

# INSTRUCTIONS FOR POWER OF ATTORNEY

Before executing a Power of Attorney or accepting the responsibility of acting as the power of attorney or (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:**

The first document attached below is what is called a 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:**

The second document below is what is called a 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 for the purposes of the Conventional Power of Attorney but, in addition will function should you become incapacitated as a result of situations such as stroke, Alzheimer's or other debilitating situation. 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 he/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 so ever.

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 he/she signed the same as his/her 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 \_\_\_\_\_  
My commission expires \_\_\_\_\_

# **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 agent for the undersigned who may hereafter become disabled or incompetent. This Power of Attorney shall become effective upon execution, and shall continue through any disability or incompetence of the Principal.

## **Designation.**

Name of Agent: \_\_\_\_\_

Agent's Address: \_\_\_\_\_

Agent's Phone Number: \_\_\_\_\_

If my agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Successor Agent: \_\_\_\_\_

Successor Agent's Address: \_\_\_\_\_

Successor Agent's Phone Number: \_\_\_\_\_

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent: \_\_\_\_\_

Second Successor Agent's Address: \_\_\_\_\_

Second Successor Agent's Phone Number: \_\_\_\_\_

## **GRANT OF GENERAL AUTHORITY**

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the act:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- Real Property
- Tangible Personal Property
- Stocks and Bonds
- Commodities and Options
- Banks and Other Financial Institutions
- Operation of an Entity or Business
- Insurance and Annuities
- Estates, Trusts, and Other Beneficial Interests
- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service
- Retirements Plans
- Taxes
- All Preceding Subjects

**GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

My agent **MAY NOT** do any of the following specific acts for me **UNLESS** I have **INITIALED** the specific authority listed below:

(**CAUTION:** Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. **INITIAL ONLY** the specific authority you **WANT** to give your agent.)

- (\_\_\_\_) Create, amend, revoke, or terminate an inter vivos trust
- (\_\_\_\_) Make a gift without limitations except any special instructions in this power of attorney
- (\_\_\_\_) Make a gift, subject to the limitations of the act and any special instructions in this power of attorney
- (\_\_\_\_) Create or change rights of survivorship
- (\_\_\_\_) Create or change a beneficiary designation
- (\_\_\_\_) Authorize another person to exercise the authority granted under this power of attorney
- (\_\_\_\_) Waive the principal’s right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- (\_\_\_\_) Exercise fiduciary powers that the principal has authority to delegate

**LIMITATION ON AGENT’S AUTHORITY**

An agent that is not my ancestor, spouse, or descendant **MAY NOT** use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

**SPECIAL INSTRUCTIONS (OPTIONAL)**

On the following lines you may give special instructions:

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**EFFECTIVE DATE**

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

**NOMINATION OF CONSERVATOR (OPTIONAL)**

If it becomes necessary for a court to appoint a conservator of my estate, I nominate the following person(s) for appointment:

Name of Nominee for conservator of my estate: \_\_\_\_\_  
 Nominee’s Address: \_\_\_\_\_  
 Nominee’s Phone Number: \_\_\_\_\_

**RELIANCE ON THIS POWER OF ATTORNEY**

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it is terminated or invalid.

**SIGNATURE AND ACKNOWLEDGMENT**

Your signature: \_\_\_\_\_

Date: \_\_\_\_\_

Your name printed: \_\_\_\_\_

Your address: \_\_\_\_\_

Your phone number: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me, or identified to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is attached to the within instrument and acknowledged to me that said person executed the same.

IN WITNESS WHEREOF, I have hereunto placed my official hand and seal the day and year in this Certificate first above written.

\_\_\_\_\_  
Notary Public for State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires on \_\_\_\_\_