

Instructions for Montana Power of Attorney for Property (Statutory Form)

Note: Use these instructions and forms to create a Montana Power of Attorney for Property.

These instructions and form letter may not be right for your case. They cannot take the place of advice from a lawyer. Talk to a lawyer if you have **any** questions.

Do not change these forms. If you change the forms, you might lose language you need.

What is a Montana Power of Attorney for Property?

- A Montana Power of Attorney for Property is a legal document that lets you share the power to make money and property decisions for you. It sometimes is called a statutory power of attorney for property. This means that the form language of the document is set forth in a law called a statute.
- For ease in reading, these instructions will refer to a Montana Power of Attorney for Property as a Power of Attorney.
- In this Power of Attorney, you are called the principal. You will sign the Power of Attorney. This gives another person permission to share your right to make money and property decisions. That person is called your agent. After you grant a Power of Attorney for your agent to make decisions about your money and property, your agent will not need your specific permission to make each decision when it happens.
- This Power of Attorney cannot give another person permission to make health care decisions for you. It cannot give another person permission to

care for and make decisions about your children. It can only give someone permission to make money and property decisions for you.

- This Power of Attorney may not apply to Native American trust lands. It may not allow you to share your power to make decisions about trust lands. If you want to share power to make decisions about Native American trust lands, please talk to an attorney before you use this form.
- This Power of Attorney may not apply to money or property located in another state, especially real property. If you want to let someone else make decisions about your money or property located in another state, please talk to an attorney before you use this form.

If you still have questions after you read these instructions, talk to a lawyer.



Why might I want a Power of Attorney?



There are several reasons you might need another person to make money or property decisions for you. For example, you may be going out of the country and unable to pay bills while you are gone. Or you may be unable to manage your money while you are in a hospital or assisted care home. Or you might be worried about who will pay your bills or take care of your property if you become unable to do those things yourself. In cases like these, it can be helpful to share the power to make money and property decisions with someone you trust.

Remember, you are not giving away the power to make these decisions when you sign a Power of Attorney. You will still be able to make your own decisions about your money and property. All you are doing is letting someone else share that power with you.

What form will I need?

You will only need one form. It is called a Montana Power of Attorney (Statutory Form). It follows these instructions.

Are there limits to who can grant a Power of Attorney?

To grant a Power of Attorney, you must be competent. For purposes of granting a Power of Attorney, a person is not competent if she does not understand what money and property she owns, or what powers she is granting.



Can granting a Power of Attorney be dangerous?

Possibly. You are giving another person power to make decisions for you about your money and property. That means you give up a lot of control over what happens to your money and property. You must follow through on decisions that your agent makes about your money and property. Granting a Power of Attorney can be dangerous if the person you name turns out to be untrustworthy. For example, your agent could take out a loan in your name and buy a car with that loan. In that case, even if you did not want the agent to buy the car, you would still have to make the loan payment.

Even if your agent is trustworthy, it is possible that your agent could make a mistake or a bad decision. If you do not feel good about giving up control of your money and property decisions, you should not sign a Power of Attorney.



Who should I name as my agent?

Before you start filling out the Power of Attorney, think of a person you trust to make decisions about your money and property to name as your agent. Talk

with that person about what you want him or her to do, and how you would like it to be done. Make sure the person:

- is 18 or older
- wants to be your agent
- has time to be your agent
- knows how to manage your money and property
- is someone you trust to make decisions about your money and property without getting your specific permission before making each decision
- agrees with you about how your money and property should be managed



How do I fill out a Power of Attorney?

This section gives step-by-step instructions on how to complete each part of the Power of Attorney form. As discussed below, you will write some things in blanks on the form. You will also decide whether you want to leave certain sentences in the Power of Attorney or cross them out. Use a pen with black ink to fill in the form and cross out the things you want to cross out. Use a pen with blue or black ink to sign the form.

1 Write the names and addresses of yourself and your agent.

Fill in your name and mailing address in the upper left-hand corner of the Power of Attorney. Write your name and address again in the first blank on the form. Write your agent's name and address in the second blank on the form. Do not use nicknames. Only use full names.

