

National Healthcare Decisions Day (NHDD), April 16, 2016, exists to inspire, educate and empower the public and providers about the importance of advance care planning. NHDD is an initiative to encourage patients to express their wishes regarding healthcare and for providers and facilities to respect those wishes, whatever they may be. The theme for 2016 is ***"It Always Seems Too Early, Until It's Too Late."*** A typical legal means by which to express medical and financial wishes is the use of a written power of attorney.

What is a Power of Attorney?

A power of attorney is created when an individual age 18 and older (the Principal) privately empowers another person- also over the age of 18 (the Agent) to act on the principal's behalf to perform certain functions. The proper use of a power of attorney as an estate planning and elder law document depends on the reliability and honesty of the appointed agent.

The "law of agency" governs the agent under a power of attorney. The law of agency is the body of statutes and common law court decisions built up over centuries that dictate how and to what degree an agent is authorized to act on behalf of the "principal". Powers of attorney are a species of agency-creating documents. In most states, including Colorado, powers of attorney can be and most often are unilateral contracts--that is, signed only by the principal, but accepted by the agent by the act of performance.

The agent under a power of attorney has traditionally been called an "attorney-in-fact" or sometimes just "attorney." However, confusion over these terms has encouraged the terminology to change so more recent state statutes tend to use the label "agent" for the person receiving power by the document.

One important aspect of a power of attorney is its scope, which reflects the subject matter over which the agent may make decisions. A power of attorney can cover virtually any subject matter, or it can be limited to decision-making regarding the principal's financial or health matters.

A comprehensive power of attorney may include a grant of power for the agent to represent and advocate for the principal in regard to health care decisions. Such health care powers are more commonly addressed in a separate "health care power of attorney," which may be a distinct document or combined with other health topics in an "advance health care directive."

Another important preliminary consideration about powers of attorney is "durability." Powers of attorney are voluntary delegations of authority by the principal to the agent. The principal has not given up his or her own power to do these same functions but has granted legal authority to the agent to perform various tasks on the principal's behalf. All states have adopted a "durability" statute that allows principals to include in their powers of attorney a simple declaration that no power granted by the principal in this document will become invalid upon the subsequent mental incapacity of the principal. The result is a "durable power of attorney"--a document that continues to be valid until a stated termination date or event occurs, or the principal dies.

