

Power of Attorney

What is a Power of Attorney?

A power of attorney is a document that allows another person, or an institution, to act as your legal agent. The person who issues a power of attorney is called the principal, and the person who acts as agent is called attorney-in-fact. Powers of attorney, signed by the principle and notarized by a notary public, formalize the legal relationship between you and your agent, and give notice to third parties (banks, businesses, creditors, etc) that the named agent has permission to act for you. It is one of the strongest legal documents that you can give to another person. Everything your agent does within the authority of the power of attorney is legally binding upon you.

There are different types of powers of attorney for different situations.

A **general power of attorney** authorizes your agent to do just about everything, and to do it in your name. For example, an agent with a general power of attorney can rent or buy a house with your money, borrow money that you must repay, sell your car, sue someone for you, or remove all funds from your bank account. There are some things that are so personal in nature that they cannot be delegated to an agent, such as a marriage ceremony or the execution of a will.

A **special power of attorney** gives your agent limited authority to do specific things. For example, you can authorize someone to register your car, to clear your quarters, to ship household goods, or to buy or sell a house, without granting authority to do anything more. The focus is on the performance of a specific act. A special power of attorney can give your agent authority to do as many specific acts as desired.

A **durable power of attorney** is the only power of attorney that will remain effective even if you become legally incompetent. A durable power of attorney can be made effective immediately when signed and continue to be effective until it is revoked, you or your agent die, a time limit set out in the instrument is reached, or a guardian of your estate is appointed. Some states require that a durable power of attorney be recorded in the county clerk's office in the county in which you reside. For specific circumstances see your legal assistance attorney.

A **springing power of attorney** is drafted so that the agent cannot act in your place unless you are incapacitated. A springing power of attorney is for financial affairs only; a separate document should be drafted to give

your agent the power to make your health care decisions in the event you are incapacitated (called a *durable power of attorney for healthcare*).

Who Should I Name as My Agent?

The most important rule in powers of attorney is: Choose your agent wisely. You must be confident your agent will act in your best interest only. It is vitally important you select only person you trust without reservation. A spouse or parent may be the wisest choice. Do not give general powers of attorney to friends or fellow soldiers known for only a short period of time. Never give a power of attorney to someone who is not absolutely trustworthy and capable.

Does Every Institution Honor a Power of Attorney?

Third parties are NOT required to honor powers of attorney, but most will. The third party will most likely require presentation of the original power of attorney before allowing the agent to act for you. For that reason, be sure you give the original power of attorney to your agent (photocopies are not an acceptable substitute).

Banks and other financial institutions often draft and make available their own unique powers of attorney, and may not accept powers of attorney prepared by other offices. The individual financial institution can answer questions about acceptance of other powers of attorney.

Can I Revoke the Power of Attorney?

If you want to terminate your agent's authority to act for you, you can execute a *Revocation of Power of Attorney*. Powers of attorney also end on your death, your agent's death, expiration of the term recited in the power of attorney, destruction of the original power of attorney. You must notify your agent that you have revoked the power of attorney. Otherwise, your agent may be able to continue acting on your behalf. You should also consider giving a copy of the revocation to your major creditors and any agency or business where the power of attorney has been used or you suspect the agent may try to use it. The revocation must be signed and notarized. Notification to the agent should be by certified mail (restricted delivery) or in person with disinterested witnesses.

What Is A "Sundown" Clause?

A sundown clause is simply the section of the document that states the expiration date and terms under which the agent's authority ends. When drafting the power of attorney, determine how long you will need the agent to act for you. It is advisable to keep the time frame as short as possible. If you later find you need to give the agent more time, you can always execute another power of attorney and mail it back to your agent.

General Guidelines

Before giving someone power of attorney, consider:

- Only give away as much power as is absolutely necessary. If you need someone to perform only specific tasks for you, then you don't need a general power of attorney. Get a Special Power of Attorney—one that will authorize your agent to perform only those specific tasks.
- Limit the duration of your Power of Attorney to no longer than 1 year or a shorter period. Don't set the expiration date longer than you will need your agent's services, and don't give the Power of Attorney before it will be needed.
- Make sure your agent is someone you can trust. If you lose trust in your agent, talk with a legal assistance attorney about revoking your Power of Attorney.

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Power of Attorney is distributed by the Camp Zama Legal Assistance Office, located in Building 101, Room CE209. Our office hours are 0830 to 1630 Monday, Tuesday, Thursday and Friday. On Wednesday, our hours are 0830 to 1200. You may call for an appointment at DSN 263-4698/commercial 046-407-4698.