

INSTRUCTIONS FOR POWER OF ATTORNEY

Before executing a Power of Attorney or accepting the responsibility of acting as an Attorney in Fact, you are asked to read the following information. Should you not understand any of the information or are uneasy about what your duties or responsibilities are, you are instructed to contact an attorney of your choosing to further discuss the matter.

POWER OF ATTORNEY:

The power of attorney is a document in which one person (called "the principal") gives another person (called "the attorney in fact") legal authority to act on his or her behalf.

Among the powers an attorney-in-fact normally has are the rights to:

1. Handle the principal's bank account;
2. Collect all money owed the principal, including wages, government benefits, or other income;
3. Pay all the principal's bills;
4. Negotiate with people or institutions who have claims against the principal;
5. Maintain the home, and any other house or real estate of the principal;
6. Handle any other assets of the principal, from stock accounts to automobiles.

CONVENTIONAL POWER OF ATTORNEY:

A conventional power of attorney, which has been available for hundreds of years, is basically a simple document by which you appoint another adult to act for you in a transaction, or series of transactions. The conventional power of attorney terminates upon incapacity or death of the principal, and/or whenever it expires by its own terms.

It is a useful legal method to authorize the handling of many short-term monetary and business problems when the principal will not be available to do it herself. Numerous other financial situations can be conveniently handled by use of a conventional power of attorney, from banking transactions, to IRS hearings, to paying bills, to handling financial expenses of a friend's minor children on a temporary basis.

DURABLE POWER OF ATTORNEY:

A durable power of attorney is designed for a different purpose. It is a document in which you authorize an adult of your choice to make necessary financial and/or medical decisions on your behalf should you become incapacitated. The point of a durable power of attorney is that it allows you to establish, in advance, a fully legal method to accomplish this without the necessity for any court guardianship or conservatorship proceedings should you in fact become incapacitated.

In other words, it is valid from the date it is signed and remains valid regardless of the subsequent disability or incapacity of the principal; however, the durable power of attorney normally terminates only upon death of the principal, or by revocation by the principal.

One big advantage of the durable power of attorney is that it can be drafted so that it only becomes effective if you, the signer, become incapacitated. This is called a "springing durable power of attorney", which means that the durable power of attorney never goes into effect if you never become incapacitated.

CAUTION -- NOTICE:

Any power of attorney, most especially a durable power of attorney, is a document which transfers tremendous power, either in the present or, in the case of a springing durable power of attorney, possibly sometime in the future. Even though any power of attorney can be revoked at any time (as long as the principal remains competent), you should never create a durable power of attorney unless you are confident you have a thorough understanding of the authority you are, or may be, transferring.

Legally, your attorney in fact is a "fiduciary", which means she owes a duty of complete good faith and trust to you, the principal. But don't take much comfort from these nice sounding words. If the attorney-in-fact breaches his or her duty and manages your affairs in a careless or dishonest way, the existence of this high legal duty will probably do little good. Why? The principal, his heirs or interested parties, can only sue the attorney-in-fact for breach of duty. This is not much, if any, solace or remedy for a derelict attorney-in-fact. Lawsuits are burdensome and expensive. If you wind up having to sue an attorney-in-fact, you have ironically become deeply entwined with the very legal system a durable power of attorney was designed to avoid.

Information extracted from various sections:

The Power of Attorney Book, Second Edition, by Attorney Dennis Clifford

Power of Attorney

Know All Men By These Presents:

That _____, hereinafter referred to as the Principal, has made, constituted and appointed, and by these presents does make, constitute and appoint _____, true and lawful attorney, hereinafter referred to as Attorney in Fact, for the Principal and in the Principal's name, place and stead and for the Principal's use and benefit to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interest, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belonging to the Principal and have, use and take all lawful ways and means in the Principal's name, or otherwise, for the recovery thereof, by attachments, arrest, distress, or otherwise, and to compromise and agree for the same, and to make, sign, seal, and deliver acquittances, or other sufficient discharges for the same; for the Principal and in the Principal's name, to bargain, contract, agree for, purchase, receive, and take lands, tenements, hereditaments, and accept the seizing and possession of all lands, and all deeds, and other assurances in the law therefore, and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements, and hereditaments, upon such terms and conditions and under such covenants as the Attorney in Fact shall think fit; to assign and transfer any note or mortgage. ALSO to bargain and agree for, buy, sell mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares, and merchandise, choses in action and other property, in possession or in action, and to release mortgages on lands or chattels, and to make, do, and transact all and every kind of business of what nature and kind soever.

AND also for the Principal and in the Principal's name, and as the Principal's act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, leases, and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfactions of mortgage, judgment, and other debts, and such other instruments in writing, of whatsoever kind or nature, as may be necessary or proper in the premises:

GIVING AND GRANTING unto the Principal's said attorney, the Principal's full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as the Principal might or could do if personally present.

In Witness Whereof, _____ the Principal has hereunto set the Principal's hand and seal this _____ day of _____, _____.

Signed, Sealed and Delivered in the Presence of:

WITNESS

PRINCIPAL

WITNESS

STATE OF _____)
County of _____)

On this day personally appeared before me _____ to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that _____ signed the same as _____ free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, _____.