2 Choose the decisions your agent can make.

You can choose the decisions that you want your agent to make for you. These are found on pages 1 and 2 of the form. They are listed as (A)

through (N). Write your initials on the line in front of each decision you want your agent to make for you. If you want to give your agent power to make all of the decisions that are listed, just put your initials in front of item (N). The decisions you can let your agent make are described below:

- A Real Property Transactions. Real property means land and buildings, fences, pools, and other things attached to land. An example of a real property transaction is selling a house.

- B Tangible Personal Property Transactions. Personal property means those tangible things that you own, such as vehicles, clothing, jewelry, and furniture. Remember, land and the things attached to it are real property, not personal property. An example of a tangible personal property transaction is selling a car.

- C Stock and Bond Transactions. Some examples of stock and bond transactions are buying stock and safekeeping any interest or shares of that stock.

- D Commodity and Options Transactions. Some examples of commodity and option transactions are buying stock options and continuing to use a stockbroker.

- E Banking and Other Financial Institutions Transactions. Some examples of banking and other financial transactions are making a deposit at the bank, withdrawing money from a savings account, or writing checks.

- F Business Operating Transactions. Some examples of business operations are selling, expanding, or remodeling your business.

For example, if you own a store, the agent could sell the store,

make the store bigger, or remodel it. The agent could also hire or fire employees.

- G Insurance and Annuity Transactions. Some examples of insurance and annuity transactions are buying health insurance, continuing to pay car insurance, or terminating life insurance.
- H Estate, Trust and Other Beneficiary Transactions. An example of estate, trust, and other beneficiary transactions is the agent accepting money or a gift on your behalf. Your agent cannot, however, write a Will for you.
- I Claims and Litigation. Some examples of claims and litigation are filing a lawsuit, settling a claim, and hiring an attorney.
- J Personal and Family Maintenance. Some examples of Personal and Family Maintenance are everyday expenses, such as grocery and utility bills, as well as money to take care of other personal or family matters.
- K Benefits from Social Security, Medicare, Medicaid, or other Governmental Programs or from Military Service. Some examples of Social Security, unemployment and military service benefit transactions are filing applications for these benefits, and filing or settling any claims related to these benefits.
- L Retirement Plan Transactions. Some examples of retirement plan transactions are putting money into a retirement plan, withdrawing money from a retirement plan, or withdrawing money from an employee savings account.

M Tax Matters. An example of a tax matter is filing a federal or state income tax return.

N All of the powers listed above. You do not need to initial any other lines if you initial line (N). If you want to give your agent all of the powers listed above, you can put your initials in front of this option.

3 Write in special instructions.

If you have a special instruction about what your agent can or cannot do for you, you can write in that instruction. Write it on the lines under the SPECIAL INSTRUCTIONS section. For example, you might have a savings account you want to give to your grandchild after you die. In that case, your special instruction could be that your agent can put money into the account, but not take it out.

Note: You may have a health care power of attorney, which is different from the Power of Attorney in this packet. A health care power of attorney can be part of an Advance Directive. A health care power of attorney says that someone else can make medical and health care decisions for you if you become unable to tell your health care providers what you want.

The Power of Attorney in this packet does not apply to medical and health care decisions. Instead, it lets you share the power to make property and money decisions.

In the special instructions of your Montana Statutory Power of Attorney, you can write "I have a health care power of attorney. I do not want this Power of Attorney to revoke or affect my health care power of attorney." If you write this, it will be clear that your health care power of attorney will stay in effect.

4 Decide when you want the Power of Attorney to take effect.

If you do not give a specific date you want the Montana Statutory Power of Attorney to take effect, it will go into effect immediately. If you would like it to go into effect at a later date, you will need to write that date in the SPECIAL INSTRUCTIONS section. For example, you may want your

agent to make decisions about your money and property while you are out of the country, but not before you leave. In that case, you would write the date that you are scheduled to leave the country as the date the Power of Attorney would take effect.

5 Decide if you want this Power of Attorney to cancel any other Power of Attorney.

This Power of Attorney will cancel any other Power of Attorney that you signed in the past. If you don't want this to happen, cross out the sentence on the form that says:

“This power of attorney revokes all previous powers of attorney signed by me.”

