

The FPOA “Special Instructions” Section Article [\(Back to FPOA Toolkit\)](#)

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[What Is The “SPECIAL INSTRUCTIONS” Section? \(Top of page\)](#)

The “Special Instructions” section of Ohio’s Statutory Financial Power of Attorney (FPOA) is an optional section where you can add additional instructions for your agent. Such instructions can be divided into two types:

- 1) Additional instructions not included in the default Statutory FPOA, such as the anti-arbitration clause below, or
- 2) Instructions that change the Statutory FPOA default provisions, such as an instruction not allowing your agent to be compensated for performing his/her duties.

Any Special Instructions included must be initialed by you, the principal, prior to signing the FPOA, in order for such instructions to be binding on your agent.

[What FPOA Default Provisions Are Changeable With Special Instructions? \(Top of page\)](#)

Although any FPOA default provision can be changed with Special Instructions, there are several choices built into the Ohio Statutory do-it-yourself form interview that may result in Special Instructions:

- 1) If during the do-it-yourself FPOA interview you choose that your agent should not be compensated for performing his/her duties as your agent, then that choice appears as a Special Instruction because such compensation is built into the form unless you state otherwise.

- 2) Similarly, by default your FPOA becomes effective immediately upon signing. But you can change that by choosing that it shall not become effective until you become incapacitated and that choice will appear as a Special Instruction.
- 3) Although the form FPOA does not have a place to name a co-agent, that provision can also be added as a Special Instruction.
- 4) The Special Instructions above will be automatically created when you choose that option in the do-it-yourself FPOA interview. However, you also have the opportunity to type your own Special Instruction during the do-it-yourself FPOA interview if you wish. For example, your agent's authority will continue until you die unless you specify a shorter period of time in the Special Instructions.

Why Has Pro Seniors Added Special Instructions To The Form For Me To Consider?

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Pro Seniors has been using this FPOA form for our clients since Ohio first created it in 2012. During that time, we found that several provisions not included in the form were especially helpful for our senior clients. We added these three provisions as Special Instructions to your FPOA form which you can choose to accept or reject. To accept Special Instructions one through three, you must initial each provision at the end where this appears: (_____). To reject any Special Instruction provision, simply do not initial it at the end. If a Special Instruction provision is not initialed, it has no effect whatsoever.

Why Was The Qualified Income Trust Special Instruction Added To The FPOA Form?

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Over half of Ohio nursing facility residents are on Medicaid. The main reason for this is that the average cost for long-term care in the United States in 2016 was \$225 per day or over \$80,000 per year for a semi-private room in a nursing home. Because of this high cost, even people with moderate savings run out of money if they are in a nursing home for a year or longer.

Once their savings run out, nursing home residents turn to the Medicaid program to help pay their bill. But if their income exceeds 300% of the federal benefit rate (FBR), the maximum federal monthly SSI payment, \$750 per month for an individual in 2018, they are not income eligible for Medicaid unless and until they create a Qualified Income Trust (QIT). However, the Ohio FPOA form specifically withholds authority from the agent to create a trust.

Therefore, the only way to allow your agent to create a QIT is to authorize it in the Special Instructions. Pro Seniors has added that authorization as the first Special Instruction. Initialing

this Special Instruction provision before you sign the FPOA, will allow your agent to create a Qualified Income Trust if necessary to qualify you for the Medicaid program.

Why Was The Authority to Agree to Arbitration and Waive Your Right To A Jury Trial And A Class Action Withheld From Your Agent In The Second Special Instruction? (Top of page)

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Many nursing facilities and other long-term care providers add clauses to their contracts that the consumer agrees to privately arbitrate all disputes rather than file a complaint in court where the consumer is entitled to a jury trial. Some contracts also prohibit the consumer from filing a class action. Most consumers don't thoroughly read or completely understand the multi-page contracts they sign. This is especially true when the consumer is in ill health and about to receive long-term care. Many FPOAs are in similar circumstances and may inadvertently agree to such provisions.

By initialing the second Special Instruction provision before you sign the FPOA, you are including in your FPOA the provision that your agent, your attorney-in-fact, will not have the authority to waive your right to a court trial, jury trial or your right to file a class action. Thus preserving your right to settle any dispute with the nursing facility in a court of law before a judge rather than being forced into private arbitration before a hearing officer.

Pro Seniors feels it is important that you protect your fundamental right to a jury trial and therefore recommends that you initial the second Special Instruction in your FPOA before you sign the FPOA at the end.

Why Was The Preservation-Of-Rights Special Instruction Added To The FPOA Form? (Top of page)

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When Ohio's Statutory Financial Power of Attorney legislation was signed by the Governor of Ohio and became law March 22nd, 2012, Pro Seniors created Ohio's first do-it-yourself financial power of attorney form and uploaded it to www.ProSeniors.org so that Ohio's low income seniors could create their own simple FPOA free of charge.

But Pro Seniors received several complaints from southwest Ohio seniors that once they filed their Statutory FPOA with their bank, allowing their agent to do their banking for them, the bank would not allow the senior herself to conduct business at the bank. In other words, the bank felt that the senior had given her banking rights to her agent and in doing so, no longer retained those rights herself.

Legally, the bank's position was incorrect. Legally, the senior always retains the right to conduct her own banking even if she has authorized her agent in the FPOA to also do banking

on her behalf. But the problem is convincing the bank that its legal position is wrong short of hiring an attorney to sue the bank. The easiest way to deal with a bank that takes such a position, is to simply add the third Special Instruction to the FPOA specifically stating that the senior (principal) reserves all rights to do personally any act which her agent is authorized to perform by the FPOA.

Though legally unnecessary, no harm is done by initialing the third Special Instruction and having it at-the-ready should the bank take the erroneous legal position that you no longer have the right to conduct your own banking because you gave that authority to your agent. Initialling your acceptance of the third Special Instruction can save you time, money and hassle down the road.