

POWERS OF ATTORNEY

(General Information)

A power of attorney is a written authorization by one person (the principal) to another person (the agent or attorney-in-fact) to act on the principal's behalf in the principal's name. It can be beneficial for those absent from family or property for a prolonged time, because it authorizes another person, such as a spouse, to conduct essential business transactions in the principal's name. However, since the actions of the agent are binding on the principal, it also can be very dangerous. You should grant a power of attorney only to someone you trust and only to the extent necessary to complete the mission. There are three types of power of attorney available from the D17 Legal Assistance Office.

SPECIAL POWER OF ATTORNEY

A special power of attorney authorizes the agent to conduct only those transactions specifically described in the document. In most cases, you can anticipate the kinds of business your agent might have to transact for you in your absence and the amount of time required, and you can limit the power of attorney to only those powers within the time required. Some of the things which can be done with special powers of attorney are:

- Buy, register, insure, or sell a vehicle, including borrowing money to do so.
- Buy, sell, or lease real estate, including borrowing money to do so.
- Settle insurance claims or collect debts.
- Cash checks.
- Sign income tax returns.
- Ship automobiles or household goods.
- Authorize medical or hospital care or broader guardianship authority for children.
- Accept or vacate government quarters.

GENERAL POWER OF ATTORNEY

A general power of attorney authorizes the agent to perform almost any act the principal could do. It grants the agent full authority to deal with the principal's property as if it were the agent's own and to create binding debts in the principal's name. It also authorizes the agent to dispose of the principal's property. Essentially, if you appoint someone as your general power of attorney, you authorize that person by you. That is why a GENERAL POWER OF ATTORNEY IS POTENTIALLY ONE OF THE MOST DANGEROUS LEGAL INSTRUMENTS YOU CAN EXECUTE! You should give a general power of attorney only to another in whom you have absolute trust and confidence and only after first considering whether a special power of attorney would suffice. It usually would.

The D17 Legal Assistance Office generally limits the duration of general powers of attorney to one year, and the D17 Legal Assistance Office will never prepare a general power of attorney without an expiration date.

DEPLOYMENT POWER OF ATTORNEY

A deployment power of attorney is similar to the general power of attorney, except it does not authorize the agent to incur debt in the agent's name.

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(General Information)
(cont'd)**

TERMINATION

Ordinarily, the authority granted in the power of attorney terminates upon the earliest of the following events:

- The death of the principal.
- The date stated in the power of attorney, if any.
- A valid revocation.

However, it can be difficult, if not impossible, effectively to revoke a power of attorney once it is signed and given to the agent. Since copies generally are as valid as the original, destroying all signed copies is the only way to ensure that it cannot be used against your interests. Therefore, in addition to selecting your agent wisely and limiting the powers only to those the agent absolutely will need, you should always provide an expiration date. While a power of attorney may continue as long as the grantor desires, we do not recommend any be in force for longer than one year. The D17 Legal Assistance Office will not prepare a power of attorney that does not include an expiration date. If it becomes necessary to revoke an unexpired power of attorney which cannot be recovered and destroyed, consult a legal assistance attorney.

In some instances it may be convenient for more than one person to have the authorization of power of attorney. If the word “severally” follows the name of the agent, then the agent may act alone, but if the word “jointly” follows the name of the agent, then more than one agent’s signature would be required. It also is possible to provide for the agents to act “jointly or severally,” or to grant authority to agent A and agent B, “or either of them.”

DURABLE POWER OF ATTORNEY

A general power of attorney **cannot** serve in the place of a will. A power of attorney automatically terminates upon the principal’s death because the agent can do no more than the principal could have done. Obviously, if the principal is deceased he cannot act. But a general power of attorney can survive disability (but not death) if it contains the words “this power of attorney (shall not be affected by) or (becomes effective upon) the subsequent disability or incompetence of the principal.”

STATUTORY FORM OF POWER OF ATTORNEY

Alaska provides for a statutory form power of attorney at AS 13.26.645. Essentially, it is a short form which lists certain powers and allows the principal to designate those which apply. Those powers are then fully described by law. The statutory form also allows the principal to designate an alternate attorney in fact, or nominate a guardian or conservator. If you appoint more than one person to act for you and do not designate whether they may act jointly or severally, the law requires them to act jointly. If you do not include a termination date in a statutory form power of attorney, it continues in effect until revoked.

One major advantage of a statutory form power of attorney is that the law requires third parties to honor them. If they do not, they are liable for actual damages, plus \$1,000 civil penalty. If your power of attorney is not a statutory form power of attorney, a third party can refuse to honor it. Statutory form powers of attorney must be acknowledged and notarized. Do not sign until you appear before a Notary!!!