

1st Edition



E-Book

Appendix

Steps for Credit Repair & Debt Statute of Limitations

Vital Information for your Estate Planning Needs
providing Insight and Perspective

With
Downloadable
Forms



Paul M. Paquette



Preview the Appendix in advance
at www.Legal-POA.com

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1st Edition

Appendix

Steps for Credit Repair & Debt Statute of Limitations

Vital Information for your Estate Planning Needs
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Paul M. Paquette



FIRST EDITION



2018

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1. Power of attorney--United States--Popular works. 2. Power of attorney--United States--Forms.
3. Estate Planning--United States--Popular works. 4. Estate planning--United States--Forms. I. Title II. Series

Summary: This appendix is a part of the Estate Planning Series offered by Paquette Publications. The appendix provides information regarding Credit Repair & Debt Statute of Limitations.

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Steps for Credit Repair & Debt Statute of Limitations

Steps for Credit Repair & Debt Statute of Limitations

Steps for Repairing Credit:

- **Review your Credit History:**
 - Get a copy of your free **credit report** at <http://www.annualcreditreport.com>. Highly recommend that you download each credit report from the following credit agencies: Transunion, Equifax, and Experian.
 - Lexis Nexis is a massive data repository and aggregator of personal information. Highly recommend that you request your **Consumer Report** at <https://consumer.risk.lexisnexis.com/request>.
 - Review Credit Report (Transunion, Equifax, and Experian) and Consumer Report (Lexis Nexis) for error and negative claims – dispute all claims. The creditor has to prove that said claim regarding the debt is legitimate.
 - All negative claims on a credit report drop off after ten (10) years. If the debt is older than ten (10) years and still shows on your credit report - dispute it, and it will drop off. The Statute of Limitations (SOL) starts on the default date, usually when the creditor receives the last payment.
 - Never acknowledge a debt or pay a debt with a debt collector. Look up the state's SOL law regarding credit card debt. If the debt is older than the SOL with no judgment/lien at the County Clerk's office, that debt is unenforceable; this is a Time-Barred Debt.
 - If you acknowledge a debt or even make a payment on a debt past the SOL, the debt collector can revive the debt (Zombie Debt) and make it legitimate and enforceable again. That is why you do not claim the debt or even make a payment. Rhetorical Question: Why do you think debt collectors record all conversations?
 - Never give out financial or employment information to a debt collector. If you do so, expect the following: wage garnishment and bank/financial levies.
- **Look up Judgment/Liens:**
 - A judgment/lien is the legal method used to intercept and satisfy any default debt, usually from the sale of real estate or probated inheritance.
 - Go to the County Clerk and research to see if you have any Judgments/Liens filed against you. Look up the state's SOL law regarding judgment/lien, the duration period, and the ability to renew. If you plan to buy property in one state, only concern yourself with counties in that state you lived in within the last fifteen (15) years. Every state varies regarding SOL for Credit Card Debt and judgment/liens.
 - If you have a judgment/lien against you, verify the debt. If it is not your debt, contact a Lawyer (usually, a bankruptcy lawyer will do).
- **Paying on Debt or Judgment/Lien:**
 - If the debt is legitimate, you can do the following: one (01) wait and hope the debt expires and does not renew, or two (02) you can negotiate/settle the debt. Suggest that you offer 15% to 25% of the balance as a lump sum owed on the debt - make sure that everything is in writing (verbal promises are worthless).
 - In writing, ensure that the Debt collector agrees to relinquish all assignment rights if you negotiate/settle a debt. Failure to do so may result in the creditor selling the unrecovered debt to another debt collector, and thus the cycle repeats.
 - You would be better off paying a debt in full if the debt with no judgment/lien is still younger than five (05) years. However, you can always gamble and wait to see if the creditor chooses to pursue a judgment/lien against you.
 - If the debt or judgment/lien is on your Credit Report, before paying the debt off – make sure in writing that the deletion of the said negative claim will occur upon successfully satisfying the Debt or judgment/lien. If you are paying on a judgment/lien, make sure to request a release of judgment/lien mailed to your address within one month. You will have to file the release with the county clerk typically cost \$10 to \$25.

Principal: _____



- Always use a check when paying a debt collector. I suggest you give the money to another person you trust (with no default debt) and have them write the check on your behalf. Make sure in the memo section you write the account number of the debt in question, and on the back, preferably above the signature line, write the following: "Settle/Paid in Full." If you write a check to a debt collector with your bank/financial account information, you give the debt collector all the required information to wipe out your bank/financial account. Remember, as long as the Debt collector does not cash the check, the debt collector does not have to honor any written or verbal agreement.
- Joint Bank/Financial accounts are subject to levy, so if you owe a significant amount of debt, it will be prudent not to have a high balance.
- **Default Student Loan Debt:**
 - This debt is impossible to get rid of except for the following: (01) victim of fraud by a College or University or (02) permanently physically or mentally disabled, thus receiving a disability check from the government.
 - Private Default Student Loan Debt issued through a Bank/Financial Institution, not the State/Federal Government, can receive a discharge through bankruptcy.
 - Default Student Loan Debt does not have a SOL; however, garnishment is usually a cap as a percentage of discretionary income. Furthermore, this debt can be at the Federal or State level, with each having different rules regarding computation and withholding on how much on garnishment amounts. Furthermore, both debts are subject to Tax Refund intercept. Tax Intercept and Wage Garnishment priority goes as follows: Child Support → Alimony → Tax Debt → Default Student Loan Debt → Non-Taxable Debt (Government Debt → Credit Card Debt → Medical Debt).
 - Typically, filing and recording a judgment/lien for default Student Loan Debt does not occur at the County Clerk's office. Because the debt-collecting agency can easily intercept tax refunds, implement pay garnishment, and impose a bank/financial levy default without needing a judgment/lien.
- **Bankruptcy:**
 - Bankruptcy should only be an option if you are in significant debt and will not pay it off within ten (10) years. Think of it as \$100,000.00 or more. Furthermore, discharging Default Student Loan debt that is State or Federal back is nearly impossible in bankruptcy. Consult a licensed bankruptcy attorney to evaluate if bankruptcy is right for you. A chapter 7 bankruptcy will reflect on your credit report for (10) ten years, and a chapter 13 will reflect for (07) seven years. If you file for bankruptcy, you receive a clean slate because creditors know you cannot file again for an extended period.
- **Please Note:**
 - Just because a debt is no longer on your credit report does not mean you still do not have legal obligations to pay for it. When applying for a loan/mortgage, the financial institution will be looking at your cash flow to determine if you have enough discretionary income to pay said loan/mortgage. Typically, the applicant must provide employment verification and up to six (06) months' worth of payroll information to receive a loan/mortgage.
- **Credit Card Use:**
 - In order to have a credit history, you must have some debt use. If you currently use a debit card, consider applying for a credit card with the same financial institution. The easiest way to establish a credit history is with a credit card with a \$1,000.00 limit using more than \$500.00. Use the credit card to make everyday purchases, then pay it off within a month to prevent overspending and ensure you do not pay interest. Do not take cash advances.
 - Various factors determine a credit score. To achieve a high credit score, do the following: have a low utilization ratio, pay it off monthly, and maintain all credit lines even if you do not use them unless they charge an inactivity fee. There are many tips, but these are the biggies.
 - To prevent identity theft and to prevent unauthorized use of credit cards or loans, I suggest implementing a credit freeze (which is free) at Transunion, Equifax, and Experian. Thus if you want another line of credit, you will have to provide a security code to unfreeze the account when applying for said credit line or loan.

