# What is the Difference Between a Conservatorship and Power of Attorney?

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If you are trying to figure out your estate plan in Massachusetts, you have likely heard of both conservatorship and Power of Attorney (POA), but you may still be unclear about the difference between the terms.

While they do serve a similar purpose in many ways, they are legally very different. The Massachusetts wills, trusts, and estate planning attorneys at Cohen Cleary, P.C. can help you understand the difference between them and determine how best to utilize both.

## What Is a Conservatorship in Massachusetts?

A conservatorship often works in tandem with guardianship. Where guardianship identifies someone to protect the individual, a conservatorship appoints someone to look after the finances and estate of the protected person who is no longer able to handle their own affairs. It often includes managing the protected person's property and financial affairs. This includes but is not limited to paying bills, handling bank and investment accounts, collecting income, and entering into or signing financial and legal documents on their behalf."

Though many people may designate the same person to manage their finances and healthcare, a conservatorship is a separate role from making healthcare or related personal decisions for them. This person is court-appointed, though your loved ones may file paperwork to make their case to take over managing your affairs.

## What Is a Power of Attorney in Massachusetts?

Unlike a court-ordered conservatorship, a Power of Attorney is someone that you intentionally and proactively designate to handle your affairs if you become unable to do so. There are several types of POA that are beneficial in different contexts:

- **General Power of Attorney:** This POA provides broad authority for the individual to help you handle your affairs. This is typically for financial or business matters and becomes invalid if you become incapacitated.
- **Durable Power of Attorney:** A durable POA is similar to a general POA, but this extends even when you are unable to make decisions for yourself or are otherwise considered incapacitated.
- **Limited Power of Attorney:** A limited Power of Attorney is typically used for a very specific task, such as allowing your CPA to work with your financial institutions, or appointing someone to complete a real estate sale or purchase on your behalf.
- **Springing Power of Attorney:** A springing Power of Attorney typically requires some kind of triggering event. This is often something like a doctor's certification stating you are no longer

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able to care for yourself.

- **Healthcare Proxy:** A healthcare proxy is often referred to as medical Power of Attorney and is commonly included in an advance healthcare directive. This type of arrangement allows a specific person to take over your healthcare decisions if you become incapacitated. This type of designation should be completed when you are still of sound mind and often requires two witnesses.

From an estate planning perspective, designating a durable or springing Power of Attorney or completing the healthcare proxy form are often the best ways to proactively protect your wishes and make the situation easier for your loved ones.

## Key Differences Between Conservatorship vs Power of Attorney

The biggest difference between a conservatorship and a Power of Attorney is that a POA is something you establish ahead of time while you still have the legal capacity to make the decision of who should be in charge of your affairs. The process to establish conservatorship of a person is most commonly done in an emergency setting where someone is urgently needed to step up.

This can be due to the absence of a POA, or it could be due to a current POA who is failing in their duty. Additionally, the courts appoint the conservator based on those who apply for the role, while you have full control of a POA.

## When Is a Power of Attorney the Right Choice?

Many people feel that setting up a Power of Attorney is something to do later, but taking a proactive approach can set you and your family up for success. This is a document that you can change or void at any time, so you can make changes as your life changes.

Most people prefer to have a say over who manages their financial affairs should they be unable to do so, making a POA the wise choice. Additionally, having a plan ahead of time can do a lot to reduce the stress and fear of your loved ones in the moment and can reduce conflict if you have multiple family members who may not agree on your care or how your affairs should be managed.

If you are married, you may assume that your spouse will have the ability to make decisions for you if something were to happen. They do not, however, have a legal right to manage your affairs if you have not explicitly given them that right. If something happens to you without this POA, your spouse will have to go through the process of petitioning the courts to take charge of your financials, which can be time-consuming, expensive, and stressful.

When you plan ahead, you can ensure that everyone knows their role should something happen, and you give your loved ones the opportunity to ask questions or address feelings they may have about your decision. While you may still have people who disagree with your decision, the POA reduces infighting among many families.

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## When Is a Conservatorship Necessary in Massachusetts?

Conservatorships often happen when an adult is determined to be incapacitated due to illness or disability. If you become ill or incapacitated without a valid POA, then your loved ones will have to petition the courts for a conservator to handle all of your affairs.

## Does Conservatorship Override Power of Attorney?

A conservator has the authority to revoke or limit an existing power of attorney. This can be helpful in a situation where the designated person is not acting in your best interest, whether that's making decisions you would not agree with, or the acting agent is engaging in financial abuse or medical neglect.

A loved one can go to court and petition for a conservatorship on the grounds of abuse, neglect, or exploitation. In many cases, this is a good thing that protects you from harm and provides additional oversight when necessary. It should be noted, however, that the court typically requires significant support for a conservatorship claim to override a legally valid Power of Attorney. The courts work to balance your expressed autonomy by appointing a POA with changing dynamics and your well-being.

## Speak With a Massachusetts Estate Planning Attorney

It can be overwhelming and stressful to plan for illness or death, but in many ways, it is one of the last things you can do to help take care of your family. Working with an estate planning attorney can give you and them the peace of mind to know that your wishes are clear and you have established the foundation for them to follow through.

If you are unsure about what will best suit your situation, you can call us today for a free case consultation where we can discuss your situation and help you develop a plan you feel confident with.

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