Crossing out that sentence means that the new Power of Attorney that you sign will NOT cancel any other Power of Attorney that you signed in the past. But it might make things confusing for someone who is trying to decide which powers you gave to an agent. If you do not know whether or not you want to cancel another Power of Attorney that you have signed in the past, please talk to a lawyer.

<p>Note: You may want this Power of Attorney to cancel your other Powers of Attorney for money and property decisions, but not your health care power of attorney for medical decisions. If this is what you want,</p> <ol style="list-style-type: none">1) do not cross out the sentence that says “This power of attorney revokes all previous powers of attorney signed by me.” AND2) write in special instructions on the blank lines above the sentence saying you do not want this Power of Attorney to revoke or affect your health care power of attorney. Read the “Note” box on page 7 of this packet to learn how to write those special instructions.

6 Take all steps needed to cancel another Power of Attorney.

If you decide that you want this Power of Attorney to cancel any other Power of Attorney that you have signed, you should follow these steps:

- Do NOT cross out the sentence that reads “This power of attorney revokes all previous powers of attorney signed by me.”
- Read all the Powers of Attorney you have signed in the past to see if they have specific instructions for cancelling them. If there are specific instructions, you must follow them.
- In addition to following specific instructions for cancellation in a past Power of Attorney, you should contact any third party such as a business, bank, loan office, or social security office where your previous agent has taken care of business for you. Tell these third parties that your old Power of Attorney has been cancelled. If possible, write a letter to each third party and keep copies of the letters for yourself. If you do not tell the third parties that your past Power of Attorney has been cancelled, you may still be responsible for anything your previous agent does with them.

7 Decide if you want your agent to make decisions for you if you become mentally unable to make decisions for yourself.

A Power of Attorney can be in effect when you are mentally able to make decisions, but cannot take care of your money and property for another reason. For example, you may be out of the country.

A Power of Attorney can also be in effect for you if you are ever mentally unable to make decisions. This is called a “durable power of attorney.”

For example, a durable power of attorney would let your agent make money and property decisions for you if you suffer serious injuries in a car accident and are mentally unable to make decisions.

If you do NOT want your power of attorney to be durable, you must cross out the sentence on the Power of Attorney that says:

“This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent.”

Crossing out that sentence means that your agent will not be able to make money and property decisions for you if you become mentally unable to make those decisions.

8 Decide if you want your agent to act as your court-appointed conservator, if need be.

If you become mentally unable to make decisions about your money or property, a court may appoint a person called a conservator to take care of your money and property for you. Even if you have granted a durable Power of Attorney, the court may believe the Power of Attorney does not give your agent enough powers to take care of all of your money and property issues. In that case, the court may appoint a conservator to take care of those issues.

You can say in your Power of Attorney that you want your agent to be your conservator if you become mentally unable to make decisions about your money or property. You do this by saying you nominate your agent as conservator. The Power of Attorney automatically nominates your agent as conservator unless you cross out that part of the form.

If you do not want to nominate your agent as your conservator, you should cross out the sentence that says:

“If it becomes necessary to appoint a conservator of my estate, I nominate my agent.”

Crossing out that sentence means that the court would try to appoint someone other than your agent to act as your conservator.

9 Name someone to take over if your first agent cannot or will not act for you.

You can choose a person to take over if it turns out that your agent cannot or will not help you. The person who will take over is called a “successor agent.” It is important to name a successor agent in the Power of Attorney because you may become mentally unable to name someone in the future. For example, if you become mentally unable to make decisions and then your agent dies, your family and other interested people would need to go to court to have someone else named to take care of your money and property.

The Power of Attorney provides space for you to name three successor agents, if your first choice becomes unable or unwilling to act as your agent. You should name people you trust who could act as your agent and make money and property decisions for you.

10 Sign one or two original Powers of Attorney in front of a notary public.

Before you sign, re-read the Power of Attorney to make sure you have filled it out correctly. When you are ready, bring the Power of Attorney to a notary public. You must appear in front of the notary public to either

sign the Power of Attorney or swear you already signed it. The notary public will fill out the part of the form that begins “This document was acknowledged before me on.”

As discussed below, you may decide to record your Power of Attorney with a county Clerk and Recorder’s Office and get certified copies. If you do this, you may want to sign two originals of the completed Powers of Attorney in front of the notary public, one for you to keep to make uncertified copies and one to record to make certified copies.