Debt Statute of Limitations:

A statute of limitation gives a creditor the right to take legal action against you in a specific timeframe and thus ask the court to force you to pay a debt. The court system does not keep track of the status on your debt. Instead, it is your responsibility to prove the debt has passed its statute of limitation.

Principal: _____

Time-Barred Debts:

Time-Barred debt is debt that has passed the statute of limitation. However, just because the debts have aged past the statute of limitation does not mean that you no longer owe money or that your credit rating has not suffered. It means the creditor will not get a judgment/lien against you—as long as you come to court prepared with proof that your debt is too old. Proof might include a personal check showing the last time you made a payment or your own records of communication that you have made about that debt.

Categories of Debt:

Debts fall into one of four categories. Knowing your debt type is essential because their time limits vary. If you have doubts, check with your attorney about your type of debt.

- **Oral Agreements:** These are debts created via a verbal agreement to pay back the money, and there is nothing in writing.
- **Written Contracts:** These are debts that come with a signed contract (on paper – napkin counts) by you and a third party. A written contract usually includes the terms and conditions of the loan, such as the loan amount and the monthly payment. Medical debt is one kind of written contract.
- **Promissory Notes:** A promissory note is a written agreement to pay back debt at a specific interest rate and by a certain date and time. Mortgages and student loans are two examples of promissory notes.
- **Open-Ended Accounts:** An account with a revolving balance you can repay and then borrow again is open-ended. Credit cards, in-store credit, and lines of credit are all examples of open-ended accounts. It is not an open-ended account if you can only borrow the money one (01) time.

Debt Statute of Limitations by State:

Each state has its own statute of limitations on debt, which varies depending on your debt type. Usually, it is between three (03) and six (06) years, but it can be as high as ten (10) or fifteen (15) years in some states. Before you respond to a debt collection, find out your state's debt statute of limitations. If the statute of limitations has passed, you may have less incentive to pay the debt. If the credit-reporting time limit (a date independent of the statute of limitations) has passed, you may be even less inclined to pay the debt. These are the statutes of limitation, measured by years, in each state, as of June 2019.

State	Oral	Written	Promissory	Open	State	Oral	Written	Promissory	Open
Alabama	6	6	6	3	Montana	5	8	8	5
Alaska	3	3	3	3	Nebraska	4	5	5	4
Arizona	3	6	6	3	Nevada	4	6	3	4
Arkansas	3	5	3	3	New Hampshire	3	3	6	3
California	2	4	4	4	New Jersey	6	6	6	6
Colorado	6	6	6	6	New Mexico	4	6	6	4
Connecticut	3	6	6	3	New York	6	6	6	6
Delaware	3	3	3	4	North Carolina	3	3	5	3
Florida	4	5	5	4	North Dakota	6	6	6	6
Georgia	4	6	6	6	Ohio	6	8	15	6
Hawaii	6	6	6	6	Oklahoma	3	5	5	3
Idaho	4	5	5	5	Oregon	6	6	6	6
Illinois	5	10	10	5	Pennsylvania	4	4	4	4
Indiana	6	6	10	6	Rhode Island	10	10	10	10
Iowa	5	10	5	5	South Carolina	3	3	3	3
Kansas	3	5	5	3	South Dakota	6	6	6	6
Kentucky	5	10	15	5	Tennessee	6	6	6	6
Louisiana	10	10	10	3	Texas	4	4	4	4
Maine	6	6	6	6	Utah	4	6	6	4
Maryland	3	3	6	3	Vermont	6	6	5	3
Massachusetts	6	6	6	6	Virginia	3	5	6	3
Michigan	6	6	6	6	Washington	3	6	6	3
Minnesota	6	6	6	6	West Virginia	5	10	6	5
Mississippi	3	3	3	3	Wisconsin	6	6	10	6
Missouri	5	10	10	5	Wyoming	8	10	10	8

