

## DIFFERENT TYPES OF POWER OF ATTORNEY: WHAT ARE THEY? OSJA, PRESIDIO OF MONTEREY

A power of attorney is a legal document that gives someone power to act on your behalf. The person who receives this power is known as an “agent” or “attorney-in-fact.” In general, a power of attorney grants significant powers. For example, the agent can sign on your behalf, enter into agreements under your name, and cause third-parties to take certain actions.

Various circumstances might demand a power of attorney. You might grant a power of attorney when you will have an extended absence (*e.g.*, deployment). You might also grant authority to another to provide instructions for your medical care should you be unable to express your wishes. In short, a power of attorney can be an important, but also dangerous, document.

### **1. Are there different types of powers of attorney available?**

A power of attorney is flexible and can be tailored to fit many needs. In contemplating your needs, consider the following types of powers of attorney:

- General Power of Attorney – A general power of attorney grants your agent authority to take *any* action that you, yourself, might take. This document, therefore, is powerful, binding you by law to any act of the agent on your behalf. Because a general power of attorney provides significant opportunity for abuse, it is rarely recommended.

- Special Power of Attorney – Unlike the former, a special power of attorney provides the agent with specific, limited authority. A special power of attorney might limit the agent to one particular act, *e.g.*, filing your income tax return, or a set of specific acts, *e.g.*, paying monthly rent from your bank account and selling your vehicle.

- Guardianship Power of Attorney – Occasionally there is a need to appoint someone to act on your behalf with respect to your child(ren). Obtaining a court order naming a guardian, however, can be time-consuming and costly. To avoid this problem, many complete a guardianship power of attorney, which designates a trusted person as the child’s temporary guardian. The power of attorney gives the temporary guardian authority to take custody of the child and act in the interests of the child’s health, education, and welfare, including, for example, the power to obtain medical care. Individuals frequently seek these for use in family care plans, among other uses.

- Medical Power of Attorney – A medical power of attorney grants an agent authority to make health care decisions on your behalf if you suffer from a disability or an illness. For more information on this type of power of attorney, please see the Medical Power of Attorney information paper.

- Financial Power of Attorney – A financial power of attorney, also known as a durable financial power of attorney, grants an agent authority to handle your financial affairs, including, but not limited to, acquiring and disposing of property, collecting debts, borrowing money, handling lawsuits by or against you, filing tax returns, and receiving and selling stocks. A financial power of attorney can be immediate, granting authority to act the moment you sign the document, or “springing,” coming to life only after you are declared disabled, absent, or incapacitated.

## **2. I've heard the term “durable” power of attorney. What does that mean?**

Unlike other powers of attorney, a “durable” power of attorney does not expire once you become incompetent or incapacitated. That is, a durable power of attorney remains in effect even if you are unable to make sound decisions or care for yourself. The advantage is that once you become incompetent or incapacitated someone may step in to handle your affairs immediately, thereby avoiding the need to seek a court-appointed guardian. Additional information can be found in the Durable Power of Attorney information paper.

## **3. Are there any limitations to a power of attorney?**

Although most businesses and organizations accept generic powers of attorney, some businesses will refuse to recognize a power of attorney that does not use their form or follow a certain format. Additionally, some businesses or offices require use of specific language. Consider the following:

- If the power of attorney gives an agent authority to handle your bank accounts, brokerage accounts, investments, or other financial documents, you should contact the financial institution or brokerage firm in advance to determine whether they require a specific form or format, or whether they will accept a generic power of attorney. For example, USAA requires its customers to use USAA's power of attorney form, which can be found on its website.
- If you grant authority to buy, sell, or mortgage real estate, some states require that the power of attorney be recorded in the public records before an agent may act on your behalf. In Oklahoma, for example, state law requires that the power of attorney be recorded in the public property records of the county where the property is located.
- If you grant authority to buy or sell a vehicle, ensure that you have on hand and include in the power of attorney important identifying details, such as the vehicle identification number (VIN) and the make and model of the vehicle.
- If you intend to grant authority to an agent to handle your taxes and tax returns, you should use the Internal Revenue Service's power of attorney form, IRS Form 2348. Although a special power of attorney may suffice, the recommended approach is to use the IRS form.
- Some military offices require a power of attorney containing specific language. For example, dependents need a power of attorney to obtain a Tricare or DEERS card while the dependent's sponsor is absent or deployed. Similarly, the housing office requires a power of attorney containing specific language before a dependent may clear government quarters, sign for government quarters, or ship and receive household goods.

Other limitations and specific circumstances may exist; therefore, you should consult an attorney or make an appointment with the Legal Assistance Office if you have additional questions.

**4. I just returned from Afghanistan. Before leaving, I gave my spouse a power of attorney. The power of attorney terminated when I returned, right?**

Wrong. The authority granted in a power of attorney continues until the powers granted terminate or you take certain actions to revoke the power of attorney. This is discussed further below. Note that until the power of attorney terminates or is revoked, your agent may continue to act on your behalf and bind you legally by his or her actions. The Legal Assistance Office can help you draft a revocation letter.

**5. Is a power of attorney permanent or can I revoke it?**

Most powers of attorney are not permanent. In general, a power of attorney will terminate upon the earlier of the following events:

- a. Incompetency or incapacity (*i.e.*, you become unable to handle your own affairs or care for yourself);
- b. Expiration by a date specified in the power of attorney (*e.g.*, this power of attorney expires/terminates on 1 March 2012);
- c. Revocation (*i.e.*, you destroy the original and any copies, and notify those to whom copies have been given that the authority to act on your behalf has been revoked; or, if you cannot retrieve the original, you create a revocation document); or
- d. Death.

Note again, however, that a *durable* power of attorney differs. You may revoke a durable power of attorney at any time before you become incompetent or incapacitated; however, once you become incompetent or incapacitated, the durable power of attorney continues until (a) your death or (b) a court sets aside the durable power of attorney, whichever occurs first.

**6. How do I get a power of attorney?**

The Legal Assistance Office can draft a power of attorney that suits your needs. Most powers of attorney can be handled by our staff at the front desk. For more particular powers of attorney, such as a Medical Power of Attorney or Durable Power of Attorney, you should consult an attorney or make an appointment with the Legal Assistance Office.

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