11 If possible, get the agent’s signature on each original.

Your agent does not need to sign the Power of Attorney if he or she acts as your agent or accepts the appointment as your agent in a different way. But you may want your agent to sign the Power of Attorney to show that your agent knows he or she is your agent. If your agent is willing to sign the Power of Attorney, ask him or her to sign the original(s).

Now that I have filled out the Power of Attorney, what do I do next?

1 Decide if you want to record your Power of Attorney.

- You can record your completed, signed and notarized Power of Attorney in a county Clerk and Recorder’s Office. If you do this, the Clerk and Recorder will charge you fees for recording, certifying and copying the Power of Attorney. The law does not require you to record your Power of Attorney. However, you may want to record your Power of Attorney if you know your agent will conduct a real property transaction for you, so the records of who has dealt with the real property will be clear. Or you may want to record it if someone you deal with will require a certified copy of the recorded

document. If possible, find out whether the banks, credit unions, businesses, government offices or other people your agent will deal with will require a certified copy.

2 Make or get copies.

- Figure out how many certified and non-certified copies you need. You need to provide a copy to each financial institution, business, or person that your agent will handle your money or property with. As stated above, some people and institutions may require a certified copy, which you can only get from the county Clerk and Recorder's Office. Other people and institutions may not require a certified copy.
- If you have recorded a Power of Attorney, get the number of certified copies you need from the county Clerk and Recorder's Office. You will be charged for each copy and certification.
- Make the number of non-certified copies you need. You can do this by copying a notarized original Power of Attorney that you have not recorded.

3 Send the copies.

- Send the copies to all financial institutions, businesses, or people with whom you do business. When they get your Power of Attorney, they will know that the person you named as your agent has your permission to conduct business for you.

4 Keep your original or a copy in a safe place.

- A good place to keep this and other important documents is in a safe deposit box.

5 Review your Power of Attorney every so often.

- Look at your Power of Attorney every year or so. Your life circumstances could change. You may want to change the powers granted to your agent, or name someone else as your agent.

- Keep a list of all the institutions and people that have received a copy of your Power of Attorney. If you want to cancel the Power of Attorney later, you will need to know who has a copy of it.



How does my agent do business for me?

- Before the person you have named as your agent can take care of your property and money, the financial institutions, businesses, and people he or she will deal with must have a signed copy of the Power of Attorney.

- Your agent will sign checks, contracts, or other agreements for you. Your agent will have to sign your name and then sign his or her name as your “attorney in fact.” For example: In a Power of Attorney, Paul Principal named Andy Agent to be the person to take care of Paul Principal’s money and property. When Andy Agent goes to the bank to sign checks for Paul Principal, Andy Agent will sign the check as follows: “Paul Principal by Andy Agent, his attorney in fact.”

When Does a Power of Attorney End?

The Power of Attorney will end when you die. You may also cancel the Power of Attorney during your lifetime.

How Do I Cancel my Power of Attorney?

To cancel your Power of Attorney, you must give written notice. The written notice must clearly identify the Power of Attorney you want to cancel. (It is especially important for you to clearly identify the Power of Attorney you want to cancel if you have more than one.) The notice must state that the Power of Attorney is cancelled. You should send a copy of the cancellation notice to all the financial institutions, businesses, and people who dealt with your agent or had a copy of your Power of Attorney. Also, if you record your Power of Attorney and later decide to cancel it, you must cancel your Power of Attorney at the Clerk and Recorder's Office and you should send certified copies of the cancellation to the people and institutions who dealt with your agent.

Note: If you do not give notice that you have cancelled your Power of Attorney, you can still be held responsible for anything your agent does.

Where can I get more information?

The laws of Montana are called the Montana Code Annotated or "MCA." The laws about Statutory Power of Attorney begin in the MCA at Title 72, Chapter 31, Section 201. An easier way to write that is § 72-31-201, MCA. The symbol § means section. The MCA can be found at your local library or on the Montana State Law Library website at www.lawlibrary.mt.gov. Click on the "MCA" option near the top of the page.



Where Can I Get Legal Help?