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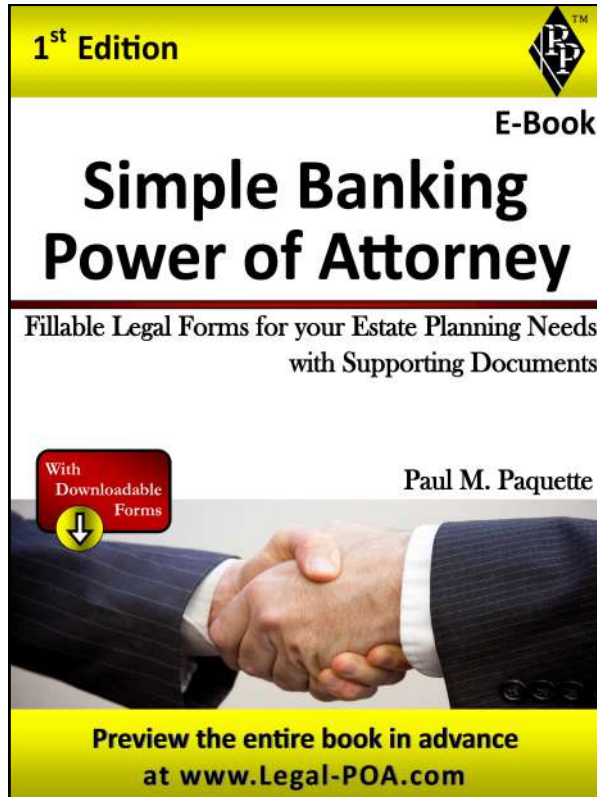
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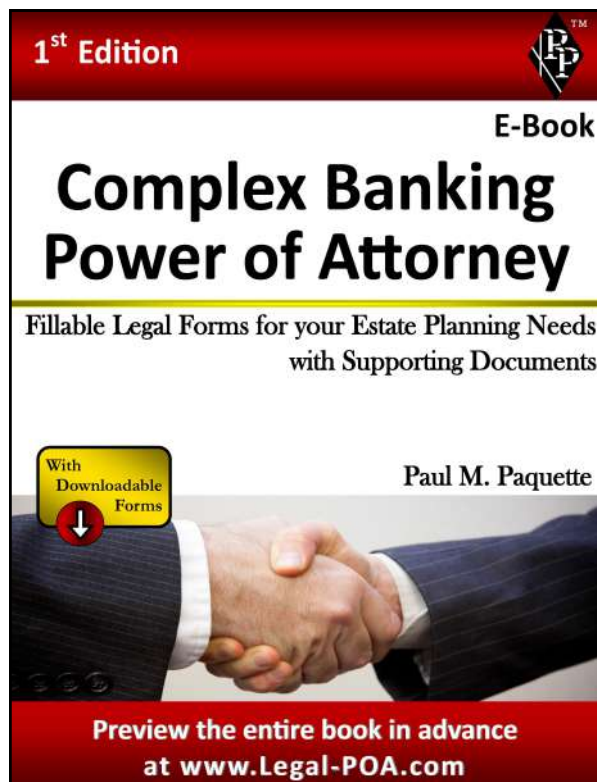
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- Define Expiration Date
- Built-In Safety Features

Optional:

- Durability Provisions

Design for short-term (less than five years) use with an Agent whose honor is beyond reproach and doubt.



Complex Banking Power of Attorney

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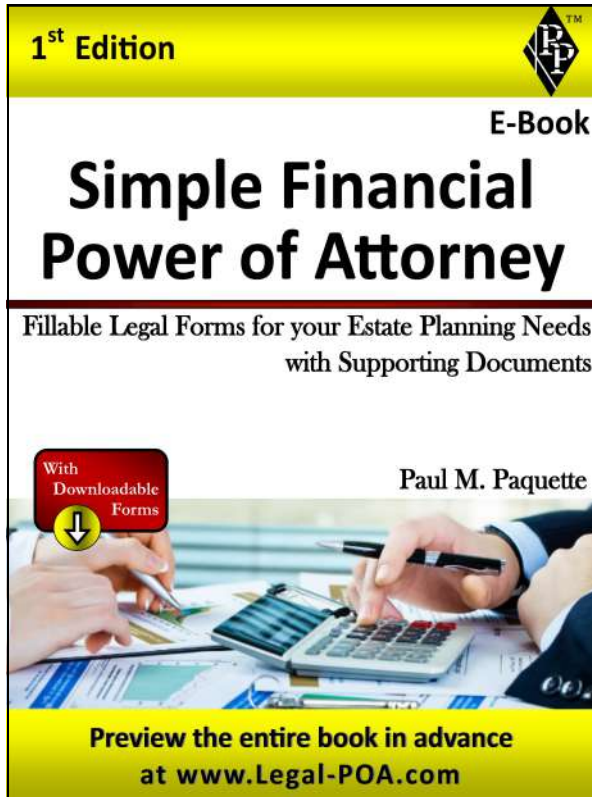
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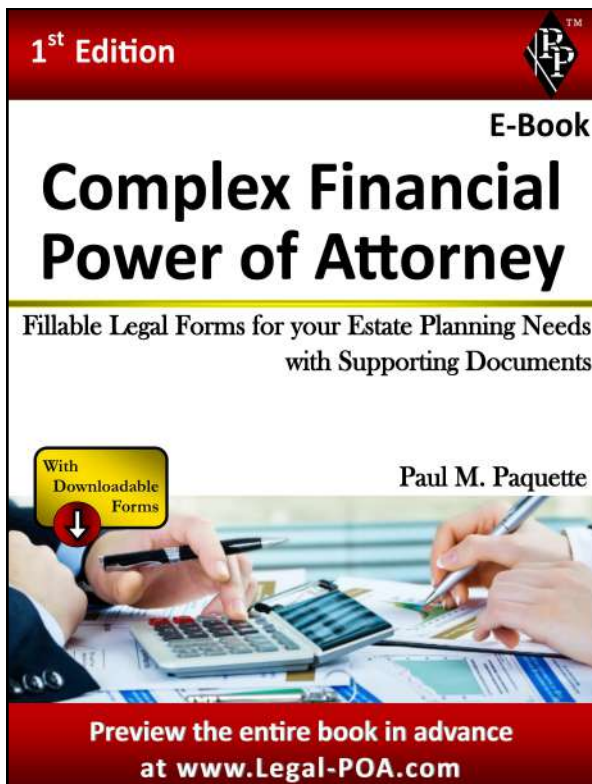
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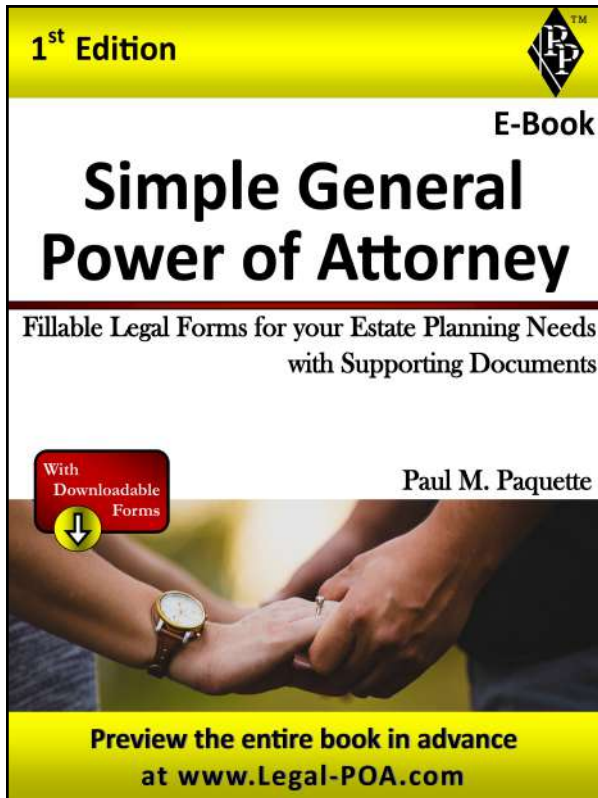
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- Built-In Safety Features
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Design for long-term (greater than five years) use, preferably with multiple Agents to reflect the changing realities of life with optional safety features that create additional administrative burdens but with some checks and balances on the Agent's power.

