

Understanding

Power of Attorney



The Law Offices of
BEYER, PONGRATZ & ROSEN
GREGORY R. BEYER Esq.

**For More Information on Trusts, Powers of Attorney, Long
Term Care Planning, Corporations and Asset Protection,
Please Contact:**

**THE LAW OFFICE OF
BEYER, PONGRATZ & ROSEN
A PROFESSIONAL LAW CORPORATION**

Sacramento Office:

3230 Ramos Circle
Sacramento CA 95827
(916) 369-9750

Lincoln Office:

433 F Street
Lincoln CA 95648
(916) 645-9529

This Pamphlet entitles holder to a FREE consultation

Being proactive in life is a good thing – especially if you have taken the time to prepare a trust or will to reflect how you want personal and financial matters handled after you're gone.

Planning for who makes financial and medical decisions for you if you become disabled or incapacitated is just as important as planning after you are gone. This is where important estate planning documents like a power of attorney come into play.

What is a Power of Attorney

A ***Power of Attorney (POA)*** is an important legal document generally created in accordance with state law to allow a person or persons to act as an agent on behalf of an account owner. The individual (or entity) granting the power is commonly referred to as the principal. The principal appoints another individual or entity as his or her agent and confers authority to perform certain acts on behalf of the principal. The agent is also referred to as the ***attorney-in-fact***.

The attorney-in-fact powers are generally limited to those stated in the POA document or as otherwise provided for under applicable law. The POA document is reviewed in accordance with BPR's policies and procedures to determine BPR's ability to support the POA.

- A POA document presented for an account owner can come in different forms:
- A state statutory POA document
- A personally prepared or attorney prepared POA document
- The BPR Power of Attorney forms
- A military POA document

For:

- **Trust accounts:** The POA remains in effect until the client dies or is deemed mentally disabled, incompetent, or incapacitated.
- **All other eligible accounts:** BPR allows **only** durable power of attorney (DPA). The DPA remains in effect until the client dies or revokes the DPA in writing. A durable power of attorney is not affected by subsequent disability or incapacity of the client.

Eligibility

POA is **permitted** for these account types:

- Individual (including transfer on death)
- Joint (including transfer on death)
 - One joint owner can have attorney-in-fact authority over another joint owner.

- A third party attorney-in-fact can be named as attorney-in-fact for one or both joint owners. If the POA only applies to one owner, the POA affidavit must specify to which owner the POA applies.

- IRA:

- Traditional

- Inherited

- **Exception:** Inherited IRAs for the benefit of a minor or estate cannot have a POA

- Roth

- Inherited Roth

- **Exception:** Inherited IRAs for the benefit of a minor or estate cannot have a POA

- Rollover

- SEP

- SIMPLE

- Trust: If the current version of the POA form is **not** used, additional documentation is required to add POA to a trust account.

- **Note:** In place of the client's POA document or a state statutory POA form,

the client can complete a BPR Power of Attorney form.

POA is not permitted for these account types:

- Business:
 - Corporation
 - Limited liability company
 - Unincorporated association
 - Sole proprietorship
 - Partnership
- Conservatorship
- Custodial
- Estate
- Guardianship
- SE 401(k) and Keogh
- Non-prototype retirement

Acceptable POA signatures

The attorney-in-fact must sign all documents when acting on behalf of the principal in his or her capacity as attorney-in-fact. The attorney-in-fact must identify his or her POA relationship when signing for the principal.

POA requirements by state:

California Notary and Witness requirements

Specific language requirements

- Notary – **YES**
- Witness – Two witnesses are valid in lieu of a notary

If using BPR's Power of Attorney Authorization Form, a notary is required.

Important! State requirements can change from time to time. Consultation with an attorney is encouraged.

Establishing power of attorney

1. Complete the required POA paperwork
2. Complete additional requirements for these features and maintenance tasks as appropriate:

- To add check-writing authority or update the signer, all account owners and the attorney-in-fact who will be signing checks for the account must sign a signature card.
- To maintain **option trading capabilities** on an account, as applicable, the account owners must complete a new option application for the account and include the attorney –in-fact's information before the

POA authorization goes into effect for the account.

