

# Powers of Attorney

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## What is a Power of Attorney?

A Power of Attorney is a document that gives someone else the legal power to do certain things for you. That person is called the *attorney in fact* or *agent*. The person who signs a power of attorney making someone else their agent is called the *principal*. A person does not have to be a lawyer to be someone's attorney in fact. A power of attorney can be for a special, general or limited purpose.

**Information Not Legal Advice**  
This pamphlet is for information only and is not a substitute for the advice of an attorney.

## What is the purpose of a power of attorney?

A power of attorney shows other people that your agent has the legal authority to act in your name. However, the law does not require people to deal with your agent instead of you.

As stated above, a power of attorney may be for a limited purpose and a limited time period, or it can be general and have no expiration date.

The two types of powers of attorney that people use the most are general and special.

- A special power of attorney gives the agent the right to do a certain thing within a certain period of time. For example, sign the papers needed to transfer property. This limits the right of the person you selected to act for you.
- A general power of attorney gives the agent the right to do many things. They can transfer title to your car or property; open or close bank accounts; transfer certificates of deposit; and provide money for your family. This kind of power of attorney gives the agent a lot of responsibility, so the agent should be someone who is trustworthy and honest.
- There is a difference between a *general* and a *general durable* power of attorney. If you become unable to handle your affairs ( become incompetent), a general power of attorney ends. If you have signed a general durable power of attorney, the agent still has the power to handle your affairs if you become incompetent.

## Who can give someone a power of attorney?

You must be an adult and of sound mind to give another person power of attorney. In other words, you have to be at least eighteen years old, and you have to understand what you are doing at the time you sign the power of attorney.

## Can my agent tell me what to do?

No. The power of attorney only allows your agent to do the things you want done for you. It does not limit your ability to do things for yourself.

## Does the power of attorney end?

Yes. There are five instances when a power of attorney ends: it ends if it has an ending date; it ends when you become incapacitated if the power of attorney is not a durable one; it ends when you revoke it; it ends when a guardian of the estate is appointed for you; or it ends when you die.

## What is a durable power of attorney?

A durable power of attorney does not end if you are incapacitated. A durable power of attorney and a general durable power of attorney are the same thing; the key word is *durable*. A durable power of attorney can be for business and financial decisions. There are certain requirements:

- It must be in writing,
- It must name the person that you want to be your agent, and
- It must say how the power of attorney is to be used.

For example:

- If you want a financial durable power of attorney to continue even if you become disabled, it must say: *“This power of attorney is not affected by subsequent disability or incapacity of the principal.”*
  - If you want a financial durable power of attorney to start if you become disabled, it should say: *“This power of attorney becomes effective on the disability or incapacity of the principal.”*
- It must be signed and notarized.

## Are there advantages of a general durable power of attorney?

With a general durable power of attorney, you can say who you want to take care of everything if you cannot take care of your own affairs. If you have a durable power of attorney, the court may not have to name a guardian for you if you become incapacitated. Be warned, however, that there is no law that requires a third party to accept a power of attorney.

## What happens if I have a durable power of attorney and the court appoints a guardian?

Your general durable power of attorney ends if the court names a guardian of your estate. If the court names a temporary guardian, your general durable power of attorney may be suspended.

## Can I stop a power of attorney?

You have the right to end your power of attorney any time. This is called *revoking* a power of attorney. If the power of attorney is for a specific amount of time, it will end automatically. You *must tell* your agent that you are revoking the power of attorney. You must also tell the people working with the agent that you revoked the power of attorney. It is best to prepare a sworn written statement of your revocation. A sample Revocation of Power of Attorney is part of this brochure. You must have the mental ability to revoke a power of attorney. That is, you must be able to understand what you are doing.

## What is a statutory durable power of attorney?

In Texas, this is a standard form provided in the Texas Probate Code. This form gives your agent very *broad powers* to act in your name. Use it carefully and with caution. Before signing a statutory durable power of attorney, you should ask a lawyer to help you understand the powers that you are giving to the person you have selected.

## Who should I choose to be my agent?

A person you would trust with your life. Choose this person very carefully. That person can act in your name, as if you were there. In most cases, you are responsible for anything your agent does in your name. Choose someone who is honest and trustworthy. This is especially important if you are signing a general durable power of attorney. Because of the powers that you give to another person, it is highly recommended that you talk to a lawyer before signing any power of attorney.

You should especially speak to a lawyer to prepare a Durable General Power of Attorney. If you are low-income, we may be able to refer you to a lawyer who can do this for free. If you are older and do not live in an area where these services are free, you can pay a reduced fee.

## Can I give someone power of attorney to sell my property?

Yes. This is a special power of attorney that only allows your agent to sign a deed for the property. This kind of power of attorney must include a legal description of the property that you want to sell. You must record the power of attorney in the deed records of the county where the property is located. If you wish, you can add an expiration date to the power of attorney.

## What if my spouse is my agent and we get divorced?

If your spouse is your agent, the power of attorney ends the day your divorce is granted. If you do not want your spouse's power of attorney to end when you divorce, make sure to write that in the durable power of attorney. You may also execute a new one after the date of the divorce naming your ex-spouse as your agent.

## Do businesses have to accept my power of attorney?

Unfortunately, not. Most businesses will accept payments made by an agent under a power of attorney, and most banks will accept deposits of money into accounts that are made by an agent. Some banks or other financial institutions will not accept powers of attorney for withdrawals of money, that is, when an agent tries to take money out of an account or tries to close an account. Some banks have their own forms for a power of attorney. You should contact the banks and other financial institutions where you have accounts to see what their policy is.

## For more information...

Texas Law Help has useful information on many areas of the law. Go to [www.texaslawhelp.org](http://www.texaslawhelp.org).

## Legal Hotline for Texans: (800) 622-2520 or (512) 477-3950

Call our attorney-staffed legal hotline. Advice is free for Texans 60 and over or for anyone receiving Medicare.