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Simple General Power of Attorney

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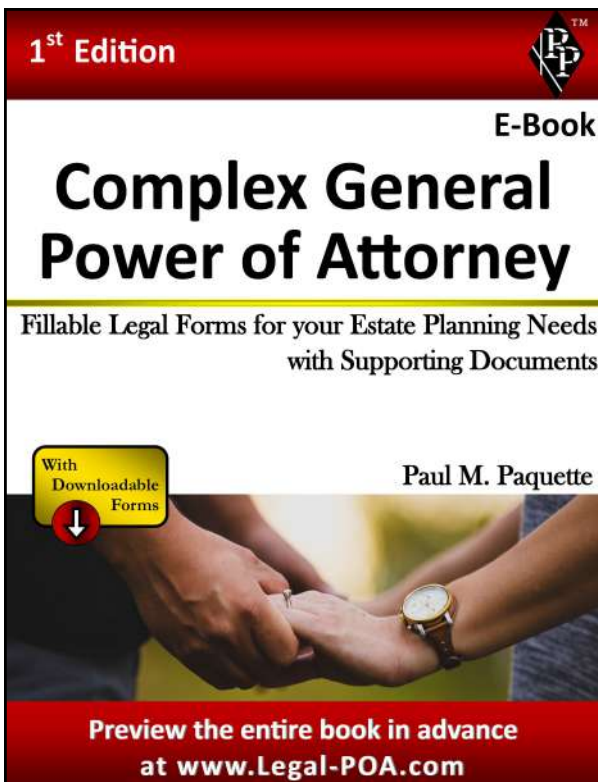
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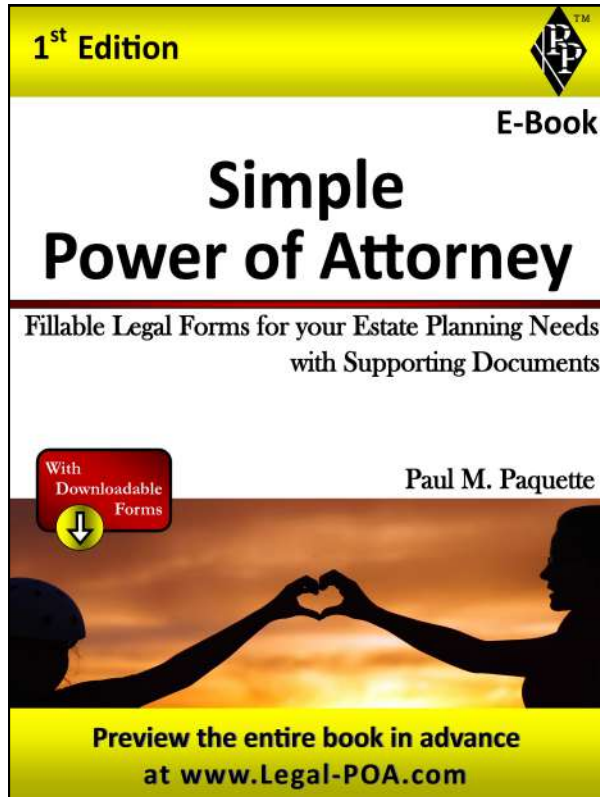
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- Variable Effective Date
- Variable Expiration Date
- Built-In Safety Features
- Sprinkling Powers

Optional:

- Durability Provisions
- Springing Powers
- Agent Co-Power Sharing
- Protector Provisions
- Delegate Provision
- Security Footer Settings

Design for long-term (greater than five years) use, preferably with multiple Agents to reflect the changing realities of life with optional safety features that create additional administrative burdens but with some checks and balances on the Agent's power.

Also Available



Simple Power of Attorney

is a legal document that allows you, the Principal, to appoint a person you trust, the Agent, with limited powers (written by the Principal) and abilities regarding the Principal's property and affairs.

