



VINCORA™

A Thoughtful Signing Process

ENHANCED DURABLE POWER OF ATTORNEY | CALIFORNIA EDITION

Suggested practices when a Principal's ability to understand or communicate may be questioned

Purpose and guiding principle

A Principal with a history of brain injury, cognitive impairment, communication difficulty, or fluctuating alertness may still be able to make meaningful choices about an Enhanced Durable Power of Attorney (EDPOA). A diagnosis, age, unusual speech, or need for extra time does not by itself answer whether the Principal has the legally required capacity at the time of execution. The question is whether the Principal can understand the nature and consequences of the particular transaction and make a voluntary choice.

This guide offers optional, practical measures to make the process accessible and to preserve an accurate record of what happened. They are not extra California statutory signing requirements, do not guarantee validity, and cannot turn a document signed without the required capacity into a valid one. Where substantial doubt remains, postpone execution and seek individualized advice from an independent California attorney.

1 | Plan for independence and comfort

- Schedule the discussion for a time when the Principal is usually most alert. Provide glasses, hearing aids, communication aids, accessible print, water, and a quiet setting. Allow a trusted support person if the Principal wants one, while preserving an opportunity to answer privately.
- Choose two independent adults to observe the review when feasible. Avoid named agents, successor agents, relatives of the proposed agents, and persons involved in the Principal's paid care. These are added impartiality precautions; do not confuse them with the narrower statutory witness qualifications for an ordinary California financial POA.
- If the proposed Agent also provides housing, daily care, or paid services, consider an independent attorney to explain the arrangement privately. Example: a Principal may freely want a longtime caregiver to act, but a private conversation helps document that the choice is the Principal's rather than the caregiver's.

2 | Review the actual choices, not just the signature page

Work through the EDPOA in manageable sections. Explain each proposed authority in plain language and ask open-ended questions: "What could [Name of Agent] do with your bank account if

you grant this power?” or “What happens if you choose not to grant this authority?” A simple yes/no answer or a rehearsed phrase is less informative than an answer in the Principal’s own words.

Give particular attention to powers with large practical effects: banking and withdrawals, sale or mortgage of property, gifts or loans to an Agent, changes to trusts or beneficiaries, and access to private electronic communications. The Principal may grant some powers and withhold others. Do not assume an unmarked election is consent; follow the EDPOA’s own election instructions.

The observer should distinguish explanation from coaching. Rephrasing a confusing question is fine; supplying the desired answer, signaling which box to initial, or correcting the Principal until the “right” answer appears is not. Record material difficulties and the assistance given.

3 | Breaks are welcome—including another day

There is no benefit in rushing a tired Principal through a long document. Stop when concentration fades. A break may last minutes, hours, or several days. Mark clearly which sections were discussed and which elections or initials were completed at each session; record the date, approximate time, participants, and any significant change in alertness or communication. Resume by briefly revisiting earlier choices and confirming that they still express the Principal’s wishes.

If the Principal’s understanding materially changes, do not rely on earlier answers as proof of understanding at the later signing. The relevant decision and execution should occur when the Principal can meaningfully understand and voluntarily act. If an election is changed before execution, make the final document unambiguous rather than relying on unexplained cross-outs.

4 | Two distinct witness roles

Review observers: For stronger contemporaneous evidence, invite independent observers to attend the substantive discussion and initialing sessions. Their job is to document only what they personally saw and heard. California law does not generally require witnesses to be present for every page initial or every pre-signing discussion of a financial POA; this is a suggested VINCORA practice for circumstances in which understanding might later be questioned.

Execution witnesses: If using the optional witness-attestation page, the two individuals who sign that page should personally witness the Principal sign the EDPOA or acknowledge the existing signature or the POA, as the page and applicable law require. Ideally, they are physically present together with the Principal at the final execution session, including the notarial signing. A person who attended only an earlier review should NOT sign as though they witnessed the final signing unless they were an actual witness of the signing.

If different observers attend different sessions, each may complete a separate VINCORA Supplemental Witness Observation Record identifying the dates, sections, and events actually observed. The two final-session witnesses should each sign their own observation record covering their final-session observations and, if applicable, earlier sessions they also attended. Earlier observers may provide separate records for their earlier sessions but should not sign the final execution attestation unless they also actually witnessed the requisite signing or acknowledgment.

