

Power of Attorney Revocations 101

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Introduction

If an agent under a power of attorney (POA) is using their authority to commit elder abuse or fraud, a revocation of the document may be an important step in stopping the abuse and preventing further harm. Learning how to navigate these cases with a client-directed approach is key to providing effective civil legal assistance. Power of attorney revocations must be executed in accordance with state statutes, and notice of the revocation to the agent, as well as any parties relying on the POA, is critical to success.

Key Lessons

1. Power of attorney (POA) revocation may be a helpful civil remedy in cases of elder abuse or fraud.
2. It is critical to provide actual notice of the POA revocation to the agent and all relevant parties.
3. Placing client concerns and wishes at the center of the representation will build trust and inform the trajectory of the case.

Revoking a Power of Attorney

States have enacted a variety of statutes governing powers of attorney, including how to create and revoke them. In 2002, the Uniform Law Commission (ULC) conducted a national study to determine how states legislate powers of attorney. Following the study, the ULC created the current version of the Uniform Power of Attorney Act (UPOAA), which 32 states have adopted (seven other states had enacted previous versions of the UPOAA).

The UPOAA addresses the revocation of powers of attorney in Section 110, which specifies that a POA will terminate when: the terms of the POA stipulate the circumstances of its termination; the principal or agent dies; the principal becomes incapacitated (if the POA is not durable); the purpose of the POA is accomplished; or when the principal revokes the POA or the agent's authority.

A power of attorney can be revoked in several ways, including:

1. Execution of a subsequent power of attorney, with language explicitly revoking all prior powers of attorney;
2. Execution of a power of attorney revocation document;
3. Divorce or dissolution of the marriage between the principal and the agent (in some jurisdictions); and
4. By court order.

Because powers of attorney can be revoked in several ways and because states do not have uniform legislation on powers of attorney, it is important to check various sources to determine how a particular client's power of attorney may be revoked. First, it is important to look at the power of attorney document itself to determine if it provides a method of revocation. Second, one should look at their state statute to determine requirements as to form and notice for a power of attorney revocation. Finally, practitioners should check case law on powers of attorney, as common law may apply where the statute is silent.

It is imperative that the agent receives actual notice of the revocation. It is also imperative that anyone who may rely on the revoked power of attorney has actual notice of the revocation. If an entity or person does not have actual knowledge of the revocation, they are not liable for relying on a revoked power of attorney.¹

Case Management

Attorneys can prepare for POA revocation cases by knowing the statute and case law in their jurisdiction and becoming clear on the process. Clarity will also help attorneys to prepare relevant interview questions for their clients and prepare appropriate forms to achieve the POA revocation. Most importantly, attorneys can ensure a client-directed experience by focusing on what the client wants and needs from the representation.

Because the POA revocation process is relatively simple and uniform, attorneys can improve their practice by preparing form revocation notices and client interview questionnaires for use in these cases. Having these forms available will help practitioners focus on the specific needs of a particular client rather than thinking about the basics of POA revocation. Initial client interviews should include a review of the POA document, if it is available, and questions about what the document says, who has the document, and why it needs to be revoked. Attorneys will also need to gather contact information for the agent and all parties to receive notice of the revocation.

In addition to the legal work of revoking a power of attorney, practitioners need to be aware of client safety. If a POA is being revoked because the agent is committing elder abuse or fraud, the client may need protection before a POA revocation is served upon the agent. It is important to have a conversation with the client about the agent's anticipated reaction to receiving a POA revocation notice. If the client has concerns about their safety or the safety of their assets, protective measures need to be discussed and implemented prior to POA revocation.

Practice Tips

- Send a copy of the POA revocation to every person and institution that could possibly be relying on a prior POA (financial institutions, medical providers, skilled nursing facilities, insurance, benefits providers, etc.).
- If there is concern an entity may not accept the revocation or is relying on an “unsprung” POA, the attorney can contact the entity's general counsel to discuss the issue and give instructions to the entity.
- Hand delivery of a revocation notice to an institution on the same day that notice is mailed to the agent can be a protective action, allowing the client to secure accounts and records prior to the agent receiving notice.
- If there is concern a POA revocation notice will be challenged on the basis of decisional capability, securing an accompanying letter certifying client's capacity at the time of signing a revocation can be a type of protective action.

¹ See Section 110(d) of the UPOAA

- Offer the client an advice letter on POA accountings and related actions during the representation. This provides the client with information needed to discern what they want to do moving forward. Educating the client also protects them from misinformation from the agent or other sources.

Conclusion

The ability of a principal to revoke a power of attorney may be an effective civil legal remedy to combat cases of elder abuse or fraud committed by an agent. Attorneys can be effective advocates for their clients by placing client concerns and desires at the center of representation. Thinking through the POA revocation process and preparing form questionnaires and revocation notices can make case management easier. With client interview questions and basic forms in place, practitioners can focus on client safety and education.

Additional Resources

- [Drafting Advance Planning Documents to Reduce the Risk of Abuse or Exploitation](#), National Center for Law and Elder Rights
- [Managing Someone Else's Money Guides](#), Consumer Financial Protection Bureau
- [Five Safeguards for Power of Attorney](#), ABA Commission on Law and Aging
- [National Center on Law and Elder Rights](#)
- [ABA Commission on Law and Aging](#)
- [Administration for Community Living](#)
- [Uniform Power of Attorney Act](#)

Please contact ConsultNCLER@acl.hhs.gov for free case consultation assistance. Sign up for our email list and access more resources at NCLER.acl.gov.

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