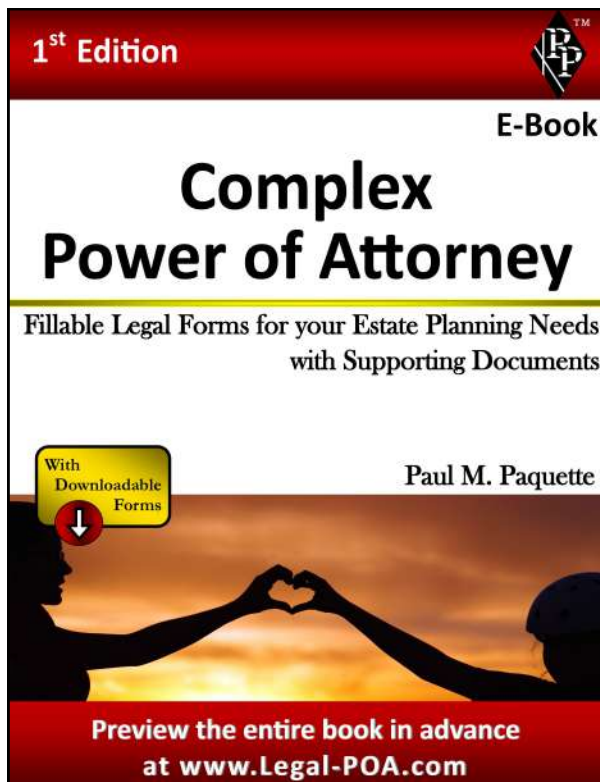
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Complex Power of Attorney

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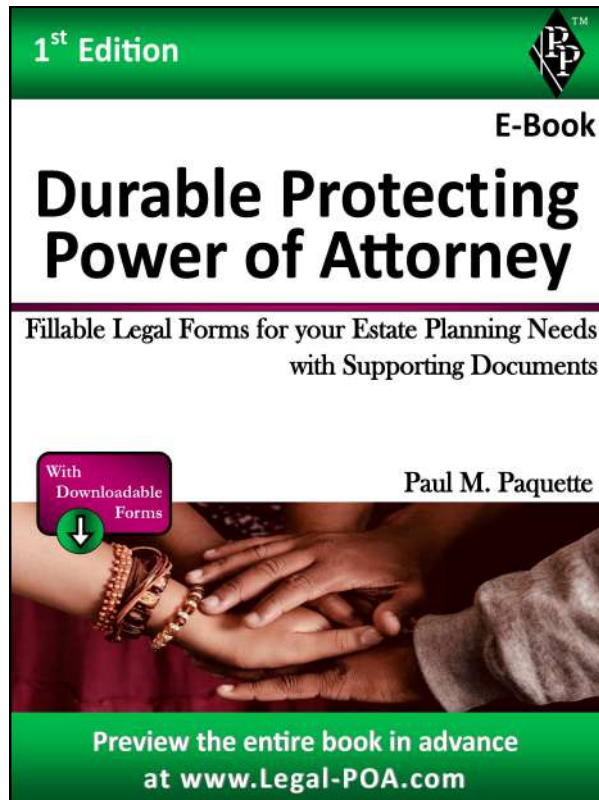
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- Sprinkling Powers

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Design for long-term (greater than five years) use, preferably with multiple Agents to reflect the changing realities of life with optional safety features that create additional administrative burdens but with some checks and balances on the Agent's power.

Also Available



Durable Protecting Power of Attorney

is a legal document that allows you, the Principal, to appoint a person you trust, the Agent, with the power to act in an administrative capacity, intervene when the subservient Agent violates their fiduciary duties, and ensure transparency. Thus, the Agent serves as a “Protector” of the Principal’s interest and property.

Key Details: Optional:

- Names multiple Agent with successor’s Agent
- Variable Effective Date
- Variable Expiration Date
- Built-In Safety Features
- Sprinkling Powers
- Durability Provisions
- Springing Powers
- Agent Co-Power Sharing
- Delegate Provision
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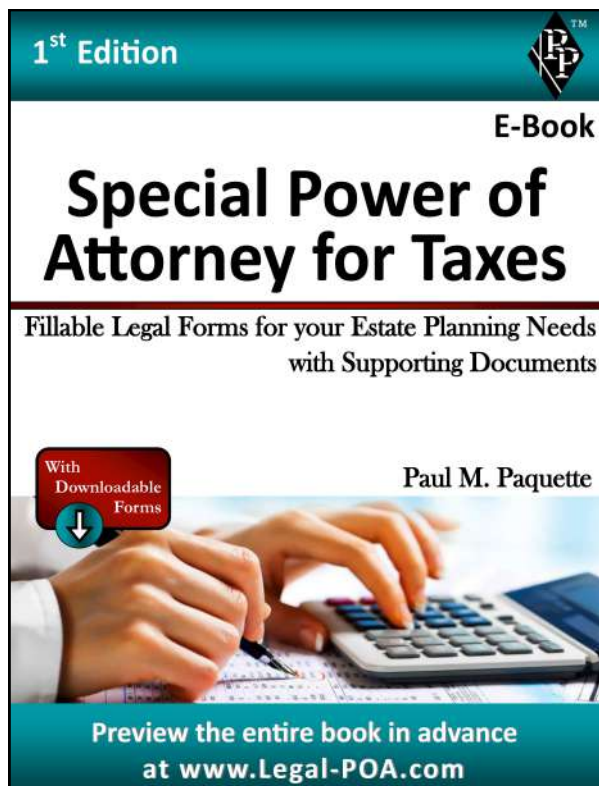
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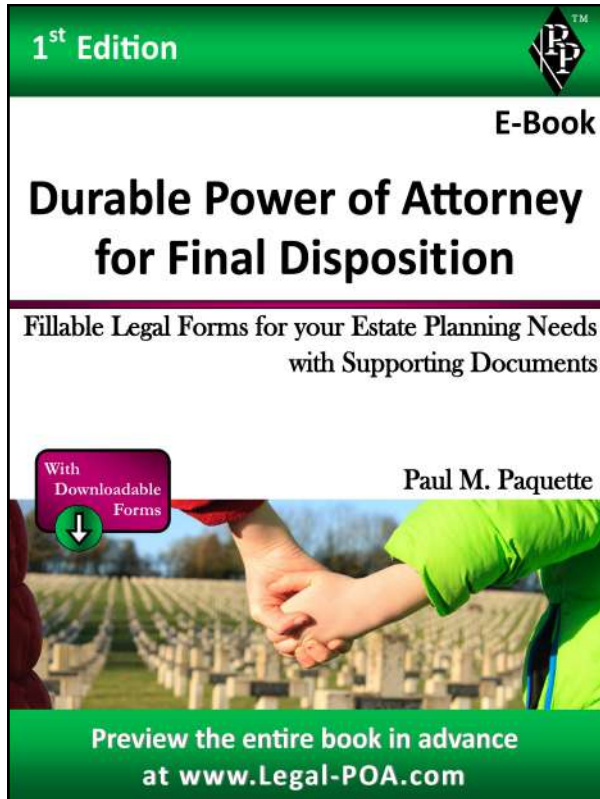
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- Effective Immediately
- Define Expiration Date
- Built-In Safety Features
- Durability Provisions

