCE at (202) 434-2120 for assistance.** LCE provides free legal services for low-income individuals.

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