Power of Attorney

What is a Power of Attorney?
A Power of Attorney is a legal way to have one person act on behalf of another. The Power of Attorney document gives someone authority to act on your behalf on matters that you list in the document. The power can be specific to a certain task or can cover many duties, including financial and medical. The power can start immediately or only after some event occurs, such as if you become mentally incompetent. A Power of Attorney does not take away your right to act on your behalf.

The person who gives the authority to the agent (also called the attorney-in-fact) to act on their behalf is called the principal. The person who receives the authority to act on behalf of someone else is called the agent.

Different Types of Powers of Attorney
There are different types of Powers of Attorney. Each type has a different purpose and grants different levels of power to the agent.

1. Durable Power of Attorney
A Durable Power of Attorney remains or becomes effective upon the principal becoming incompetent or unable to manage his or her affairs. Powers of Attorney created under Arkansas law on or after January 1, 2012, are automatically durable unless the Power of Attorney specifically states that it is terminated by the incapacity of the principal.

2. General Power of Attorney
A General Power of Attorney authorizes the agent to carry on business or an enterprise for the principal and usually has broad, rather than specific, powers.

3. Special or Limited Power of Attorney
A Special or Limited Power of Attorney authorizes the agent to carry out a particular business or transaction for the principal.

4. Durable Power of Attorney for Healthcare
A Durable Power of Attorney for Healthcare is an advance health care directive. It allows you to name an agent to make healthcare decisions for you, including the power to consent to or withdraw from any type of medical treatment, even if death results.

The agent may exercise the powers given throughout the principal’s life, even after the principal becomes disabled, unless it is revoked or the court revokes it. The principal may combine a Durable Power of Attorney with a Living Will.

A Living Will is a document in which a person states his or her wishes in case they are unable to make medical decisions for themselves.

Benefits of Power of Attorney
A Limited Power of Attorney can be helpful if you are temporarily hospitalized or if you will be traveling for an extended time. A Limited Power of Attorney can also be helpful if you are unable to do your own banking or pay your bills for any other reason.

If you appoint someone to act for you in a durable power of attorney:
- You clearly define ahead of time how you want your financial affairs handled in the event that you are unable to do so.
- You have peace of mind that comes from knowing that the person you have chosen is the one who will handle your affairs if you are not able to do so.
- You can get the benefits you are entitled to, because your agent can make claims and applications on your behalf.

Children and Powers of Attorney
If someone else takes care of your child or children for you, then a Power of Attorney can provide a way for the caretaker to provide medical consent and make educational decisions.

When does a Power of Attorney end?
A Power of Attorney can end for the following reasons:
- By setting a specific date for it to end
- If the agent or principal dies
- If the sole agent resigns
- If the principal and agent are married to each other and either person files for divorce or separation
If the principal revokes the Power of Attorney in writing and files that writing with the court

An agent cannot transfer property, or act in any other way under the Power of Attorney, after the principal's death. In order to ensure your property is divided per your wishes upon your death, a Trust, Will, or other estate planning tool should be used. You should speak with an attorney specializing in estate planning to determine what technique is best suited for you.

If I give a Power of Attorney to someone, do I give up the right to manage my own affairs?
No. You retain full control over your affairs, even after you have signed a Durable Power of Attorney. You can allow your agent to act, or not, at your discretion. You can also revoke the Power of Attorney at any time and for any reason.

How do I revoke a Power of Attorney?
You can revoke a Power of Attorney by giving written notice to the attorney-in-fact. You should also file a copy of the letter revoking the power of attorney with the court. It is also a good idea to give notice to any banks, brokerages or other places where the attorney-in-fact conducted normal business on your behalf.

If a Power of Attorney is durable, and you become incompetent, only the court can revoke it during the time you are incompetent. This could happen if an interested party petitions the court on your behalf, alleging that the attorney-in-fact has violated his or her responsibilities.

CAUTION: Choose your agent with extreme care because you are giving him or her a great deal of responsibility and authority.

Is a Power of Attorney right for me?
You should think very carefully before granting a Power of Attorney to someone. A Power of Attorney can be very helpful in some situations. For instance, a Durable Power of Attorney may be a better alternative than adding someone's name to your bank account, because the person you designate can handle your money without having a legal interest in it. It is not expensive to have a lawyer prepare a durable power of attorney, and it can be revoked quickly.

Glossary

- **Advance health care directive**: a document stating your wishes to your doctor and family about the medical treatment you would or would not like to have in case you become unable to make medical decisions for yourself.
- **Agent**: a person who is authorized to act for another. Also, called Attorney-in-fact.
- **Durable Power of Attorney**: a power of attorney that remains or becomes effective depending on its language, upon the principal becoming incompetent or unable to manage his or her affairs.
- **Fiduciary**: a person, such as an agent of a principal, who stands in a special relation of trust or confidence
- **Living Will**: a document where a person states his or her wishes for medical treatment.
- **Principal**: the person who has given the authority to the agent to act on their behalf.
- **Power of Attorney**: a document that gives someone authority to act on your behalf on matters that you specify.

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The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.