Design for short-term (less than five years) use with an Agent whose honor is beyond reproach and doubt.



Also Available



Durable Power of Attorney for Final Disposition


is a legal document that allows you, the Principal, to appoint a person you trust, the Agent, to handle the Principal's last wishes and preferences regarding Final Disposition (Funeral & Burial).

Key Details: Optional:

- Names multiple Agent with successor's Agent
- Variable Effective Date
- Variable Expiration Date
- Built-In Safety Features
- Sprinkling Powers
- Durability Provisions
- Springing Powers
- Agent Co-Power Sharing
- Protector Provisions
- Delegate Provision
- Security Footer Settings

Design for long-term (greater than five years) use, preferably with multiple Agents to reflect the changing realities of life with optional safety features that create additional administrative burdens but with some checks and balances on the Agent's power.


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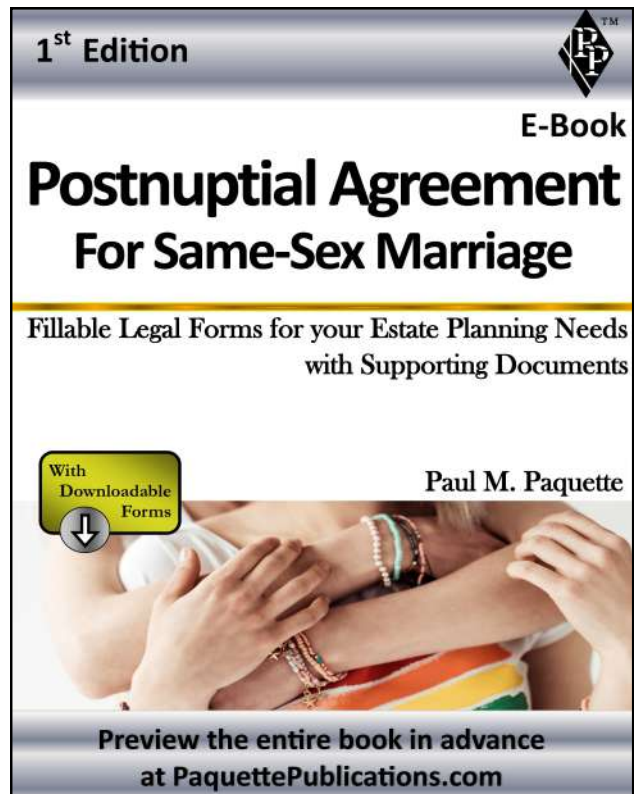