These organizations may be able to help you:

- **Montana Legal Services Association (MLSA)** gives free legal help to low-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.

- **The State Bar Lawyer Referral and Information Service (LRIS)** refers people to Montana lawyers who might be able to help. The referral is free. Call LRIS at 1-406-449-6577.
- **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at www.lawlibrary.mt.gov. Or you can contact a Reference Librarian at 1-800-710-9827 or by email at mtlawlibrary@mt.gov.

Please take a short survey about this form.

When you are done with the form, please take our online survey at this address:

http://www.surveymonkey.com/s.aspx?sm=fCBhbbJj4MdOWw_2fjsCjlg_3d_3d

Or you can access the survey on the “Forms” page of the State Law Library website, at www.lawlibrary.mt.gov. Your answers will help make the form better.

Thank you!

_____ (your name)

_____ (mailing address)

_____ (city, state, ZIP)

Montana Power of Attorney for Property (Statutory Form)

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THIS PART. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I _____
(insert your name and address) appoint _____
_____ (insert the name and address of the person
appointed) as my agent (attorney-in-fact) to act for me in any lawful way with
respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS. TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING. TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

- ____(A) real property transactions;
- ____(B) tangible personal property transactions;
- ____(C) stock and bond transactions;
- ____(D) commodity and option transactions;
- ____(E) banking and other financial institution transactions;

- ____(F) business operating transactions;
- ____(G) insurance and annuity transactions;
- ____(H) estate, trust, and other beneficiary transactions;
- ____(I) claims and litigation;
- ____(J) personal and family maintenance;
- ____(K) benefits from social security, medicare, medicaid, or other governmental programs or from military service;
- ____(L) retirement plan transactions;
- ____(M) tax matters;
- ____(N) ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:
ON THE FOLLOWING LINES, YOU MAY GIVE SPECIAL
INSTRUCTIONS LIMITING OR EXTENDING
THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney revokes all previous powers of attorney signed by me.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU.

IF YOU DO WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU, YOU SHOULD READ THOSE

POWERS OF ATTORNEY AND SATISFY THEIR PROVISIONS CONCERNING REVOCATION. THIRD PARTIES WHO RECEIVED COPIES OF THOSE POWERS OF ATTORNEY SHOULD BE NOTIFIED.

This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

If it becomes necessary to appoint a conservator of my estate or guardian of my person, I nominate my agent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT TO NOMINATE YOUR AGENT AS CONSERVATOR OR GUARDIAN.

If any agent named by me dies, becomes incompetent, resigns or refuses to accept the office of agent, I name the following (each to act alone and successively, in the order named) as successor(s) to the agent:

1. _____
2. _____
3. _____

For purposes of this subsection, a person is considered to be incompetent if and while: (1) the person is a minor; (2) the person is an adjudicated incompetent or disabled person; (3) a conservator has been appointed to act for the person; (4) a guardian has been appointed to act for the person; or (5) the person is unable to give prompt and intelligent consideration to business matters as certified by a licensed physician.

I agree that any third party who receives a copy of this document may act under it. I may revoke this power of attorney by a written document that expressly indicates my intent to revoke. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to

indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this _____ day of _____, 20____

(Your Signature)

State of _____

(County) of _____

This document was acknowledged before me on

_____ (Date) by

_____ (Name of Principal)

_____ (Signature of Notarial Officer)

_____ (Seal, if any) (Title (and Rank))

[My commission expires: _____]

BY SIGNING, ACCEPTING, OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT. THE AGENT WORKS EXCLUSIVELY FOR THE BENEFIT OF THE PRINCIPAL. THE FOREMOST DUTY AS THE AGENT IS THAT OF LOYALTY TO AND PROTECTION OF THE BEST INTERESTS OF THE PRINCIPAL. THE AGENT SHALL DIRECT ANY BENEFITS DERIVED FROM THE POWER OF ATTORNEY TO THE PRINCIPAL. THE AGENT HAS A DUTY TO AVOID CONFLICTS OF INTEREST AND TO USE ORDINARY SKILL AND PRUDENCE IN THE EXERCISE OF THESE DUTIES.

_____ (Signature of Agent)

Signed this _____ day of _____, 20____