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Precautionary power of attorney

Heruntergeladen am 29.06.2025

<https://fimportal.de/xzufi-services/10636617/L100001>

Modul	Sachverhalt
Leistungsschlüssel	99046028000000, 99046028000000
Leistungsbezeichnung I	Precautionary power of attorney
Leistungsbezeichnung II	
Typisierung	2/3 - Bund: Regelung (2 oder 3), Land/Kommune: Vollzug
Quellredaktion	Hessen
Freigabestatus Katalog	unbestimmter Freigabestatus
Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	
Leistungstyp	
Leistungsgruppierung	
Verrichtungskennung	
SDG-Informationsbereich	
Lagen Portalverbund	Urkunden und Bescheinigungen (1070200), Erbschaft, Nachlass und Testament (1190200), Altersvorsorge (1180100)
Einheitlicher	

Modul	Sachverhalt
Ansprechpartner	Nein
Fachlich freigegeben am	25.09.2018
Fachlich freigegeben durch	Hessian Ministry of Justice
Handlungsgrundlage	
Teaser	
Volltext	<p>A sudden accident, stroke or other serious illness can lead to mental and physical frailty. Taking precautions for such times must be well thought out. Anyone who wants to avoid ordering care in such cases can achieve this by means of a power of attorney. Care is no longer necessary if the affairs of the person concerned can be taken care of by an authorized representative or by help in another form as well as by a caregiver. A power of attorney therefore applies not only in cases of permanent need for care, but also if the person concerned is only temporarily unable to act on his or her own responsibility and make meaningful decisions. It constitutes an authorisation of representation granted by legal transaction. The prerequisite for a lawful power of attorney is the legal capacity of the person giving the power of attorney. With the power of attorney, you authorize a person you trust to act for the person giving the proxy in predefined situations and for predefined tasks. A revocation or change of the power of attorney, for example to adapt it to a current situation, is possible at any time.</p> <p>Since legal transactions carried out on the basis of a power of attorney are not regularly reviewed by third parties (the authorized representative becomes the representative through the power of attorney and therefore decides in place of the power of attorney who is no longer capable of making decisions), you should only grant powers of attorney to particularly trustworthy, personally known and fully legally competent persons who are willing to act for you if necessary. You can be guided by your wishes and needs when drawing up the power of attorney and give additional instructions on how certain of your affairs should be regulated. Therefore, it may be advisable to</p>

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involve the desired authorized representative(s) already in the drafting of the power of attorney.

Special features of the power of attorney You should consider the following special features when drafting a power of attorney:

- You can only draw up a power of attorney if you have your own legal capacity.
- In principle, you can draw up the power of attorney informally. Nevertheless, it seems sensible to have the power of attorney notarized. This is because the notary can advise you comprehensively on possible legal effects and the content of your power of attorney. In addition, the notary can make findings on legal capacity and officially document your identity and protect against incorrect content, inaccurate and inappropriate drafting of the power of attorney.
- If there is a notarial power of attorney, this is a strong indication that you, as the person giving the power of attorney, were legally competent when it was drafted. In addition, in order to eliminate cases of doubt, you can obtain a medical certificate proving your legal capacity by certifying your ability to form your free will.
- If your power of attorney is to be irrevocably suitable for real estate and banking transactions, a notarial certification is mandatory.
- The precautionary power of attorney only becomes effective when your own legal incapacity and incapacity to act is determined by a doctor, but then takes effect immediately in contrast to the care order, in which the authorized representative must first be appointed by the care court as a caregiver.
- Only the original power of attorney is valid, so keep it safe, but at the same time make sure that the power of attorney remains traceable in the event of an emergency, as the authorized representative can only stand up for you with this. You can deposit the original with a lawyer or a notary. You can also register your power of attorney with the Central Pension Register.
- In the case of notarised precautionary powers of attorney, further copies can be issued at any time later by a notary, which are equivalent to the original in legal transactions.
- You can authorize several people, who will then

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perform different tasks for you in the event of your legal incapacity. Please note that you also have to draw up different precautionary powers of attorney.