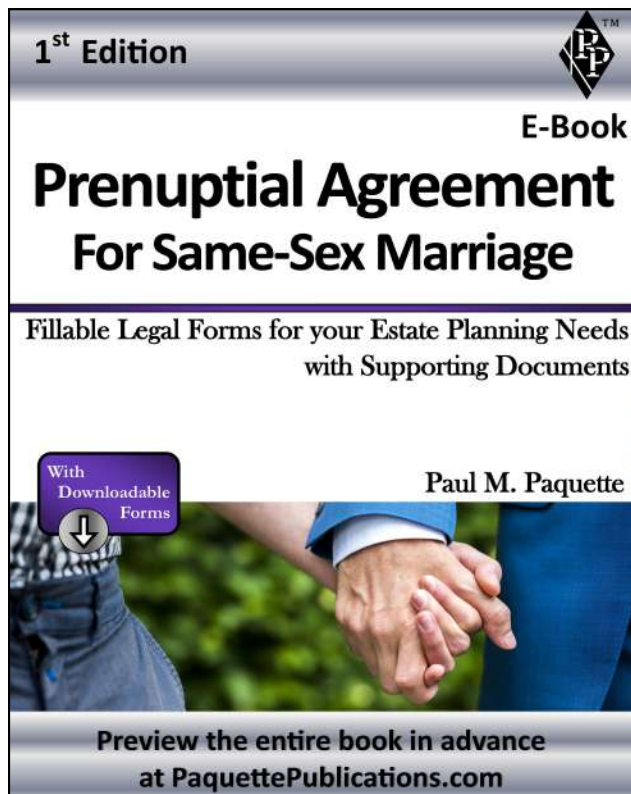
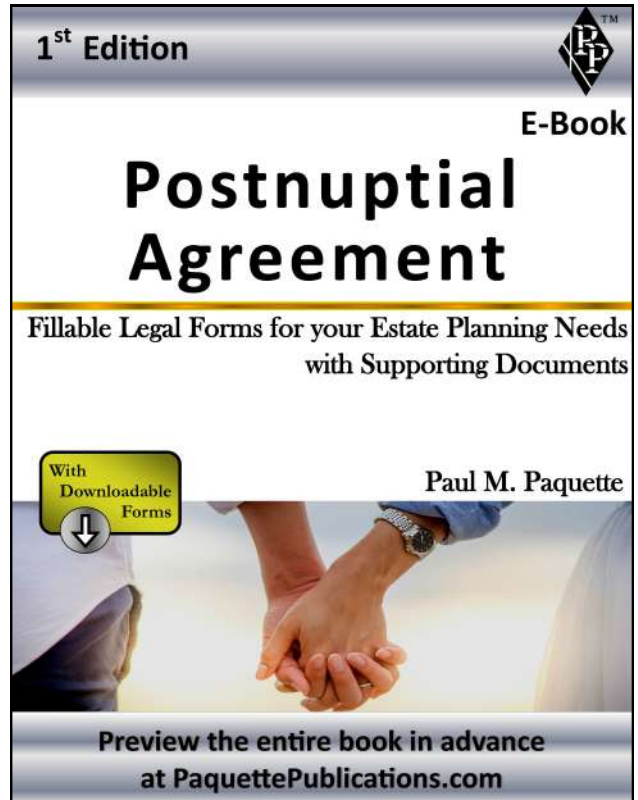
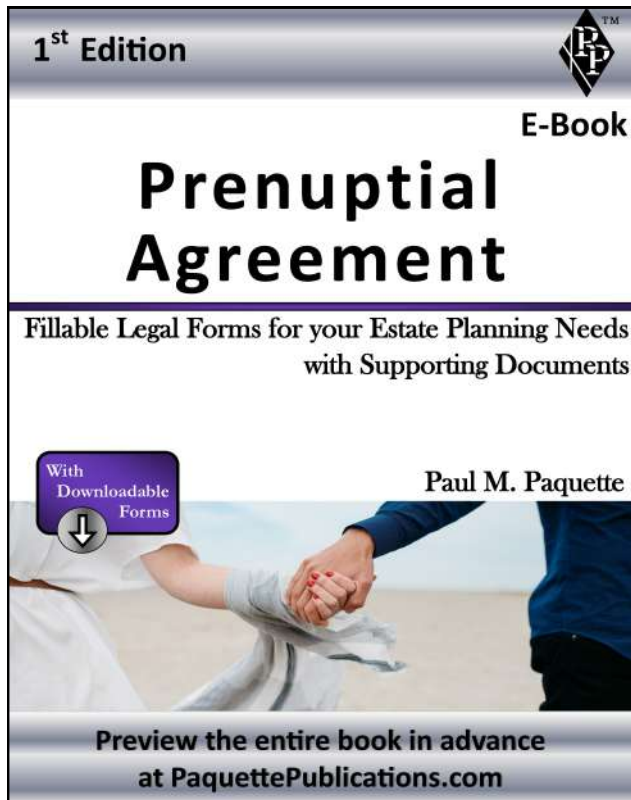
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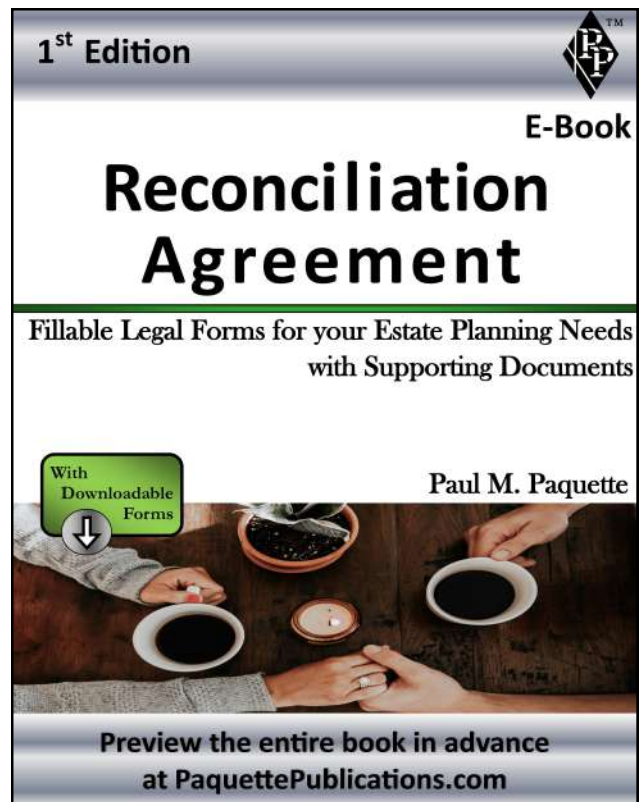
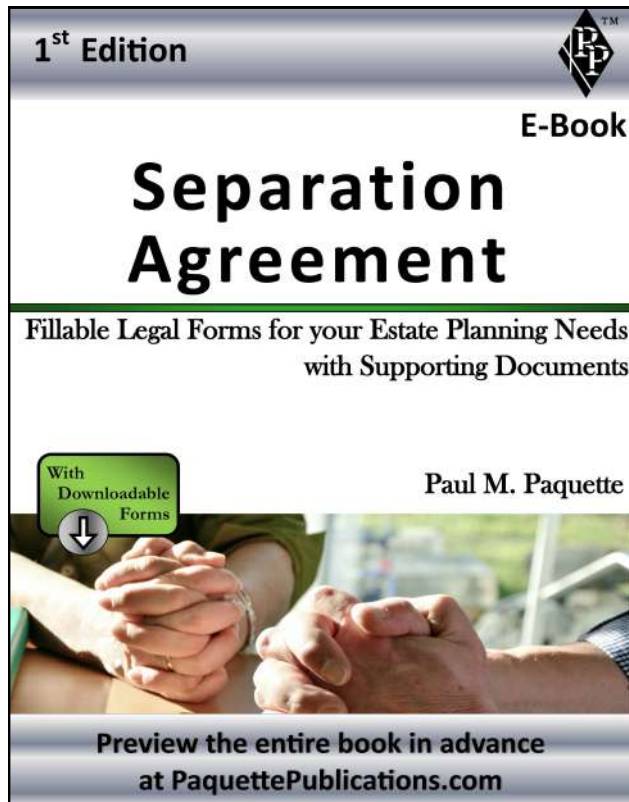
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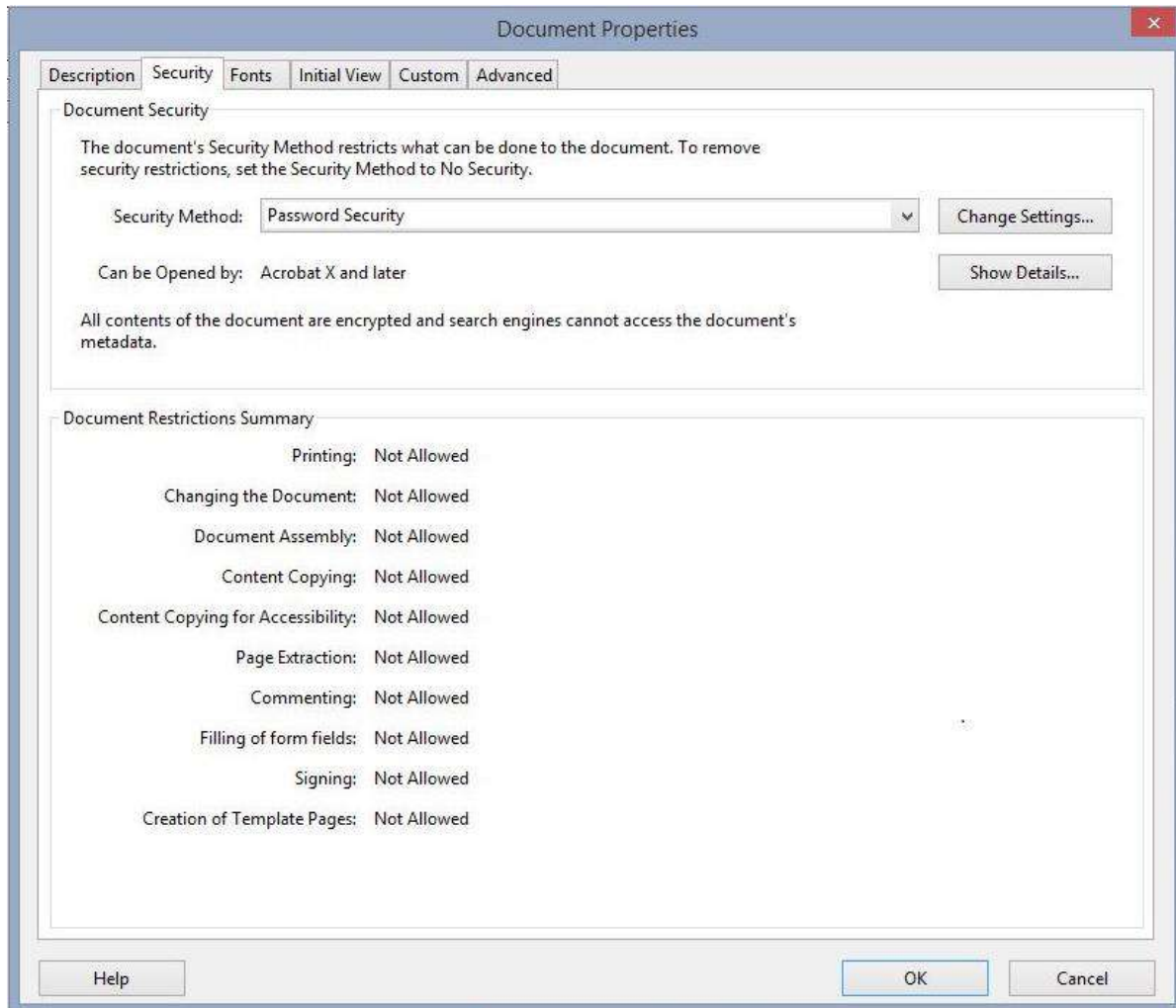
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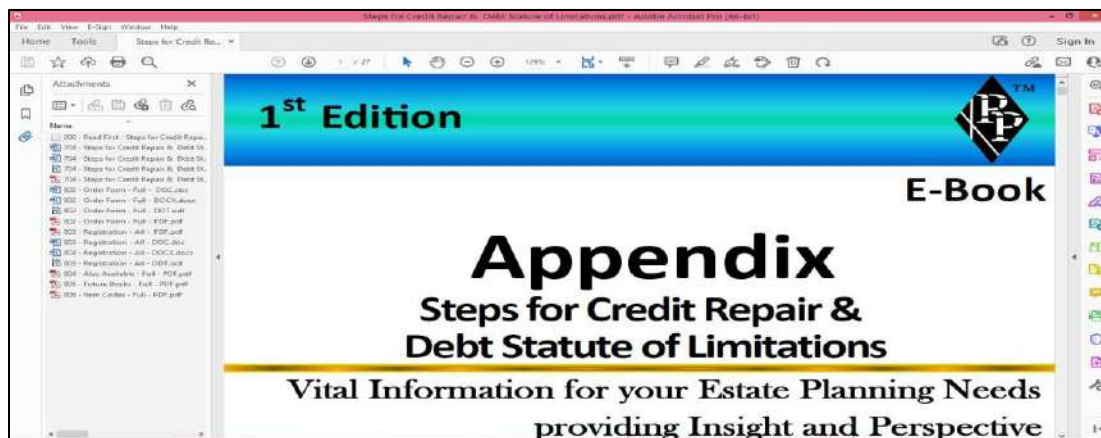
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