

The law about Powers of Attorney is different in each state. This document addresses questions about Powers of Attorney under Indiana law. This document is intended to provide general guidance and should not be interpreted as legal advice.

What is a Power of Attorney?

A Power of Attorney document (POA) is a written document that grants a designated person (your “Agent”) authority to act on behalf of the person giving the POA (the “Principal”) in some matters. The authority of the Agent may be broad or limited and may allow decisions regarding finances, medical treatment, and/or property. A POA is not a standardized, “one size fits all” form. POAs are not guardianships and an Agent who has authority under a POA is usually not authorized to care for or make decisions on behalf of one’s children.¹

Should I establish a power of attorney if I fear immigration detention or deportation?

Not everyone needs a POA. Each person should consider whether a POA is right for them based on their individual circumstances. A POA may be useful because it can be used to allow a trusted friend or family member to access your bank account. If you do not have a bank account in the United States or other substantial financial assets, there may not be a compelling reason to complete a POA. Many banks allow customers to manage their accounts from outside the United States, so if someone is deported, they will generally be able to access their resources from abroad.

What are the risks of establishing a POA?

There is danger in giving someone a POA. The person granted a POA can withdraw money from your bank account without further permission.² While you can seek to terminate the POA at any time, the revocation process can be complicated.³ And unless you notify your bank of the termination, your Agent could still use the POA authorization. There have been cases of people granted POA who have stolen money from the immigrants who gave them that power.

If I do not establish a POA, what will happen to my assets in the United States if I am detained or deported?

Detention and deportation do not terminate your ownership of your assets in the United States. You may transfer or sell your property from abroad. You may wish to consult with an attorney now about how to do this so that if you are detained or deported, you have a plan in place to manage your assets. Establishing a POA may or may not be appropriate for you, depending on the type and amount of your assets and whether you already co-own your assets with someone else who could manage your assets if you become unavailable.

Can I establish an Indiana POA from detention or from my home country?

Probably not. For a POA to be valid in Indiana, it must (1) Be in writing; (2) Name the person designated to hold the POA; (3) Give that person the power to act on behalf of the individual giving the POA; (4) Be signed by that person or at that person’s direction either before a notary OR qualifying witnesses.⁴ It may be possible to establish a POA under the laws of your home country from abroad.

¹ NIJC’s guide on Indiana guardianships is located here: immigrantjustice.org/know-your-rights/family-protection-planning

² Ind. Code Ann. § 30-5-5-5

³ Ind. Code Ann. § 30-5-10-1

⁴ Ind. Code Ann. § 30-5-4-1

If I have a mortgage on my home, do I need a POA if I fear detention or deportation?

As long as you continue to pay your mortgage, you should be able to keep you home in the event of detention or deportation. If you do not automatically pay your mortgage through your bank and need someone available to make payments for you if you become unavailable, a POA may be appropriate. Remember, the person you give POA to will have authority to access your bank account and there is risk anytime you give someone else access to your money. You may wish to set up automatic payments on your mortgage to avoid the need for a POA.

If I still think I need a POA, how can get one?

Indiana law has very specific requirements for a POA to be valid. See the requirements listed above. Know that it is possible to create a POA that *only* becomes active upon the occurrence of a specified event, like detention or deportation.⁵ A POA may be created to terminate at a designated time.⁶ Establishing that the POA only becomes active upon detention or deportation and that it expires at a set time are ways to you can protect yourself if you elect to establish a POA.

Should I ask a notary or “notario” to prepare a power of attorney for me?

Be aware of notary fraud! In the United States, a notary is not automatically a lawyer. Most notaries in the U.S. have no legal training at all. Unless a notary also has a license to practice law, the notary is not authorized to draft any legal document. A POA is a complicated legal document. Being a notary authorizes an individual to verify signatures – nothing more! If you decide a POA is the right option for you, you may need a notary to verify your signature on your POA document. Instead of going to a shop that advertises notary services, you should visit the notary at your bank or some other trusted institution. In Indiana, the average cost to notarize a document is \$5.00 or less. It is best to have a lawyer’s assistance for a POA. If you would like a lawyer to assist you, contact the [Indiana Bar Foundation](#) or the [Volunteer Lawyer Network](#).⁷

Can I change or terminate a POA from my home country?

You can terminate a POA at any time, but communicating that termination from abroad may be tricky. For example, if your bank is not aware that you have terminated a POA, the person given the POA can continue to access your bank account. If you choose to establish a POA, you may set a termination date so the POA automatically ends on a date you have selected.

⁵ Ind. Code Ann. § 30-5-4-2

⁶ Ind. Code Ann. § 30-5-10-2

⁷ Indiana Bar Foundation: <https://www.inbarfoundation.org/civil-legal-assistance/#LH-internal-link>
Volunteer Lawyer Network: www.volunteerlawyernetwork.net