

APPENDIX A1

Power of Attorney Information Sheet

What is a power of attorney?

A power of attorney is a legal document that allows an individual, called the *principal*, to appoint another individual as an *agent* (also known as an *attorney-in-fact*). The agent may perform specified acts on behalf of the principal.

Why should I sign a power of attorney?

In the event you become unable to manage your property and financial matters, your agent can manage your affairs for you. By appointing your agent while you are competent, you can choose someone you trust to handle your property and/or financial affairs. If you become incapacitated and have not appointed an agent, a court may appoint a guardian to make any necessary decisions about your property, and you will have no control over the selection of the guardian.

Who can sign a power of attorney?

Any person over the age of 18, who has the capacity to understand the nature of the document he or she is signing and the powers it gives the designated agent.

Who should be named as an agent?

An agent should be a person *whom you trust and believe will handle your property and affairs in your best interest*. Usually family members and/or close friends are named as agents. Sometimes lawyers, accountants or other professionals are named. When you appoint an agent, a legal relationship is created between you, as the principal, and your agent. Your agent has a duty to act in your benefit and best interests in all transactions made under the power of attorney.

What is a durable power of attorney?

A durable power of attorney goes into effect immediately, which means the agent can immediately exercise the powers granted by the principal. The agent's power is not terminated by the disability or incapacity of the principal.

What is a nondurable power of attorney?

A nondurable power of attorney goes into effect immediately, but if the principal becomes mentally incapacitated, the power terminates. Therefore, if you are planning for your possible incapacity, you should sign a durable power of attorney instead.

What is a durable power of attorney effective at a future time (springing power)?

A durable power of attorney effective at a future time becomes effective only when a certain event occurs. Generally, this event will be when the principal becomes incapacitated and cannot make decisions about property matters. The principal may also specify any other event that will make the power of attorney effective. A physician or other person you designate must certify that the specified event has occurred, which “springs” the document into effect. The durable power of attorney effective at a future time is more commonly known as a *springing power of attorney*. The 2009 legislation eliminated the separate statutory short form springing power of attorney and provided that a statutory short form power of attorney can be made a springing power of attorney only through section (g) modifications.

Can a principal appoint more than one agent?

A principal may appoint one or more agents by naming them on the power-of-attorney form. When two or more agents are appointed, the principal can choose whether the agents are to act separately or together. If the principal fails to choose, then the agents must act together. Also, the principal may appoint one or more alternate agents to act if the primary agent(s) is unable to act for any reason.

What does it mean when two or more agents act separately or together?

When the principal initials the box in the power of attorney stating that two or more agents may act SEPARATELY, each agent can act on the principal's behalf without informing the other or obtaining the consent of the other. When the principal wants two or more agents to act TOGETHER, each agent must agree on and authorize every act to be taken on the principal's behalf. No agent can act alone. Thus, if one of the two agents named dies or cannot act, the power of attorney can no longer be used.

What if an agent dies or is unavailable when decisions have to be made?

The principal may also appoint one or more ALTERNATE agents and can choose whether they are to act separately by so designating on the power-of-attorney form. A failure to make that selection will mean that the multiple successor agents must act together. The alternate agent(s) should be someone you trust to handle your property and/or financial affairs. By naming an alternate agent, the principal guarantees that if the agent dies or is unable or unwilling to act, the alternate agent can act on the principal's behalf.

What decisions can an agent make?

The power of attorney allows the principal to select among many different powers to allow the agent to make decisions concerning the principal's property. These powers may include the handling of real property, banking transactions such as signing checks, insurance transactions, retirement benefits and benefits from military service. The complete list of powers appears on the form.

How does the principal give powers to the agent?

The principal grants specific powers to the agent by initialing the boxes next to the powers to be given to the agent. If a box is NOT initialed, the agent will NOT be given that power. As an alternative, the principal can write or type the letters for each power to be granted on the line next to paragraph P and then initial that paragraph.

What happens if my agent steals my money or property?

If your agent abuses the powers granted, the agent is accountable and can be sued and forced to return the money or property. The agent may also be prosecuted for violation of criminal law. However, since these proceedings are often long and difficult to pursue, the best protection is for you to select an agent who is trustworthy and reliable.

May a third party, such as a bank or mortgage company, be held legally responsible for any claims arising out of the agent's use of the power of attorney?

No, a third party may not be held legally responsible for claims related to the agent's use of the power of attorney unless the third party knew or should have known that the power was no longer in effect.

Is there a special procedure for signing the power of attorney?

Yes. A power of attorney becomes valid when the principal and initial agent(s) sign and acknowledge the document before a notary public. Acknowledging the document means that you tell the notary that the document is a power of attorney. If the document is not signed this way, it is not valid. In addition, each power you wish to grant the agent must be separately initialed or indicated under paragraph P, which must then be initialed.

Do banks have to recognize powers of attorney?

Banks are required by law to honor a power of attorney. Unfortunately, some banks insist on using their own forms, which give the agent authority only over that bank's accounts. A principal should advise her banks that she has signed a power of attorney in order to verify that it will be honored. If the bank has its own form, the principal should complete the appropriate form and sign it before a notary public. There is usually a bank employee who is a notary public, and the form can be signed at the bank.

What is the difference between a power of attorney and a health care proxy?

A power of attorney gives authority to an agent to perform certain specified acts concerning property and financial affairs on the principal's behalf. It does not give the agent the power to make health care or other personal decisions for the principal. By contrast, the health care proxy allows a designated agent to make *medical* treatment decisions on behalf of the principal. The health care proxy is always springing, which means that it only goes into effect if the principal becomes mentally incapacitated and is unable to make decisions about medical treatment.

How do I revoke the power of attorney?

As a principal you may revoke the power of attorney at any time by notifying the agent in writing. The principal also may revoke the power of attorney by tearing up, burning, canceling, obliterating or destroying the document. The agent, every bank, institution and individual that has a copy of the power should be notified that the power of attorney has been revoked.

Can the agent make decisions even after the principal's death?

No, the agent has no authority after the principal's death.

Where should I keep the power of attorney after it is signed?

You should keep the original power of attorney in a safe place after it is signed and should tell your agent where it is. You may want to give the document to the agent or to a third party, such as a lawyer or accountant, and provide written directions on when it should be delivered to the agent. You may give a copy of the power of attorney to a family member, close friend or trusted professional adviser for safekeeping. You should also provide the agent with a copy and tell the agent when the powers should be exercised.

Is a New York power of attorney valid in other states?

Every state has its own laws governing the form and signing procedures of the power-of-attorney document. If you are moving out of state or will be in another state for an extended period, you should first contact a lawyer in the state to find out if the state will honor the New York power of attorney. If the other state does not honor the New York power of attorney, you should execute a new power of attorney that will be valid in that state.

What if I have further questions?

You should contact an attorney.

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