

POWERS OF ATTORNEY

GENERAL INFORMATION

A power of attorney is a written instrument authorizing one person to act on behalf of another in certain legal matters. Military community members frequently discover that a power of attorney can save considerable expense and inconvenience.

There are two types of powers of attorney: the “special” and the “general” power of attorney. In legal terms, the person who gives the power is called “the grantor”. The person given the power to act on the grantor’s behalf is referred to as an “attorney-in-fact” or an “agent”.

The **special power of attorney** authorizes the attorney-in-fact or agent to do only those acts specifically mentioned in the instrument. For instance, many servicemembers give their spouses a special power of attorney to set up household goods moves through the Transportation Office. Other common situations include selling or registering vehicles, childcare and real estate transactions.

A **general power of attorney** gives the attorney-in-fact the power to do any act on behalf of the grantor. Servicemembers deployed or serving unaccompanied tours frequently give their spouses or parents general powers of attorney. A general power of attorney has enormous potential for abuse. For example, the attorney-in-fact can contractually bind the grantor. He or she can also empty the grantor’s bank accounts, or sell any of his most cherished possessions.

The difficulty of **revoking a power of attorney** compounds its inherent danger. To revoke a power of attorney, the grantor must (a) physically retrieve the original document and any copies issued to third parties, and (b) make it known to the attorney-in-fact and all parties relying on the document that the powers have been revoked. For some types of transactions, where the power of attorney has been widely relied upon – such as in real estate transactions – it is advisable to publish the revocation in the public notice section of your local newspaper. Moreover, to protect the grantor from third-party claims, he should do more than revoke the power of attorney. Because of the dangers associated with a power of attorney, the grantor should insist upon a power of attorney for a limited duration. When the power of attorney expires, third parties cannot legally rely on it when entering into contracts. Accordingly, this office will not execute powers of attorney lasting over one year.

You should also be aware of any restrictions or qualifications that your state might impose upon the use of powers of attorney. Some states require registration of powers of attorney. This is usually done in the city or county where the grantor lives or where the holder intends to use the power of attorney. Currently, in most states you must only record powers of attorney used to convey real estate. Most states also limit the use of general powers of attorney in real estate transactions; so if you expect to use a power of attorney in a real estate transaction, make sure you request a special power of attorney. In addition, the use of a power of attorney in real estate transactions in any state should be approved in advance by all parties involved.



FREQUENTLY ASKED QUESTIONS

What is a Power of Attorney?

A Power of Attorney or POA is a document that authorizes someone else to act as your agent. For example, you might grant or give a POA to a friend, authorizing your friend to act as your agent to sell your car, ship your household goods, or obtain medical care for your child. The "grantor" of a POA is the person who makes the POA. The "agent" is the person authorized under the POA to act for the grantor.

Are there different kinds of Powers of Attorney?

Yes. The two main types are general and special POAs. A general POA allows your agent to do any and all things that you could legally do yourself. A general POA is essentially unlimited. A special (or limited) POA lists the particular act or acts that the agent is authorized to do and limits the agent's authority to only those acts.

When does a Power of Attorney expire?

Theoretically a POA can be made out for as long as the grantor wants. As a practical matter, however, a POA, especially a general POA, should almost never be made indefinite or permanent. Legal Assistance Offices usually make General POAs valid for no longer than one year. After that, the POA has to be renewed by the grantor.

What are some of the things a special Power of Attorney can do?

You can use a special POA to authorize your agent to do almost any legal action that you could do yourself. The following list is just a sample of the actions that could be included in a special POA.

- Buy or sell real estate;
- Purchase, register, or sell a car;
- Cash your paycheck or other checks or withdraw money from your bank account;
- Admit a child to the hospital for medical care;
- Ship or store furniture and household goods;
- Sign rental and utilities contracts;
- Sign an income tax return;
- Clear or accept quarters during a PCS move.

Are there any things a Power of Attorney cannot do?