- You have the option of appointing a substitute representative in the event that the intended representative is no longer able or no longer willing to exercise the power of attorney for you for other reasons.
- If your authorised representative is also to be allowed to make serious decisions in the case of medical measures in which you, as the person giving the power of attorney, could die as a result of the measure or suffer serious and prolonged damage to your health, you must explicitly mention this in your written power of attorney. In addition, for actions in these areas, the authorised representative generally requires the prior authorisation of the guardianship court (department of the district court). The same applies with regard to possible restrictions on the freedom of movement of the person giving the power of attorney.
- In order to ensure that your power of attorney is up-to-date, you can renew it annually by signing a date and, if necessary, by witnesses.
- Public certifications carried out by a registrar of a supervisory authority are almost equivalent to notarial certification (except in cases of irrevocable authorization for real estate and banking transactions).
- Once a power of attorney has entered into force, it is almost irreversible because the person giving the power of attorney is no longer legally competent. However, it is possible to make a provision in your power of attorney according to which a court-appointed supervisor can unilaterally terminate the power of attorney. This supervisor will be appointed by the guardianship court if the court deems it necessary for your well-being.

Bank power of attorney A bank power of attorney authorises a person to carry out all transactions with the bank on behalf of the person giving the power of attorney. You should also renew a bank power of attorney annually. Even if a notarial certification is not absolutely necessary, it offers the highest security against doubt. If you have drawn up a power of attorney and this includes banking transactions and is

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notarized, it must be accepted by your bank. No additional bank power of attorney is required for the authorised representative. You should use the form offered by your bank for this purpose, as this will avoid acceptance problems when exercising the power of attorney later. General power of attorney With a general power of attorney, you can authorize one or more trusted persons to represent you in all matters without having to go into individual powers or tasks. A general power of attorney therefore requires a great deal of trust in the authorized person. For your safety, it is therefore advisable to list individual tasks that are to be taken over in detail. In contrast to the precautionary power of attorney, a general power of attorney applies to all areas of life, even if they are not explicitly mentioned. Even with the general power of attorney, only the original applies, which authorizes the authorized person immediately and at any time for you to be able to act. Although advice and certification by a notary is not absolutely necessary, this is strongly recommended.

https://verwaltungsportal.hessen.de/leistung?leistung_id=B100019_643439

<https://verwaltungsportal.hessen.de/themen?leistung=B100019%3A%3A643439&view=leistung>

Erforderliche Unterlagen

This depends on the scope of the power of attorney to be granted.

Voraussetzungen
Kosten

In the case of notarial certification: the statutory fee, the amount of which depends on the value of the object.

Verfahrensablauf
Bearbeitungsdauer
Frist
**weiterführende
Informationen**
Hinweise

See also the brochure "Betreuungsrecht", published by the Hessian Ministry of Justice and the Hessian Ministry

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	<p>of Social Affairs and Integration</p> <p>https://justizministerium.hessen.de/infomaterial/Betreuungsrecht</p> <p>https://justizministerium.hessen.de/infomaterial/Betreuungsrecht</p>
Rechtsbehelf	
Kurztext	
Ansprechpunkt	<p>Advice and support in questions of power of attorney is available from locally competent care authorities, care associations as well as lawyers and notaries. The care authorities of the municipalities and the local care associations offer personal consultations. Contact persons can be found in the Hessian brochure Childcare Law in Annex IV.</p> <p>https://justizministerium.hessen.de/infomaterial/Betreuungsrecht</p> <p>https://www.betreuungsrecht.hessen.de/</p> <p>https://justizministerium.hessen.de/infomaterial/Betreuungsrecht</p>
Zuständige Stelle	
Formulare	<p>https://justizministerium.hessen.de/infomaterial/Betreuungsrecht</p> <p>https://justizministerium.hessen.de/infomaterial/Betreuungsrecht</p>
Ursprungsportal	Precautionary power of attorney, Vorsorgevollmacht