

UNDERSTANDING YOUR POWER OF ATTORNEY



A Power of Attorney (POA) is a written instrument that allows you (the "principal") to authorize your agent ("attorney-in-fact") to conduct certain business on your behalf. It is one of the strongest legal documents that you can give to another person. Every act performed by your agent within the authority of the POA is legally binding upon you. Since a POA is so powerful, give it only to a trustworthy person, and only when absolutely necessary. 31 FW/JA can help you select the proper POA for your needs.

I. TYPES OF POA'S

There are three types of POA's; general, special, and durable.

1. GENERAL POWER OF ATTORNEY

A General POA gives your agent the authority to do most things you could do yourself, such as write checks and pay bills, borrow money, and sign contracts in your name. Your agent cannot perform certain actions which require your personal attention though, such as taking an oath. General POA's may not be accepted for the performance of certain acts, such as cashing government checks, or conducting real estate transactions.

2. SPECIAL POWER OF ATTORNEY

A special, or limited, POA authorizes your agent to do only a specified act, such as sell your car, ship your household goods, or cash your paycheck. A special power of attorney can accomplish almost any need: access to a particular bank account; closing on a house; medical care for your children; or movement of your household goods. The special power of attorney, as its name implies, restricts the other

individual's action to a particular purpose which you have chosen. This can be much safer than giving a general power of attorney, which grants another individual almost complete legal power over your personal and financial affairs.

Also, the special power of attorney is more likely to be accepted by those with whom your agent will be trying to do business. Because it is drawn for a specific purpose, it is often considered to be a more reliable measure of your actual intent. Some acts may only be accomplished with a special POA. For example, authorizing someone to buy or sell real estate in your name requires a special POA which describes, in great detail, the property and the specific acts to be done by your agent.

SPECIAL POWER OF ATTORNEY TO ACT "IN LOCO PARENTIS"

This is a common type of special power of attorney. The phrase "*in loco parentis*" means "in the place of the parent." This type of special POA grants parental authority to another (such as a babysitter) to perform a range of functions which can include picking up a child from school, buying food and clothing, and consenting to medical treatment of the child in the event of illness or injury. If you have children, you will almost surely want a special POA to provide for their non-emergency medical care when you and your spouse are away.

Service medical regulations clearly provide that your children may be treated if a true emergency exists, and you or your spouse cannot be reached. In a non-emergency situation, however, consent is required before treatment. The special medical POA is, in effect, your transfer of your authority to consent to that treatment to another

individual whom you have chosen to act for you. You cannot designate a medical facility. You must designate a specific person or two, alternatively -- for example, a husband or wife, either of whom you trust with decisions concerning medical care for your children. Also, the individual whom you designate must be an adult.

Without this type of special POA, a day care center, school, store, hospital or clinic, fearing legal repercussions, may refuse to follow the requests of the babysitter or other agent, and require the specific authorization of the actual parent. This POA will assist the agent in the daily business of looking after the child, and can avoid unnecessary delays in emergencies. Furthermore, the special POA provides legal protection for the facility and also for the agent who might otherwise fear taking action on behalf of the child.

3. DURABLE POWER OF ATTORNEY

A durable POA gives your agent the right to continue conducting your business transactions even after you become incapacitated by an illness, such as a coma or stroke. This differs from a POA that is not durable because a non-durable POA is void when you become incapacitated.

A durable POA is very effective if you do not have joint accounts or property because it allows your agent to access your bank accounts, pay your bills, and care for your property while you are unable. Without this document or joint accounts, your family would likely need to go to court to become your guardian in order to access your finances.

You may revoke the POA when you are no longer incapacitated or the POA will be revoked upon your death.

II. SPECIAL CONSIDERATIONS

1. A POA is void upon the death of the principal.
2. Any third party has the right to refuse to accept a POA.
3. A POA does not have to be effective immediately. It can be drafted to “spring” into effect at some definite point in the future, such as at the incapacity of the principal.
4. A POA should be given for only a limited time period (such as six months during a deployment). A third party is more likely to accept a POA with a recent date than one which is many months or years old.
5. Many financial institutions and other businesses have their own POA's which they prefer to be used to conduct business. It is a good idea to show your POA to all known third parties who may be dealing with your named attorney-in-fact to ensure that your POA is acceptable to them.
6. All endorsements and instruments made by your agent pursuant to the POA should be executed through the agent signing your name, followed by his or her name and the words “attorney-in-fact.”
7. Never give a general POA when a special POA will accomplish the mission. There is less opportunity for abuse when only limited powers are given.

8. A special POA should be as specific as possible. For example, if you are authorizing an attorney-in-fact to sell a vehicle on your behalf, specify the vehicle, license number, vehicle identification number, the make/model/year of the vehicle, and any specific terms you will require. Your legal assistance attorney can help you tailor the POA to suit your precise needs.

III. REVOKING A POWER OF ATTORNEY

You may revoke a POA before its expiration date by executing a revocation of the POA. Notice of the revocation must be delivered to the attorney-in-fact, as well as to all third parties who you know relied on the POA. If possible, recover from the attorney-in-fact and destroy the original and all copies of the POA. Even though the POA has been revoked, you may be responsible to any third party who did not receive notice of the revocation.

Contact 31 FW/JA for more information or legal assistance on this topic.

DSN 632-7843 or Commercial 0434-30-7843

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