Although a POA is valid for most purposes, in many states there are some items that cannot be accomplished with a POA, because these actions are so important and personal that they cannot be delegated to another. For example, a marriage ceremony or will execution cannot be done by POA. There are also cases when a particular form of POA is required, and no other form will be accepted. Banks, financial organizations, and the Internal Revenue Service, for example, usually require their own forms to be used. This particular requirement is more in the nature of a business practice; in reality the particular form used has no legal significance whatsoever.

Why doesn't everyone have a Power of Attorney?

A POA can be very useful if you have one in effect when you need it; but a POA can also be abused, so there are potential disadvantages to having a POA. You have to evaluate your own particular situation. A recently separated spouse, for example, might use a POA from the other spouse to clean out the grantor's bank account, go on a shopping spree, or sign up for a bunch of new credit cards. As you can see, a POA can be both very helpful and very dangerous. The important thing to remember is that you are going to be legally responsible for the acts of your agent. Therefore, you must exercise great care in selecting the person to be your agent.

Are there any special requirements for Powers of Attorney?

A POA must be signed in front of a notary public. If you wish, it can be recorded at the county Registrar's Office in the location where the POA will be used. As a general rule, however, a POA is fully effective even without being recorded.



Does every business or bank have to accept my Power of Attorney?

No. Everyone is free to accept or not accept a POA. Some businesses or banks require that the POA be recorded, while others do not. Some banks will accept only a special POA. The bottom line is that if you are relying on a POA to accomplish an important task, you should check with the business or bank beforehand to be sure that it will actually be accepted.

Does a Power of Attorney expire upon my death or mental incapacity?

A POA always expires on the death of the grantor (the person signing it) or of the agent named in it. A POA also usually expires upon the grantor's becoming incompetent. However, a mentally competent grantor may include a clause in a POA that makes the POA effective even during the grantor's subsequent mental or physical incapacity. This type of POA is called a "durable" POA. In many states, durable POAs must be recorded if the grantor does become mentally incapacitated.

How does my agent actually sign for me?

The agent should sign the grantor's name, then sign the agent's name, and then indicate the agent's authority to sign. For example, "John Grantor, by Mary Agent, with Power of Attorney."

What steps can I take to prevent improper use of my Power of Attorney?

To guarantee that your POA will not be misused, but here are some tips to help prevent abuse:

- Never have a POA unless you need one.
- If you feel you might need a POA, have one prepared, but don't sign it or give it to your agent until you need it.
- Always put an expiration date on your POA; never make a POA that lasts indefinitely.
- Make sure your expiration date is long enough for your agent to accomplish the job, but not longer than is needed. The duration will depend on the type of job to be accomplished and the risk of abuse. A medical care power of attorney for a child, for example, poses almost no risk of abuse, so a very long duration would probably not be much of a problem there. A general POA, however, poses a very significant risk, so a much shorter duration would probably be appropriate.
- Never use a general POA when a special will do.
- Be careful in choosing your agent. Your agent must be at least 18 years old and capable of carrying out your wishes. The agent should be trustworthy, mature, and understand the responsibility of having your POA.
- If you want to terminate a POA before its stated expiration date, the safest way to do this is to retrieve all the copies and originals given to your agent, and all photocopies that may have been given to banks, realtors, merchants, landlords, and other people. If you can't do that, the next best method is to execute a Revocation of Power of Attorney and give a copy to any person that might deal with the agent named in the original POA. In some states you may also record the revocation in the county Registrar's Office where the original POA was recorded or was to be used. Just remember that if anyone enters into a contract while reasonably relying on the original POA, even after it has been revoked, then you are liable on that contract.

What if my agent abuses the POA?

This happens fairly often, which is why you need to be careful in choosing your agent and limiting their authority. Unfortunately no matter how careful you are, abuses are still possible. You are liable to third parties for all of your agent's actions if the actions were authorized under the plain language of the POA and the third party reasonably relied on the POA. It doesn't matter whether the agent's actions were foolish or against your wishes; if the action was authorized under the plain language of the POA, then you are stuck, at least as far as the third party is concerned. You may sue your agent for reimbursement of any loss you incur as a result of the agent's misuse of the POA, but that is a time-consuming, difficult, and expensive process, and there is no guarantee that your agent will be capable of reimbursing you, even if you win your lawsuit.

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