

# POWER OF ATTORNEY GUIDE

*The material in this handout represents general legal principles. The law is continually changing; although the information in the handout was current as of the date it was drafted, some provisions in this pamphlet may have changed. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.*

## Power Of Attorney

A Power of Attorney (POA) is a written instrument that allows you (the "principal") to authorize your agent (the "attorney-in-fact") to conduct certain business on your behalf. It is one of the strongest legal documents that an individual can give to another person. The POA authorizes your agent to act on your behalf and to carry on your business in your absence. Acts performed by the agent and authorized by the Power of Attorney are legally binding on you. Since a POA is such a powerful document, it should be given only to a trustworthy person, and only when absolutely necessary. Your legal assistance office can advise you about, and prepare for you, the appropriate POA needed for your situation. PLEASE NOTE that third parties (banks, businesses, etc.) DO NOT have to accept or acknowledge your Power of Attorney; it is totally within their discretion to do so.

## General Powers of Attorney

A "general" POA gives your agent the right to conduct practically any business transaction you could do personally, including the right to sell your property and take out loans in your name for which you will be responsible. While a general POA may be helpful, it can also be very dangerous. In the past, some individuals have sold property, closed bank accounts, or run up credit card debts through use of a general POA. Consequently, a general POA should only be used when necessary and in most situations be limited in duration (generally to no more than one year). You should always ensure that your agent is someone that you absolutely trust with all of your money and legal decisions. If you lose trust in your agent, consult a legal assistance attorney about revoking the general POA. It's important to remember that a general POA is so broad in nature that some agencies may refuse to recognize or accept them. This is particularly true for real estate transactions. For these reasons, it is generally better to consider using a "special" power of attorney when possible.

## Durable Power Of Attorney

A durable POA can give your agent the right to conduct your business transactions if you become incapacitated by an illness, such as a coma or stroke. This power of attorney remains effective even if you become incapacitated. A health care POA should always be durable, and in many cases other POAs should be as well. The POAs produced by Air Force legal offices will include a durability clause unless you want it removed.

## Springing Power Of Attorney

A springing POA can give your agent the right to conduct your business transactions if you become incapacitated by an illness, such as a coma or stroke. In contrast to simply a durable POA, this power of attorney only becomes effective upon your incapacity. You may revoke the POA when you are no longer incapacitated or the POA will be revoked upon your death. A springing general POA is very effective especially if you do not have joint accounts or property, such as bank accounts, property or mutual funds. This document 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 financial accounts. Health care POAs should usually be springing as well, meaning that your agent will not make health care decisions for you unless you are unable to do so. Consult your legal assistance officer or civilian attorney concerning springing general POAs.

### **Special Powers Of Attorney**

A "special" POA limits your agent's authority to act on your behalf to specific transactions such as registering a car, shipping household goods, cashing a paycheck, buying or leasing a house, or signing for government housing. Because it is more specific, the special POA is safer than a broad general POA and more likely to be accepted by third parties. Your legal assistance attorney can help you determine the POA that will meet your needs.

*NOTE:* You should grant a POA only for the absolute minimum amount of time necessary to accomplish the act set out in the POA.

### **Revocation of Powers Of Attorney**

Generally, your non-durable POAs, both "General" and "Special," are automatically revoked upon your disability, death, or upon the termination date specified on the document itself. However, you may also revoke a POA prior to the termination date by taking the appropriate steps, including executing a revocation of the POA, delivering notice of the revocation to your agent, and delivering notice of the revocation to all third parties that have relied or may rely on the POA. In addition, to the greatest extent possible, it is important to recover the original POA from the agent and destroy the original and all existing copies of the POA. However, it is important to note that you may be responsible to any third party who did not receive notice of the revocation. If you are deployed, revoking a POA may be especially difficult and you should contact your nearest legal assistance attorney for advice. If you have a POA now in effect and you desire to revoke it, consult your legal assistance officer or civilian attorney concerning the legal steps you must take.

### **Additional Information**

- 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."
- Appropriate "durability language" may be added to POAs to ensure that the POA remains effective during any period of incapacity.
- Many financial institutions and businesses have their own POAs which they prefer to be used to conduct business. It is always a good idea to ask your own institutions if they have their own forms.

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