



CYBER LEGAL ADVOCACY BRIEF

A Preventive Law Series
Cyber Center of Excellence Office of the Staff Judge Advocate
Legal Assistance Division, Fort Gordon



ESTATE PLANNING

Powers of Attorney

WHAT IS A POWER OF ATTORNEY?

Powers of Attorney authorize an appointed agent to perform various acts on your behalf in your absence. An appointed agent is authorized to conduct general or specific acts depending on the type of power of attorney granted. Your appointed agent should be someone that you trust. It is important to understand that any act performed using a power of attorney in your name will result in you being held legally responsible for that action.

ARE THERE DIFFERENT TYPES OF POWER OF ATTORNEY?

Yes, there are two main types of power of attorney: a general power of attorney and a special power of attorney.

General Power of Attorney:

A general power of attorney is intended to authorize your appointed agent to perform almost any act on your behalf pertaining to property (including money). This broad power of attorney allows your agent to make purchases, apply for loans and credit cards, open bank accounts, sign contracts, and more. It is imperative that you understand the liability imposed upon you when authorizing someone to act on your behalf with a general power of attorney. If the agent acts pursuant to their rights under the general power of attorney, you are ultimately held responsible.

Special Power of Attorney:

A special power of attorney specific to a certain act or acts. A special power of attorney authorizes your appointed agent to conduct acts with a specific organization or make a one-time transaction on your behalf. This type of power of attorney is recommended for most servicemembers and their dependents, particularly for transactions with military organizations. In fact, many military organizations only accept special powers of attorney. Specific powers of attorney can be drafted for almost any situation that requires your presence but at which you are physically unable to appear.

WHO SHOULD I SELECT AS AN AGENT?

Choosing an agent is very important. Make sure to select someone you trust completely. You are held responsible for the transactions made by your appointed agent.

ARE POWERS OF ATTORNEY ALWAYS ACCEPTED?

Third parties DO NOT have to accept a power of attorney, nor do they have to allow you to conduct specific acts even though they have accepted the power of attorney (e.g., military finance will not allow you to change the direct deposit account for a servicemember even though they accept the power of attorney to conduct other types of transactions). Check with the organization at which you desire your agent to act pursuant to the power of attorney to ensure the power of attorney will be honored for the actions you wish your agent to perform. It is best practice to coordinate in advance with the other party to determine whether it will accept your agent's authority under the power of attorney and, if so, whether they require your power of attorney to contain particular information. Some places, like banks or title companies, may require that you complete their own particular power of attorney instead of using a generic form.

CAN I REVOKE A POWER OF ATTORNEY?

Any power of attorney, general and special/specific, can be revoked at any time. The most effective revocation is the destruction of the original power of attorney. However, written notice must be given to any organization, or third party, where the power of attorney may have been presented or attempted to be used. It is also important to provide written notice of the revocation to the appointed agent.

HOW LONG DOES A POWER OF ATTORNEY LAST?

Powers of attorney typically are given for a specific amount of time. State laws provide guidance on the length of time a power of attorney may be given. It is a good idea to appoint an agent only for the amount of time you will be unavailable. Powers of attorney are also no longer effective upon death, regardless of the expiration date.

WHAT KIND OF POWER OF ATTORNEY DO I NEED?

Everyone's situation is different, so you may need one or several powers of attorney. If you are deploying or going TDY for an extended period of time, try to think about all the things that may come up during your absence.

WHAT IS A DURABLE POWER OF ATTORNEY?

A durable power of attorney remains in effect even if you become mentally incapacitated at a later date. A nondurable power of attorney ceases to be effective if you become mentally incapacitated, even if it has not expired yet. Both general powers of attorney and special powers of attorney can be durable or nondurable.

WHAT IS A SPRINGING POWER OF ATTORNEY?

A springing power of attorney is different from most powers of attorney because it does not immediately go into effect once it has been signed. Instead, it only becomes effective at some future date, upon a triggering event. For instance, it "spring" into effect if you become incapacitated, disabled, or designated as a prisoner of war or missing in action. Many springing powers of attorney do not have expiration dates, because the power may never go into effect if the triggering event does not occur. Many healthcare powers of attorney are springing powers of attorney.

This Information Paper from the Fort Gordon Legal Assistance Office contains general legal information on a topic upon which Legal Assistance Attorneys typically advise. The information provided is general in nature and does not constitute formal, specific legal advice. If you wish to receive legal advice specific to your situation, please consult an attorney. You may schedule a legal assistance appointment by calling the Fort Gordon Legal Assistance Office at 709-791-7812/7813.
