

Power of Attorney and your IRA

It is a common financial planning strategy for investors to have Power of Attorney (POA) documents drafted for them. We, at Wells Fargo Advisors, feel it is important that you are educated regarding the procedures we undertake to process a POA request for your Individual Retirement Account (IRA), so that your wishes can be carried out. The information provided here will give a brief explanation of POA documents and our processes.

What is a POA?

A POA is a legal document in which you, the Principal, authorize someone to act as your Agent or Attorney-in-Fact for purposes of making financial or other legal decisions. This allows for the smooth transition of decision making to your Agent should you become unable to do so. POAs are also used when you are capable of making decisions on your own behalf but want your Agent to do so instead.

It's important to understand that POA statutory requirements vary by state. Adding to the topic's complexity, POA documents drafted by an attorney are written with varying degrees of intricacies. However, by addressing each of the following issues, you can help ensure that your intentions are legally and properly applied to your IRA. Any POA that we receive is reviewed by our New Accounts Department to determine whether an outside POA can be added to any or all of your accounts held at Wells Fargo Advisors. It is important that you follow up with your Financial Advisor to see that your POA has been added to your account(s).

Definitions

Power of Attorney (POA) – a legal document in which one individual (the Principal) designates another individual (the Agent) authority to act on his behalf

Attorney-In-Fact (Agent) – the individual who has been empowered to act on behalf of the Principal

Principal – the account owner or individual conveying the rights



Reviewing the POA

When reviewing your POA, we will need to determine the effectiveness and scope of appointment.

Determining the effectiveness of appointment – A durable POA is not affected by the principal's disability or incapacity and continues to be valid and enforceable if/when the principal becomes incapacitated. Typically, if the POA is not identified as "durable," then it is not enforceable following the principal's incapacitation. Most instruments will clearly identify conditions which trigger either the enactment or dissolution of the powers.



An individual who is not of sound mind cannot legally enter into a contract, such as signing a POA. It is prudent to request a physician's statement that assesses the principal's mental capacity **if you have information that indicates incapacity** at the time the POA was completed. A notary stamp does not necessarily indicate the principal's mental capacity.

Determining the scope of the appointment – There are typically a couple of elements in a POA that are relevant to IRAs. It is important to look for both inclusive and exclusive language when reviewing a POA for the following elements. For instance, the document may specifically state that IRAs are not applicable. The following table explains the typical elements in a POA relevant to IRAs.



Elements in a POA relevant to IRAs

IRA transactions	The POA instrument may also include language that is substantially similar to the following: “to buy, sell, tender, exchange, exercise or trade in stocks, bonds, and any other securities ...” The POA may specifically identify distributing IRA assets or retirement plan transactions, or reference the ability to distribute money or assets in order to allow distributions from the IRA.
Beneficiary	The POA will be reviewed to determine whether the Agent has the authority to make or change IRA beneficiary designations. Wells Fargo Advisors will not accept a beneficiary designation signed by an Agent unless the POA expressly gives the Agent the power to make or change beneficiary designations.*
Gifting	Gift language permits the agent to make gifts to a third party or to the agent. Any gifting power of the agent must be expressly stated in the power of attorney. Even if the POA authorizes the agent to make gifts, it must specifically authorize the agent to make gifts to the agent.
Opening accounts	In general, agents who wish to open banking or brokerage accounts must be granted such authority in the POA instrument. The POA would need to include language that authorizes the agent to establish securities or financial accounts.

Revoking your POA

A competent person can revoke a POA at any time. You generally should put in writing that you revoke the POA, and sign and date this in front of a notary. Send copies to the attorney-in-fact and to any person, office, or bank the attorney-in-fact dealt with for you. If you do not contact businesses that have your POA, they will not know that you have rescinded the POA and your attorney-in-fact may still be able to act on your behalf. It is important to note that different states may have their own requirements for a formal and legal revocation of the POA. There are some states that require, as an example, the revocation to be recorded with the courts.

POAs automatically end when the principal dies. Additionally, if you designate your spouse as a POA agent, it usually ends if either of you start a divorce, separation, or annulment case. Again, different states may have their own requirements regarding divorce, separation, or annulment and revocation of a POA.

Work with a legal advisor

Working with your personal legal advisor, you will be able to determine the POA wording that is pertinent to your individual needs and situation. They can also provide guidance on revoking your POA.



Talk to Wells Fargo Advisors

We look forward to working with you to help assure your retirement future at Wells Fargo Advisors. Wells Fargo Advisors does not provide legal or tax advice.

With you every step of the way

Everyone has a different vision of retirement that requires a unique financial strategy. Wells Fargo Advisors can support you in your retirement planning process by providing the guidance needed to make more informed choices. We will meet with you and help create a comprehensive plan that takes into account your complete financial picture. Your Financial Advisor will be with you every step of the way to monitor your progress and adapt your plan as needed. Working together, we'll design and implement a retirement plan that can help you live out your unique vision of retirement.

*Certain carve-outs may be applicable: 1) We will honor the prior beneficiary designation in the event of an IRA Custodian to Custodian transfer or rollover from an employer-sponsored plan; 2) we will accept a legal opinion from an attorney who cites both state statute and case law as the basis for the Agent's submission of an IRA beneficiary designation form; 3) a POA from Pennsylvania will receive special consideration due to a Pennsylvania Supreme Court case which ruled that a POA which authorized an Agent to "engage in retirement plan transactions" also gives the Agent the power to make/change IRA beneficiaries; and 4) a POA from Florida will receive special consideration due to a Florida district court case which authorized an Agent to change beneficiary designations if the POA gives the Agent powers under Florida Statute Section 709.08. Please note that Section 709.08 only applies to Florida POAs dated prior to October 1, 2011.

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