- To have **duplicate statements and confirms** mailed to attorney-in-fact, the client must check the Duplicate Statements and the Duplicate Confirmations boxes on the appropriate POA form.
- To grant the attorney-in-fact power to **designate beneficiaries**, the client must choose one of the Beneficiary Designated options.

Important! If multiple attorneys-in-fact are listed in the POA document, a clause must state that they will act independently. Attorneys-in-fact cannot act jointly.

Beneficiary designations or changes by an attorney-in-fact

The POA document must explicitly state that the attorney-in-fact has the power to designate or change a beneficiary in behalf of the principal and what limitations exist. BPR policy does not rely on general or broad powers within the POA document as the authorization changes how the principal's property will pass upon the principals death. BPR policy is to require the POA document to explicitly

state that this power is granted to the attorney-in-fact, unless the power to designate or change the beneficiaries is otherwise supported under the applicable state law.

Military POA

A military POA document is customarily prepared pursuant to federal law Title 10, U.S. Code, Section 1044(b), which states a military POA is generally exempt from the form, substance, formality, or recording requirements of state POA statutes (including the District of Columbia and the Commonwealth of Puerto Rico). Military POAs typically include an expiration date.

Acceptable Notifications

An attorney-in-fact can no longer act pursuant to a POA if BPR receives any of the following:

- Written notice from the client revoking the POA.
- Written notice of resignation from the attorney-in-fact.

Note: To determine if the resignation is acceptable, the original POA document that established the attorney-in-fact **must** be reviewed.

If the POA document is the client's:

- Need to review document to determine if there are any provisions for addressing the attorney-in-facts surrender or resignation. If none, the resignation is accepted.
- Written notice from the attorney-in-fact stating that a guardian or conservator was appointed for the account owner.
- Notice of an account owner's death.
- Notice from a court-appointed guardian or conservator of the account owner that the POA is terminated. This notice **must be** certified by the court within 90 days of receipt by BPR.
- A copy of the court order stating that the POA is no longer valid.

In a Nutshell, what is the Benefit of a Power of Attorney

A power of attorney is an easy way to have another person handle legal or **financial** matters for you when you are away or otherwise unable to handle them for yourself.

A durable power of attorney is a **protection** against costly court proceedings in the event you become incompetent.

Should I have an attorney do my Power of Attorney?

Yes, but you need the right one. An attorney with considerable experience, valuable guidance and peace of mind that yours is prepared properly. The Law Office of Beyer, Pongratz & Rosen, a Professional Law Corporation has over a Quarter Century of experience in ensuring that things go exactly as you want when you are gone, in protecting your family and reducing taxation on estates. When you work with us on your estate planning, you can feel assured it will be done correctly and specifically to take care of your needs and desires.

Call 1 (916) 645-9529 To Schedule your free
consultation now.

Biography of GREGORY R. BEYER, Esq.



Gregory R. Beyer is a Practicing California Attorney and for over 26 years, has had as the emphasis of his personal practice of law primarily revolving around Estate Planning, Elder Law, Medi-Cal Planning, Asset Protection Planning, and Business Structuring. Mr. Beyer was the Salutatorian, Parliamentarian, and Honor Graduate of his class, and is authorized to practice law before the courts of the State of California and Federal District Courts. He is a Certified Estate Planner in Legal Concepts (CEP-L) and one of a very few select Certified Senior Advisor Attorneys (CSA) in the United States. He has been listed in Who's Who and was President of the California Estate Planning Council for 2 terms. He is a member of the J. Reuben Clark Law Society and is a member of the National Association of Elder Law Attorneys.

Mr. Beyer enjoys speaking on Elder Law and Estate Planning principles to small groups as well as a speaker for national legal seminar providers. The Law Offices of Beyer, Pongratz, & Rosen has been a member of the Lincoln Chamber of Commerce, the Rancho Cordova Chamber of Commerce and the United State Chamber of Commerce. He enjoys spending time with his Wife of over 40 years, 6 children and 11 grandchildren, working with his gardens and fruit trees, and working on projects around the house.