



## **Power of Attorney**

A Power of Attorney is a legal instrument in which one person, the “Principal,” delegates legal authority to another person, known as the “Agent” or “Attorney-in-Fact.” The Agent has the legal authority to make property, financial, and other legal decisions on behalf of the Principal and in so doing, binds the Principal.

### **Types of Power of Attorney**

There are a couple of different types of Power of Attorney. A “Specific” or “Nondurable” Power of Attorney is frequently used for a specific transaction. For example the Principal might be going on vacation. In that case, it provides that the Agent can sign on behalf of the Principal on the closing of a real estate sale.

A “Durable” Power of Attorney allows the Agent to act for the Principal even if the Principal is not mentally competent or if the Principal is incapacitated. Simply titling a Power of Attorney “Durable” does not make it durable. Rather, the Power of Attorney must contain specific language allowing it to endure the subsequent incapacity of the Principal.

A “Springing” Power of Attorney becomes effective at a future time – usually at the incapacity of the Principal. It *springs* into effect at that time and the Agent is allowed the power to act. The main drawback of a springing power of attorney is the determination of “incapacity.” Most documents require a determination of incapacity made by two independent doctors.

An “Immediate” Power of Attorney becomes effective upon signing by the Principal. This can create its own set of problems as an Agent may be acting at the same time as the Principal and possibly in a conflicting way. Moreover, if a Principal executes different powers of attorney with different agents, there can be all kinds of problems.

### **Selection of Agent**

This is a process in which much thought should be placed. It is essentially giving someone a blank check over your affairs. Thus, it should be a trusted family member, a longtime friend, or a professional with a very good reputation.

Agents often abuse their power when the Principal becomes incapacitated. Such abuses may take the form of making unauthorized gifts; changing beneficiaries on accounts to benefit the agent; taking money; etc.

It is when the Principal is incompetent that it is much more difficult to change the Agent. Therefore, extreme care should be taken in selecting an Agent that will never abuse the position.

### **Continuing to Act**

Once you have selected your Agent and executed a Power of Attorney, you may continue to act. The Agent is your representative, but you are still the boss! Nevertheless, if you have an Immediate Power of Attorney, there may be some unintentional conflict between the Principal's acts and the Agent's acts.

### **Revoking of Power of Attorney**

It is extremely important that if you decide to change your Agent or otherwise change your Power of Attorney, that you immediately inform all necessary institutions that your previous Power of Attorney is no longer valid.

### **Comprehensive General Durable Power of Attorney**

While every State and the District of Columbia have adopted a statutory short form Power of Attorney document, it is generally better to have a comprehensive document. One of the most important reasons for doing so is that banks and other financial institutions honor them more.

Moreover, a comprehensive general Durable Power of Attorney allows for a lot more flexibility in the event of incapacity. This may give your Agent the power to:

- Create and fund trusts
- Deal with qualified retirement accounts
- Operate a business
- Make larger gifts to family and charity
- Collect governmental benefits

While some of these powers may be implied in the Statutory Powers, the actual listing and detailing of them in a comprehensive document will help add to acceptance by third parties.