

## **Powers of Attorney Questions and Answers**

Q. What is a Power of Attorney?

A. A power of attorney is a document that allows someone else to act as your legal agent. Thus, a power of attorney can be used to allow a friend to sell your car, to let your spouse ship your household goods or to authorize a relative to take your child to the hospital. It can also be used to sell or buy property. It can create valid and legal debts in your name or it can authorize a person to pay off your debts.

Q. Are there different kinds of Powers of Attorney?

A. Yes. The two types are general and special powers of attorney. A general power of attorney allows the person you name (or your agent) to do any and all things that you could legally do, from registering a car to selling a house. A special (or limited) power of attorney lists a particular act that the agent is authorized to do and limits the agent to that act. The agent can, of course, be authorized to do more than one legal act in a single special power of attorney.

Q. When does a Power of Attorney expire?

A. A power of attorney should never be made indefinite or permanent. The best course is to set a date for the power of attorney to expire, and this can be written into the power of attorney. That way, the power of attorney will be no good after the expiration date that you set unless, of course, you renew it by preparing a new power of attorney.

Q. What are some of the things a Special Power of Attorney can do?

A. You can use a special power of attorney to allow someone to do almost all legal actions that you can do yourself. Thus, for example, you could prepare a special power of attorney that lets your designated agent:

1. Buy or sell real estate;
2. Purchase a car or sell your furniture;
3. Sign your paycheck or withdraw money from your bank account;
4. Admit your child to the hospital for needed medical care;
5. Ship or store your luggage and household goods;
6. Sign your name to a lease or an agreement to connect utilities, such as electricity, gas, oil or telephone service;
7. Cash or deposit tax refund checks or transfer stocks and bonds.

Q. Are there things a Power of Attorney cannot do?

A. While a power of attorney will be accepted as valid for most purposes, in California there are some items that cannot be accomplished by using a power of attorney because these actions are so personal in nature that they cannot be delegated to another. Thus, for example, a marriage ceremony or the execution of a will cannot be done by power of attorney. In addition, there are times when a certain form of power of attorney is required and none other will be accepted – an example is the special form of power of attorney used by the Internal Revenue Service when a person allows a friend or relative to cash an IRS refund check.

Q. All this sounds like a good deal. Why doesn't everyone have a Power of Attorney?

A. A power of attorney can be very useful if you have one in effect when you need it. But a power of attorney can be abused as well as used; there can be disadvantages to having one as well as advantages. A husband who just separated from his wife might use the power of attorney she gave him to clean out her individual bank account. A well-meaning older person might give a power of attorney to a younger relative, only to discover that the relative squandered and spent the assets of the older person. A power of attorney always has the potential for being a very helpful or a very dangerous document for those reasons. 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.

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

A. There is no way to guarantee your power of attorney will not be misused. Here are some guidelines and precautions that will help prevent abuse:

1. Never have a power of attorney unless you need one.
2. If you feel you might need a power of attorney, have one prepared but don't sign it until you need it.
3. Always put an expiration date on your power of attorney; never make a power of attorney that lasts indefinitely.
4. Make sure your expiration date is for a fairly short period of time. While this will vary from one person to another, periods of one, two or three years are not uncommon on powers of attorney.
5. Never use a general power of attorney when a special one will do.
6. If you want to cancel or terminate a power of attorney before it expires, you can prepare and execute a Revocation of Power of Attorney. Give a copy of the revocation to any person that might deal with the person to whom you gave your power of attorney. In some states you may also record the revocation in the county register of deeds office where the original power of attorney was recorded or was to be used. Just remember that it is usually impossible to cancel effectively a power of attorney, since the safest way to do this is to get back the original and all the copies that you have given to your agent, as well as all the photocopies that may have been made by banks, realtors, merchants, landlords and other people who are relying on the power of attorney you have signed.

Q. Are there any special requirements for Powers of Attorney?

A. A power of attorney must always be signed in front of a notary public. If you wish, it can be recorded at the county register of deeds where it is to be used. When a power of attorney is used to transfer land or to do business on behalf of a person who has become incapacitated, it must be recorded. As a general rule, however, a power of attorney does not need to be recorded in order to be effective.

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

A. No., every business or bank is free to accept or reject a power of attorney. Some businesses or banks require that the power of attorney be recorded while others do not. Some banks will accept only a special power of attorney. The best rule is to check with

the business or bank before obtaining or using a power of attorney to be sure that it will be accepted.

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

A. A power of attorney expires on the death of the grantor (the person signing it) or of the agent named in it (unless a substitute agent is named). Many people choose to have an additional clause in a power of attorney that makes provision for its continued existence in the event of mental incapacity. This type of power of attorney is called a durable power of attorney. You should remember, however, that a valid power of attorney must be signed while the grantor is sane and mentally competent. If the grantor wants to prepare a power of attorney that only becomes valid upon his or her incapacity, that document can also be prepared by this office, and it is called a springing power of attorney because it "springs to life" upon the grantor's incapacity.

Q. What if I have other questions or specific problems I want help in solving?

A. See a legal assistance attorney or a civilian lawyer as soon as possible. Seeing a lawyer early may not only solve a problem you have; it may also resolve or avoid a problem in the future, on this or other unrelated subjects. Seeing your lawyer early is practicing "Preventive Law."

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