



## POWER OF ATTORNEY FACT SHEET

**INTRODUCTION:** A Power of Attorney (POA) is a written instrument that allows the principal to authorize an agent (the "attorney-in-fact") to conduct certain business on their behalf. A POA serves as one of the strongest legal documents that someone can give to another person. There are two types of POA: "general" and "special." A general POA gives the agent very broad powers to act on the principal's behalf. Whereas a special POA limits the agent's authority to act only on certain matters. Every act performed by the agent within the authority of the POA is legally binding upon the principal. Since a POA is such a powerful document, it should be given only to a trustworthy person and only when absolutely necessary.

**GENERAL POA:** A General POA gives an agent the authority to do most things the principal could do themselves, such as write checks and pay bills, borrow money, and sign contracts in the principal's name. An agent cannot perform certain actions, which require the principal's personal attention, 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.

**SPECIAL POA:** A special, or limited, POA authorizes the agent to do only a specified act, such as selling a car, shipping household goods, or cashing a check. Some acts may only be accomplished with a special POA. For example, authorizing someone to buy or sell real estate in the principal's name requires a special POA, which describes in detail the property and the specific acts to be done by the agent. Since it is limited in scope, a Special POA is preferable to a General POA, if it will suffice.

A POA becomes void upon the death of the principal or the agent, when revoked, or on the expiration date specified.

Any third party (business, bank, etc.) has the right to refuse to accept a POA. Check with the third party before obtaining a POA to ensure it will be accepted.

### **How do I make my Power of Attorney valid if I become incompetent?**

A "durable" Power of Attorney differs from a traditional POA in that it continues the agency relationship beyond the incapacity of the principal. There are two types of durable powers of attorney. One becomes effective immediately upon execution and can be used immediately. The second type, called a "springing" power, is effective only upon the incapacity of the principal; until then, it has no legal effect at all. When the specific event occurs, such as the disability of the principal, it "springs" into action. Most often, Durable Powers of Attorney are created to deal with decisions involving



## POWER OF ATTORNEY FACT SHEET

either property management or health care issues. Before the Durable Power of Attorney was created, the only way to handle the affairs of an incapacitated person was to appoint a guardian. This process frequently involves complex and costly court proceedings, as well as a determination that the principal is wholly incapable and in need of protection. With the Durable Power of Attorney, an agent acting in the best interests of the principal can act inexpensively and without costly legal action. All fifty states recognize some version of the Durable Power of Attorney. Certain powers cannot be delegated, including the powers to make, amend, or revoke a will, change insurance beneficiaries, contract a marriage, and vote.

### **What is a Medical Power of Attorney?**

A medical power of attorney is a designation made to select a person, known as the "agent" or "attorney-in-fact", to make health care decisions on behalf of someone else ("principal"). The power of attorney goes into effect after a licensed physician has deemed the principal incapable of making decisions for themselves. It is recommended for the principal to make medical power of attorney and a living will to write their treatment preferences for an agent to follow.

### **Medical POA vs. Living Will**

A **medical power of attorney** lets a person select their preferred treatment options *and* designate an agent to carry out their wishes. The agent will have full authority to make any type of decision to prolong or withdraw life-sustaining treatment.

A **living will** allows a person to select their preferred treatment options *without* designating an agent. A living will provides medical staff with the principal's intentions on whether to prolong or withdraw life-sustaining treatments depending on their condition.

If you have any questions or are interested in creating a Power of Attorney or Durable Health Care Power of Attorney/Living Will, please contact an attorney, legal assistance office, or online document creation service (i.e., legalzoom, eforms, etc.).