



## UNDERSTANDING POWERS OF ATTORNEY

A power of attorney is a legal document that gives someone power to act on your behalf. The person who receives this power is known as an “agent” or “attorney-in-fact.” In general, a power of attorney grants significant powers. For example, the agent can sign on your behalf, enter into agreements under your name, and cause third-parties to take certain actions.

Powers of attorney can be useful for a variety of circumstances. For example, you might grant a power of attorney when you will have an extended absence (e.g., deployment). You might also grant authority to another to provide instructions for your medical care should you be unable to express your wishes.

### **Are there different types of powers of attorney available?**

Yes, a power of attorney can be tailored to fit many needs. In contemplating your needs, consider the following types of powers of attorney:

General Power of Attorney – A general power of attorney grants your agent authority to take *any* action that you, yourself, might take. This document, therefore, is powerful, binding you by law to any act of the agent on your behalf.

Special Power of Attorney – A special power of attorney provides the agent with specific, limited authority. A special power of attorney might limit the agent to one particular act, for example, filing your income tax return, paying monthly rent from your bank account, or selling your vehicle.

Guardianship Power of Attorney – Occasionally there is a need to appoint someone to act on your behalf with respect to your child(ren). Obtaining a court order naming a guardian, however, can be time-consuming and costly. To avoid this problem, many complete a guardianship power of attorney, which designates a trusted person as the child’s temporary guardian. The power of attorney gives the temporary guardian authority to take custody of the child and act in the interests of the child’s health, education, and welfare, including, for example, the power to obtain medical care. Individuals frequently seek these for use in family care plans.

Medical Power of Attorney – A medical power of attorney grants an agent authority to make health care decisions on your behalf if you suffer from a disability or an illness.

Financial Power of Attorney – A financial power of attorney grants an agent authority to handle your financial affairs, including, but not limited to, acquiring and disposing of property, collecting debts, borrowing money, handling lawsuits by or against you, filing tax returns, and receiving and selling stocks. A financial power of attorney can be immediate, granting authority to act the moment you sign the document, or “springing,” coming to life only after you are declared disabled, absent, or incapacitated.

## **What does “durable” power of attorney mean?**

A “durable” power of attorney does not expire once you become incompetent or incapacitated. That is, a durable power of attorney remains in effect even if you are unable to make sound decisions or care for yourself. The advantage is that once you become incompetent or incapacitated someone may step in to handle your affairs immediately, thereby avoiding the need to seek a court-appointed guardian.

## **Are there any limitations to a power of attorney?**

Although most businesses and organizations accept generic powers of attorney, some businesses will refuse to recognize a power of attorney that does not use their form or follow a certain format. Additionally, some businesses or offices require use of specific language. Consider the following:

If the power of attorney gives an agent authority to handle your bank accounts, brokerage accounts, investments, or other financial documents, you should contact the financial institution or brokerage firm in advance to determine whether they require a specific form or format, or whether they will accept a generic power of attorney.

If you grant authority to buy, sell, or mortgage real estate, some states require that the power of attorney be recorded in the public records before an agent may act on your behalf. In Oklahoma, for example, state law requires that a power of attorney used for real estate transactions must be recorded in the public property records of the county where the property is located.

If you grant authority to buy or sell a vehicle, ensure that you have on hand and include in the power of attorney important identifying details, such as the vehicle identification number (VIN) and the make and model of the vehicle.

If you intend to grant authority to an agent to handle your taxes and tax returns, you should use the Internal Revenue Service’s power of attorney form, IRS Form 2348. Although a special power of attorney may suffice, the recommended approach is to use the IRS form.

Some military offices require a power of attorney containing specific language. For example, dependents need a power of attorney to obtain a Tricare or DEERS card while the dependent’s sponsor is absent or deployed.

Other limitations and specific circumstances may exist; therefore, you should consult an attorney or make an appointment with the Legal Assistance Office if you have additional questions.

## **I just returned from deployment. Before leaving, I gave my spouse a power of attorney. The power of attorney terminated when I returned, right?**

Wrong. The authority granted in a power of attorney continues until the powers granted expire (some powers of attorney contain an expiration date and others do not) or you revoke the power of attorney. Note that until the power of attorney expires or is revoked, your agent may continue to act on your behalf and bind you legally by his or her actions.

### **Is a power of attorney permanent or can I revoke it?**

In general, a power of attorney will terminate upon the earlier of the following events:

- a. Expiration by a date specified in the power of attorney;
- b. Revocation (*i.e.*, you destroy the original and any copies, and notify those to whom copies have been given that the authority to act on your behalf has been revoked; or, if you cannot retrieve the original, you create a revocation document); or
- c. Death.

### **How do I get a power of attorney?**

The Legal Assistance Office can draft a power of attorney that suits your needs. Many powers of attorney can be handled by our staff at the front desk. For more particular powers of attorney, such as a Medical Power of Attorney or Durable Power of Attorney, you should consult an attorney or make an appointment with the Legal Assistance Office.

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**This Information Paper provides only basic information and is not intended to serve as a substitute for personal consultation with a Legal Assistance Attorney. To schedule an appointment with a Legal Assistance Attorney, please contact the Legal Assistance Office at (580) 442-5058. The Fort Sill Legal Assistance Office is located on the 4th Floor of Building 4700 (Welcome Center) at 4700 Mow-Way Road, Fort Sill, Oklahoma 73503.**