5 | How to use the supplemental observation record

Give each observer a separate copy of the VINCORA Supplemental Witness Observation Record. Have each complete it independently, preferably promptly after the session, without comparing answers. Check only statements personally supported by observation. Use the comment spaces for the Principal's actual words, relevant questions, delays, rephrasing, assistance, disagreements, or uncertainty. A blank or adverse observation is more credible than a box checked for the sake of a tidy record.

Example: "She initially confused the successor with the primary Agent. After the names were explained, she correctly identified both and explained that the successor acts only if the first Agent cannot serve." That is more useful than "She was fully competent." A witness should describe behavior and statements, not make a medical diagnosis or guarantee legal capacity.

6 | Optional independent professional evidence

A treating physician or qualified clinician may be asked, with the Principal's consent, to evaluate and document cognition and functional understanding near the proposed execution date. A useful statement identifies the assessment date, methods, relevant limitations, and what the clinician could and could not conclude about the Principal's ability to understand the EDPOA decision. It should not merely recite a test score or promise that a document is legally valid.

A medical statement is not ordinarily a California statutory condition for executing a financial POA. It is potential supporting evidence, not a substitute for the Principal's own informed decision, proper execution, or legal advice. An independent attorney can separately assess the transaction-specific legal question and any undue-influence concerns.

7 | Notary timing and the final signing session

The notary does not need to attend the entire educational review or watch the Principal initial every page. The VINCORA EDPOA is designed for notarized execution. Schedule the notary for the final execution session once the Principal has reviewed and finalized the choices. The Principal must personally appear before the notary for the acknowledgment; the notary may take an acknowledgment of a signature previously made, but for this heightened-evidence process it is preferable for the Principal to sign the final signature page in the notary's presence while the final-session witnesses observe.

Have the complete, final EDPOA available; the Principal should confirm that it remains their voluntary choice and sign and date the execution page. The two final-session witnesses sign the separate witness attestation based on the signing or acknowledgment they personally observed. The notary completes the proper California acknowledgment. The notarial certificate verifies identity and acknowledgment, not the truth or legal validity of the EDPOA and not the Principal's cognitive capacity.

If the Principal is fatigued or cannot meaningfully confirm the decision when the notary arrives, stop and reschedule. A completed review earlier in the week is not a reason to proceed through an uncertain final execution.

8 | Preserve an honest, organized record

- Keep the executed EDPOA and notarial acknowledgment together, along with the separate final witness attestation and each dated individual observation record. Label earlier-session records by date; never backdate or merge recollections into a single account attributed to everyone.
- Keep any clinician's statement or attorney correspondence separate and confidential, sharing it only when necessary and authorized. Retain the final signed version and identify superseded drafts so they cannot be mistaken for the operative document.
- If a witness observes substantial confusion, apparent pressure, or an inability to explain the decision even with accessible explanations and rest, record the concern and stop. Consider independent legal assessment rather than searching for different witnesses who will sign.

California legal framework and scope

California Probate Code § 4120 requires capacity to contract for execution of a power of attorney. Section 4121 generally requires a dated instrument, the Principal's signature (or an authorized adult signing in the Principal's presence and at their direction), and either notarial acknowledgment or two qualifying witnesses. Under § 4122, statutory execution witnesses must be adults, may not be the attorney-in-fact, and must witness the signing or the Principal's acknowledgment. The EDPOA's separate witness page may deliberately use stricter independence precautions than this statutory minimum. For an instrument affecting real property, notarial acknowledgment facilitates recording. Additional rules may apply to particular transactions or documents.

Legal references (reviewed September 2026): Cal. Prob. Code §§ 4120–4122, 4128; California Secretary of State, "Acknowledgments" and "Notary Frequently Asked Questions." This is a suggested practice guide, not an opinion that any particular person has capacity or that a particular EDPOA will be valid.

Sources: <https://law.justia.com/codes/california/code-prob/division-4-5/part-2/chapter-2/section-4120/> | <https://law.justia.com/codes/california/code-prob/division-4-5/part-2/chapter-2/section-4121/> | <https://law.justia.com/codes/california/code-prob/division-4-5/part-2/chapter-2/section-4122/> | <https://www.sos.ca.gov/notary/acknowledgments>