

POWER OF ATTORNEY (POA) in South Dakota: FREQUENTLY ASKED QUESTIONS

This information is being provided by SD Voices for Peace which powers the SD Dream Coalition. Templates for the documents listed below can be found on sdvfpeace.org and the SD Dream Coalition Facebook and Instagram pages. This is not legal advice. For specific questions pertaining to your individual situation, please contact a family law lawyer. All this information will be in English and Spanish.

WHAT IS A POWER OF ATTORNEY

It is a document where you give permission to someone else to act on your behalf, which is called an agent or attorney-in-fact (not an actual attorney).

WHAT DOES A POWER OF ATTORNEY MEAN IN AN IMMIGRATION CONTEXT?

Right now, there is a lot of fear and uncertainty regarding what will happen if someone with children or financial assets is detained or deported. A power of attorney document allows you to prepare for whatever may happen. In the case of detention or deportation, a power of attorney (POA) document can allow the detained/deported individual to ensure that someone has the legal ability to care for the individual's children and access whatever assets and/or finances that may need managed here in the United States. Without a power of attorney or other legal document, no one else can access your bank accounts or other financial belongings like a car, home or business. Also, if someone does not have legal authority to act on your behalf it will be difficult to care for your children, especially in the case of an emergency. When a POA is done correctly, it would only take effect when you want it to and it will give you the peace of mind that your children and your financial assets would be managed by someone you trust and has legal authority to act on your behalf.

DO I HAVE TO PAY A LAWYER TO FILL OUT THIS DOCUMENT?

No. You can fill this document out by yourself. You do not have to pay anyone to create this document for you. There is a template you can use, which is part of this packet from SD Voices for Peace and the SD Dream Coalition. **The only requirement is that you must get a stamp from an official notary at the end of the document.** This stamp should not cost you any money either. If you have a bank account, your bank should notarize this POA for free. In addition, the SD Dream Coalition will have a list of local notaries (not notarios) available for free.

WHAT DOES A POWER OF ATTORNEY DO WHEN IT ADDRESSES MY CHILDREN?

When a power of attorney document covers the 'care of a minor child,' it gives the person you give permission to act on your behalf as your agent or attorney-in-fact, you will allow this person to act on your behalf to care for your child or children.

IS IT EFFECTIVE IMMEDIATELY?

You can decide when the person you give permission to act on your behalf can start doing so **and** when they can stop acting on your behalf.

CAN I CHANGE MY MIND?

Yes! Once you fill out and sign the document, you can cancel it or change the person you gave authority to at any time. If you did not file it anywhere or give a copy to someone, you can simply rip it up. You could also

cancel it by making a new valid power of attorney. Make it clear who you give authority to and what dates it starts and ends.

DOES THE PERSON I'M MAKING MY ATTORNEY-IN-FACT/AGENT HAVE TO SIGN? CAN THEY DECIDE NOT TO ACT ON MY BEHALF?

Only you, the person who is giving authority to someone else to act on your behalf, is required to sign the document. When it takes effect, the person you give permission to act on your behalf can choose not to act on your behalf! This is why it is important that you not only feel comfortable giving them the right to act on your behalf, but that they also feel comfortable with you giving them that power.

We highly recommend that you have an honest conversation with the person you would like to act on your behalf. Taking care of children and your finances is very important, and you should choose someone you trust to follow through.

WHAT ELSE CAN A POWER OF ATTORNEY DOCUMENT DO?

A power of attorney (POA) is a document where you give permission to someone else to act on your behalf. This document can give authority to act on your behalf to another person for any and all kinds of matters. In SD you have to have a separate document for different things that you want to give someone else authority to do. States will commonly let you designate things such as childcare, financial, and healthcare decisions.

WHAT FINANCIAL/ASSET DECISIONS CAN I DELEGATE IN THE POWER OF ATTORNEY?

There are many different aspects of finances and assets that you can give permission for your designated person to handle. The easiest way to discuss these different aspects is to give you a simple definition and examples for each legal term.

Real Property – Land and structures permanently attached to the land.

Example: You own a house with a shed in the backyard. A power of attorney can give someone authority to manage the physical and financial decisions regarding the house and the shed.

Tangible Personal Property – This is everything else you own that you can hold but is not a piece of land or a structure on that land.

Example: You own a guitar. A power of attorney can give someone authority to decide what happens to the guitar.

Banks and other financial institutions –This refers to your accounts with a bank or other financial institution, like a credit union. A power of attorney lets the designated person manage and/or access those accounts.

Operation of Entity or Business – This refers to any business or company or organization you may own. A power of attorney lets you give power to another person to make the decisions regarding that business.

Insurance and Annuities – Car insurance, life insurance, health insurance for your kids, etc. The person you designate can collect payments from, make payments to, or modify your insurance if you give them that power.

Stocks and Bonds – They are non-physical items that give you partial ownership in a business or entitle you to receive money from someone else.

Example: You have ownership shares of a local grocery store. A power of attorney can give someone the authority to decide what happens to that ownership interest.

Commodities and Options – Financial instruments that give you the option, if you want, to buy or sell a specific thing/good/stock.

Example: Your job gives you the right to buy shares of the company at a certain price if you choose. This is proven with a written document provided to you. The power of attorney can give someone the authority to decide what happens with that right.

Estates, Trusts, and Other Beneficial Interests – Anything you are set to receive from a trust, will, guardianship, conservatorship, etc.

Personal and Family Maintenance – Many people would include here the care for minor children. However, it also includes the care and decision-making for those in your life that you support that may not be under the age of 18. If you have an adult that you care for, you can give the decision-making and support for that adult to your designated attorney-in-fact/agent.

Retirement Plans – Any type of benefit that you are receiving or going to receive based on retiring/finishing your employment can also be delegated to the preferred person to make decisions about.

Taxes – Any taxes on businesses, property, income, etc., that need to be paid or received can be delegated to the attorney-in-fact/agent to handle on your behalf.

WHAT IS THE DIFFERENCE BETWEEN A NOTARY AND A NOTARIO

In the Spanish language, a Notario is both a lawyer who can practice law and a notary who can stamp official documents. In the United States, a Notary does **NOT** have to be a lawyer. To be a lawyer in the United States, someone must go to law school and pass the bar exam. You can always ask to see someone's "Bar ID Card" to make sure they are a lawyer. So, remember if someone is advertising as a Notario in the United States, but you need a lawyer, you can ask to see their "Bar ID Card."

ONCE THE POWER ATTORNEY IS FILLED OUT SIGNED BY YOU AND STAMPED BY A NOTARY, WHAT DO YOU DO WITH THE DOCUMENT?

We highly recommend you make 2 copies of the original document (POA) (or 2 originals). Give one copy to the person you have given authority to act on your behalf. Keep one copy for your important documents file and take a picture of the document and email it to yourself, so you can access this document wherever you have access to email.

WHAT ARE SOME OTHER IMPORTANT DOCUMENTS I SHOULD KEEP IN A FILE AND EMAIL TO MYSELF?

We suggest the following documents for your file, and we will have template for you to print on the SD Dream

Coalition social media pages and the SD Voices for Peace's website:

- Important Children's information - what school they attend, teachers' names, friends' names, what do your children like to eat, who your trusted relatives are and their contact information
- Children(s) Medical information including health insurance, medication list and doctor's contact information.
- Lawyer information – if you have a family law, immigration, criminal law lawyer
- Passports
- Birth Certificates
- Marriage License
- Any Restraining orders you may have against anyone
- Your A#, if you have one
- Copy of your work permit, green card, social security or ITIN# and other identification like the biographical page of your passport
- And any other document you need someone to find quickly