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Power of Attorney

What is a Power of Attorney?

A Power of Attorney is a legal document signed by you that gives someone else the legal authority to make certain decisions and to act on your behalf. You are called the “principal” and the person to whom you give your Power of Attorney is called your “agent” or “attorney in fact.”

Why would I want a Power of Attorney?

You may want to give someone a Power of Attorney if it is difficult for you to handle your own financial affairs, if it is difficult for you to get around, or if you are feeling overwhelmed by the “paperwork” that goes along with your dealings with businesses or agencies.

Another reason you may want a Power of Attorney is that your agent will be able to take care of your affairs if you become temporarily or permanently incapacitated, unless you say otherwise in your Power of Attorney. This may prevent, or delay, the need for a guardianship.

Do I lose the right to handle my own affairs if I give someone else Power of Attorney?

No. Naming someone else as your agent does not take away your power to make your own decisions and handle your own affairs as long as you are mentally competent to do so. You can still do things for yourself, and you can control when you want your agent to act for you. You also have a right to know what’s being done by your agent, and to see any records or paperwork concerning your affairs.

How do I make a Power of Attorney?

You must be mentally competent to make a Power of Attorney. Mental competency, also called mental capacity, means that you must be able to understand the nature and extent of your

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property and financial matters. It also means that you must understand the consequences of the Power of Attorney at the time you sign it.

You must sign the Power of Attorney, but you do not need witnesses to your signature. You should have your signature notarized.

A lawyer should write a Power of Attorney for you because the language must be very specific. For instance, banks and other institutions may reject a Power of Attorney because it may not have the exact wording necessary.

If you had a Power of Attorney prepared while you were living in another state or country and you have now moved to Virginia, that document might be legal under Virginia law. You should have an attorney look at it for you or have a new one written.

Who should I appoint as my agent?

You may appoint any competent adult as your agent. It is important that you appoint someone you completely trust. You may wish to name more than one agent in case your primary agent is unavailable, unable, or unwilling to serve at some particular time.

What authority does my agent have?

You can make your Power of Attorney very general, giving your agent a broad range of powers to handle your bills, debts, other financial matters, and property. Your agent has the power to enter into contracts for you, unless you say that they don't.

On the other hand, you may limit your agent's authority to certain things, such as to sell or rent out your house for you, or to just handle your bills and bank accounts, or some other limited activities.

A Medical Power of Attorney is used to give someone else authority to make medical decisions for you when you are not able to do so for yourself. That is a separate document. Such things are not included in a General Power of Attorney.

What responsibilities does my agent have?

Your agent must act in good faith and in your best interests, consistent with your expectations and the authority granted by you in your Power of Attorney.

The agent must act loyally, with care, competence, and diligence. The agent must avoid conflicts of interests with you, such as competing for property or money that belongs to you or that you're trying to get.

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Your agent must keep records and receipts of transactions made on your behalf. You or your spouse, adult child, parent, adult sibling, guardian, caregiver, or the Department of Social Services may petition the court for an accounting of your agent's handling of your affairs if serious questions arise.

When does my Power of Attorney begin?

Your Power of Attorney takes effect as soon as you sign it, unless you provide that it should start at some other time. You can say that you want it to start on some definite date, or after a certain amount of time has passed.

Your Power of Attorney can contain a statement that you don't want it to take effect until some particular event has occurred. This is called a "springing" Power of Attorney. For example, you may want it to take effect only at the point when you become incapacitated. Or you may want it to start when your spouse or other person is no longer available to help you with your affairs.

When does my Power of Attorney end?

You can say in your Power of Attorney how long you want it to last. You might set a specific date or time period, or it might be a certain event that would cause it to end, such as when you become incapacitated or incompetent.

You might say that the Power of Attorney is to be used for a certain purpose, and when that purpose is accomplished, it will end. An example of this is where you might give someone Power of Attorney to sell your home, or do some other transaction on your behalf, and when that's done, then it ends.

If you don't say in your Power of Attorney when it's to end, then it will end at any one of the following times: 1) when you revoke it; 2) when you die; 3) when your agent dies, becomes incapacitated, or resigns as your agent; or 4) unless your Power of Attorney says otherwise, when either you or your agent starts legal action against the other one for divorce, alimony, or custody or visitation of your child.

What happens to my Power of Attorney if I become mentally incapacitated after I've signed it?

Your Power of Attorney will continue in effect after you become mentally incapacitated, which means it is a "durable" Power of Attorney. However, you can include a statement that you want it to end if you become incapacitated. If you do not include such a statement, then your agent will continue to have authority to handle your affairs.

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How can I revoke my Power of Attorney?

You can revoke your Power of Attorney whenever you want to, so long as you are mentally competent to do so. You must have mental capacity to revoke your Power of Attorney, just as when you gave it.

You may revoke it by simply signing a new document saying it's revoked. You should have your signature notarized.

You can also revoke your Power of Attorney by signing a new one which includes a clear statement that you are revoking any and all previous Powers of Attorney. If you don't include such a statement, then your previous Powers of Attorney are not revoked.

In addition to signing a new document, it is recommended that you destroy all originals and copies of the old ones, so as to remove doubt and confusion as to which one is currently in force.

Can my agent resign?

It is possible for your agent to resign, meaning they've decided they're no longer willing or able to continue to act on your behalf. The agent must give you written notice. If that happens, you may wish to consider doing a new Power of Attorney appointing a new agent, including a statement that your previous Power of Attorney is revoked.

Will my Power of Attorney be accepted everywhere?

Your Power of Attorney should be honored most everywhere. However, some banks and agencies have their own forms that they will ask you to complete, rather than your own Power of Attorney. You should check with the places where you do business to make sure your Power of Attorney will be honored.

Where should I keep my Power of Attorney?

You should keep the original of your Power of Attorney in a safe place. You may choose to keep it in your safety deposit box if you have one. Or your attorney may make arrangements to keep the original for you.

Wherever the original is kept, you should let your agent know where it is in case they need it when you become incapacitated. You should also give a copy to your agent.

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Is a Power of Attorney the same as having a Representative Payee for my Social Security benefits?

The Social Security Administration requires that some recipients of Social Security or SSI (Supplemental Security Income) benefits have a representative payee to handle their SSA benefits if they are unable to do so themselves.

Giving someone a Power of Attorney will not satisfy the SSA requirements for the appointment of a representative payee. There is a special form and special procedures used by SSA. A General Power of Attorney will not be enough.

SSA will let you know if they're requiring that you have a representative payee, and they will explain the process.

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Free Legal information by Web and Phone: www.vlas.org and
1-866-LegalAid (534-5243)

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