Notary Public in and for the State of _____,
residing at _____

DURABLE POWER OF ATTORNEY

THE UNDERSIGNED, _____, hereinafter referred to as the Principal, domiciled and residing in the City of _____, County of _____, State of _____, designates the following named person as attorney in fact to act for the undersigned as the Principal who may hereafter become disabled or incompetent through incidence including but not limited to mental or medical happenings.

Designation. _____, City of _____, State of _____, is hereby designated as attorney-in-fact for the Principal. If, for any reason, the Attorney in Fact becomes unable or unwilling to so act, then _____, City of _____, State of _____, is designated as alternate attorney-in-fact for the Principal, with the same authority, rights and obligations as the primary attorney-in-fact. In the event that a guardianship or limited guardianship of the person or estate of the Principal is necessary, the Principal nominates the attorney-in-fact designated herein to serve in that role, subject to the confirmation of the Court.

1. To exercise or perform any act, power, duty, right or obligation whatsoever that I now have, or may hereafter acquire the legal right, power or capacity to exercise or perform, in connection with, arising from, or relating to any person, item, transaction, thing, business property, real or personal, tangible or intangible, or matter whatsoever;

2. To consult with my physicians and any and all health care providers, whether individual or institutional, in the event I am unable to do so, regarding treatment decisions to be made on my behalf; to enforce any documents I have signed declaring my intentions regarding life-prolonging procedures in the event I have been determined to be imminently terminally ill, to substitute for my judgment, in the event I am unable to communicate my wishes and intentions for myself, with respect to relief from pain, hydration, and feeding through artificial measures in the event I am unable to take food and water on my own; to enter into treatment decisions on an informed basis, and to refuse treatment which my attorney-in-fact believes, in good faith, that I would refuse if I were competent and able to act for myself;

3. To request, ask, demand, sue for, recover, collect, receive, and hold and possess all such sums of money, debts, dues, commercial paper, checks, draft, accounts, deposits, legacies, bequests, devises, notes, interest, stock certificates, retirement benefits, insurance benefits and proceeds, any and all documents of title, choses in action, personal and real property, intangible and tangible property and property rights, and demands whatsoever, liquidated or unliquidated, as now are, or shall hereafter become, owned by or due, owing, payable, or belonging to me, or in which I have or may hereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in my name for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for me, on my behalf, and in my name, all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same;

4. To lease, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any real or personal property whatsoever, tangible or intangible, or interest thereon, on such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper;

5. To maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens, mortgage, subject to deeds of trust, and hypothecate, and in any way or manner deal with all or any part of any real or personal property whatsoever, tangible or intangible, or any interest therein, that I now own or may hereafter acquire, for me, in my behalf, and in my name and under such terms and conditions, and under such covenants as said attorney in fact shall deem proper;

6. To conduct, engage in, and transact any and lawful business of whatever nature or kind for me, on my behalf, and in my name;

7. To make, receive, sign, endorse, execute, acknowledge, deliver, and possess such applications, contracts, agreements, options, covenants, conveyances, deeds, trust deeds, security agreements, bills of sale, leases, mortgages, assignments, insurance policies, bills of lading, warehouse receipts, documents of title, bills, bonds, debentures, checks, drafts, bills of exchange, letters of credit, notes, stock certificates, proxies, warrants, commercial paper, receipts, withdrawal receipts and deposit instruments, relating to accounts or deposits in, or certificates of deposit of, bank, savings and loan or other institutions or associations, proofs of loss, evidences of debts, releases, and satisfaction of mortgages, liens, judgments, security agreements and other debts and obligations and such other instruments in writing of whatever kind and nature as may be necessary or proper in the exercise of the rights and powers herein granted.

8. I grant said attorney-in-fact full power and authority to do, take, and perform all and every act and thing whatsoever requisite, proper, or necessary to be done, in the exercise of any of the rights and powers herein granted, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that said attorney in fact, or his/her substitute or substitutes, shall lawfully do or cause to be done by virtue of this power of attorney and the rights and powers herein granted.

9. The property subject to this Durable Power of Attorney shall include all real and personal property owned by me, my interest in all property held in joint tenancy, my interest in all nonhomestead property held in tenancy by the entireties and all property over which I hold a power of appointment.

10. This instrument is to be construed and interpreted as a general power of attorney. The enumeration of specific items, rights, acts, or powers herein is not intended to, nor does it, limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to said attorney-in-fact.

11. The rights, powers, and authority of said attorney-in-fact herein granted shall commence and be in full force and effect on the date hereof, and such rights, power and authority shall remain in full force and effect thereafter until I shall terminate such powers in writing.

THIS DURABLE POWER OF ATTORNEY SHALL NOT BE AFFECTED BY DISABILITY OF THE PRINCIPAL EXCEPT AS PROVIDED BY STATUTE.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, _____.

Principal

Signed sealed and delivered in the presence of:

Witness

Witness

Printed name of witness

Printed name of witness

STATE OF _____)
County of _____)

On this day personally appeared before me _____ to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that _____ signed the same as _____ free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, _____.

Notary Public in and for the State of _____, residing
at _____