

**WELCOME TO  
THE LAW OFFICE OF JOHN L. ROBERTS**

1200 Converse Street, Longmeadow, Massachusetts 01106



**POWER OF ATTORNEY SELECTION CHECKLIST**

This Checklist will help you understand important information, and identify the person you want to designate for your surrogate (substitute) decision making.

**Your Name :** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

After making an appointment, bring your Checklist to our office, with any additional questions.

**City, State, Zip Code** \_\_\_\_\_

**Your Phone:** \_\_\_\_\_ **Cell:** \_\_\_\_\_

**Your Email:** \_\_\_\_\_

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Type the names of the people you are considering here:

Relationship to you:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<b>1. Powers</b>	2. Reasons you are signing the POA	3. Is the person Competent to be your agent?	4. Is the person willing to serve as your Agent?	5. Should the Agent have Self Dealing Powers?
	6. Should you require the Agent to have a Duty to Account?	7. Same person for different roles?	8. Impact on the Agent's Estate Plan?	9. Do you also need a Trust?

**1. Understand the Powers you are giving to your Attorney-in-Fact (Agent).**

The person you designate to handle your financial and business affairs is known as your *Attorney-in-Fact* or your *Agent*.

To be an effective tool in the hands of your Attorney-in-Fact, the Power of Attorney document can grant many powers, such as the power to buy and sell your real estate, and the powers to open and close bank accounts, cash out insurance policies, and transfer assets.

This will be an "agency" relationship. You may be familiar with other types of agency relationships, such as your insurance agent, who represents an insurance company and you, in your dealings with an insurance company. A Power of Attorney creates an "agency relationship" that covers many more aspects of your life. Choose that person carefully.



**2. Understand the reasons that you are signing the Power of Attorney document.**

The purpose of the Power of Attorney document is to have a trusted person, designated in advance, to manage your financial affairs. The trusted person will be able to manage things for you, if you become unable to speak for yourself. This avoids the need for Probate Court to appoint a Conservator. Nobody wants to put their family through the delays and costs of Probate Court.

The Power of Attorney document can avoid the need to go to Probate Court.

**3. Is the person you are considering Capable and Competent.**

Carefully Select the Person Who Will Serve as Your Agent. Why did you select this person? What are their character traits?

How old is your agent? Age is important. If the person is your age, or older, they may be running into the same problems, at about the same time you do. Keeping up with bill paying and bank accounts is a challenge. Will your agent be able to manage all of the responsibility at the time in the future when you will need the help?

Name of person you are considering:	Age Appropriate?	Easy to Work with?	Willing to hire professionals?	Able to work with professionals?
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Is the person you are considering stubborn and difficult to work with?

Will the person be willing to hire professionals such as accountant, geriatric care manager, and attorney, when he/she needs technical advice to manage your financial affairs?

Will the person be able to work well with your professional advisors and planning team?



			<b>Confirm Agent's Willingness</b>
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**4. Does the person you are considering really want the responsibility? Is he/she willing to do the work?**

Serving as a Power of Attorney requires a commitment of time and energy. Believe it or not, there are people who decide to designate an agent without even asking the person they designate.

Name of person you are considering:	Willing to serve as Attorney-in-Fact?	Understands the responsibilities and duties?	Familiar with my assets and needs?
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

You are making a mistake if you sign a document without making sure the person named in the document knows what's going on.

The classic example is the widow who did not want to trouble her family members who lived in another state. She signed a Power of Attorney, designating her neighbor as her agent. Later, she got Alzheimer's. Her brother and niece came from far away to help her. They found her Power of Attorney, and contacted her neighbor. He knew nothing about the document, and refused to serve. The family had to file for [Guardianship](#) and [Conservatorship](#) in Probate Court.

			<b>Self Dealing Powers</b>
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**5. Carefully consider whether the agent should have the power to transfer assets to himself/herself.**

This is called a power of "self dealing." Without the power for self-dealing, your agent can't transfer real estate to himself. Self dealing might be a good thing, or it might be a bad thing. If you need nursing home care, and need Medicaid to pay for it, who will your assets be transferred to? Will the assets be spent down, or will your agent need the power to transfer to himself or to someone else?

Do you want the agent to be able to transfer assets to himself? If it's your spouse, it may not matter. If it's a distant relative, maybe you don't want him or her to have that power.

Name of person you are considering:	Is it appropriate to grant this person the Power of Self Dealing?
_____	_____
_____	_____
_____	_____
_____	_____

**Duty to Account**

**6. Consider whether your agent should be required to account for what he’s doing with your money.**

If there is no requirement that he keep accounts, how can anyone know what your agent is doing with your money? If there are problems, and no requirement for regular accounting of assets, your family would have to go to Probate Court to get someone appointed who *will* keep good accounts. The Power of Attorney document can be written to require that your agent account to your children, or account to all nephews and nieces if you do not have children, or to some other class of people. There could be a requirement that he or she account at specific intervals, such as annually.

<b>Name of person you are considering:</b>	<b>Should this person have a duty to account? If yes, list persons in addition to yourself who should receive an accounting:</b>
_____	_____
_____	_____
_____	_____
_____	_____

*Duty to Account* is just one feature of a properly drafted Power of Attorney. You won't find many of the things you need to consider in the Power of Attorney form documents that can be downloaded from the internet. Hiring a competent elder law attorney to prepare a Power of Attorney that fits your circumstances is an investment that you and your family will value in the future.

**Same Person for Different Roles?**

**7. Decide whether you need to nominate a different person to serve as your Guardian and Conservator.**

Many Power of Attorney documents nominate someone to serve as their Guardian and Conservator if that need ever arises. Often it's the very same person who is named as the Agent! What if the Agent doesn't keep accounts? Doesn't keep track of things?

If anyone does step up and ask that someone else who *is* competent be appointed Conservator, there can be a serious dispute. The [Massachusetts Probate Code Section 5-503](#) requires that the person who is objecting to the agent's conduct must demonstrate "Good Cause" in order to prevent the person nominated in the POA from also taking over as Conservator and Guardian.

<b>Name of person you are considering:</b>	<b>Should this person also be nominated Guardian?</b>	<b>Should this person should also be nominated Conservator?</b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



8. Confirm that the Power of Attorney document won't cause unexpected tax consequences for your agent.

This concern is related to #5, whether you agent has the power of transfer your property to himself. Confirm that there will not be unexpected estate tax consequences for your Agent. Serving as an Agent under your Power of Attorney could have an impact on your Agent's own estate plan. Make sure that your Agent 's powers won't cause your money to be included in the value of his estate. A "Power of Appointment" over your money could cause major estate tax problems for your Agent!

Name of person you are considering:	Has this person confirmed that the your Power of Attorney will not affect his / her estate plan
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9. Finally, consider whether you also need a Trust, to make sure everything is handled properly.

Consider a Trust document, in addition to your Power of Attorney document, if you are in one or more of these categories:

- People with hundreds of thousands of dollars of assets;
- People who have difficult family circumstances;
- People who have family members with disabilities or special needs;
- People who don't have close relatives or friends who want to be responsible.

Your Name:	I have: substantial financial assets	I have: difficult family circumstances	I have: disabled a family member	I have: no close relative or friend capable of being Attorney-in-Fact

If you checked one or more of these categories, you should include a Trust with your estate plan. A Trustee will be held responsible for carrying out the *specific instructions and directions* that you write in the Trust document.

During an educational meeting, we cover all of these considerations. Call (413) 567-5600 for an appointment.

