





# WHEN DOES AN AGENT'S AUTHORITY BEGIN?

The agent's authority begins when the POA says it will begin. If the POA does not state when the powers begin, the agent can begin acting immediately. Some POA documents state that the agent's authority will "spring" into effect at a future date or upon a particular event. For example, some people want the agent's authority to begin if and when the principal loses mental capacity. It is best to discuss the use of a "springing" POA with an attorney, as the springing provision may be difficult to demonstrate to banks and financial institutions. It is usually better to allow the POA to take effect immediately, especially since many third parties may not be willing to accept a springing POA. If the agent is not completely trustworthy, the principal should consider naming a different agent, naming co-agents and requiring them to act together, or perhaps not creating a POA. If there is no POA, the probate court will name a guardian if and when necessary.



## CONTACT US:

-  41 N. Perry Street, Room 104, Dayton, OH 45422
-  937-496-7623
-  Clerkhelpcenter@mcohoio.org
-  Monday-Friday 8:30AM to 4:30PM

To view our outreach schedule or find out more information, please visit our website at [WWW.COURTHOUSETOYOU.COM](http://WWW.COURTHOUSETOYOU.COM).



## OUR DIVISIONS:

- CIVIL: 937-225-4512
- CRIMINAL: 937-225-4536
- DOMESTIC RELATIONS: 937-225-4562
- RECORDS: 937-496-7762
- AUTO TITLE: 937-225-4480
- EASTERN MUNICIPAL COURT (HUBER HEIGHTS): 937-496-7231
- WESTERN MUNICIPAL COURT (TROTWOOD): 937-687-9099



CLERK OF COURTS MIKE FOLEY

**BRIDGING THE JUSTICE GAP ONE CONSTITUENT AT A TIME.**

# FINANCIAL POWER OF ATTORNEY

**MIKE FOLEY**

MONTGOMERY COUNTY  
CLERK OF COURTS





## WHAT IS A FINANCIAL POWER OF ATTORNEY?

A financial power of attorney (POA) is a legal document an individual (the “principal”) can use to appoint someone (the “agent”) to act on his or her behalf regarding personal, financial and business matters. Typically, a POA is used when an individual becomes unable to handle his or her own affairs. A principal can name one agent, or two or more co-agents, each of whom can act alone, unless the POA specifically states that they

must act together, by majority, or in any other manner. If the principal names a single agent, it is wise to name at least one successor agent. When a person becomes mentally incapacitated and has not signed a POA, the probate court may appoint a guardian for that person. It is far more efficient and cost effective to use a POA, although a standard POA document lacks the safeguards existing under a court-supervised guardianship. Unless there are co-agents or special provisions in the POA, no one oversees the agent’s conduct once the principal loses capacity. It is extremely important to choose an agent carefully, and to grant only those powers the agent may need to exercise.

## WHAT DOES AN AGENT DO?

An agent must always act in good faith and in accordance with the principal’s reasonable expectations, to the extent known to the agent; in other words, the agent must act in the principal’s best interest, and only within the scope of the authority granted in the POA. Also, an agent must act in a way that preserves the principal’s estate plan, if the agent knows about the plan and preserving it is in the principal’s best interest. For this reason, the principal should tell the agent about his or her estate plan, provide the name of the attorney who prepared it, and perhaps even include the attorney’s name in the POA.

Unless stated otherwise in the document, the agent must act loyally, avoid conflicts of interest, cooperate with the principal’s health care agent and keep accurate records of acts performed under the POA.

## WHAT POWERS DOES AN AGENT HAVE?

The principal determines the scope of the agent’s authority. Current Ohio law sets forth the details about various powers. When using the current statutory form, the principal only needs to write his or her initials on the form next to each of the following classes of powers to be granted: Real Property; Tangible Personal Property; Stocks and Bonds; Commodities and Options; Banks and Other Financial Institutions; Operation of Entity or Business; Insurance and Annuities; Estates, Trusts, and Other Beneficial Interests; Claims and Litigation; Personal and Family Maintenance; Benefits From Governmental Programs or Civil or Military Service; Retirement Plans; Taxes; and, Digital Assets.

