Power of Attorney and Health Care Directive, Explained

Two documents with two different jobs, and how California requires them to be signed.

	Durable power of attorney	Advance health care directive
What it covers	Money and property: paying bills, managing accounts, handling real estate and taxes, as far as the document allows.	Health care: who makes medical decisions for you, and the treatment you do or do not want.
Who you name	An agent, also called an attorney-in-fact, and usually a backup.	A health care agent, and usually a backup.
When it starts	Right away, or only if you become incapacitated. It depends on how the document is written.	In most forms, when your doctor decides you cannot make or communicate your own health decisions. The form can say otherwise.
California signing rule	Dated and signed by you, then notarized or signed by two qualifying witnesses (Probate Code section 4121).	Dated and signed by you, then notarized or signed by two qualifying witnesses (Probate Code sections 4673 and 4674).
When it ends	At your death. A will or trust takes over from there.	Mostly at your death. Unless the directive limits it, your health care agent can still decide about organ donation, an autopsy, and your remains (Probate Code section 4683).

Who can be a witness for a health care directive?

- Witnesses must be adults, and each must see you sign the directive or hear you acknowledge your signature.
- Your health care provider and the provider's employees cannot be witnesses. Neither can the operator or an employee of a community care facility or a residential care facility for the elderly. Your named agent cannot be a witness either.
- At least one witness must be neither related to you by blood, marriage or adoption nor entitled to any part of your estate.
- Each witness signs a declaration under penalty of perjury. A notary public is exempt from these witness rules.
- If you live in a skilled nursing facility, there is an extra witness rule (Probate Code section 4675). Ask your attorney.

Electronic documents have additional rules, including that notarization is required.

Questions to ask your attorney

- Who should be my agent, and who should be my backup?
- Should the power of attorney start now, or only if I become incapacitated?
- Which powers should I include, and which should I leave out, such as gifting or changing beneficiaries?
- Will my bank, my brokerage and my doctors accept these documents?
- Do I also need a HIPAA authorization?
- Where should I keep the originals, and who gets copies?
- Do I need to update these if I spend time in another state?

This page is general education, not legal advice. My Legacy Management is an insurance agency, not a law firm. Laws change and every family is different, so talk to a California-licensed attorney about your documents and a tax professional about taxes.

Sources: California Probate Code: Section 4121 (power of attorney requirements) · California Probate Code: Section 4673 (advance health care directive requirements) · California Probate Code: Section 4674 (witnesses) · California Probate Code: Section 4675 (skilled nursing facility residents)

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