



POWERS OF ATTORNEY

Last Reviewed: 16 March 2012

DISCLAIMER: This handout has been produced by the office of the Staff Judge Advocate, 66 ABG/JA, Hanscom AFB, MA 01731. This handout is for general guidance only. It is not meant to be a substitute for legal advice and it cannot be cited as legal authority. Before taking any action, you should consult an attorney for guidance.

With some planning, most people can usually handle their own affairs. However, there are times when you might need someone to act as your agent in your absence, to handle a particular piece of business. If you appoint someone to act for you, you do so by giving him or her your power of attorney.

A power of attorney is a legal document that allows another to conduct legal actions on your behalf (such as selling a house) and can be either special (usually connected with a single transaction or event) or general (total power over another's legal affairs). Special powers of attorney drafted to fit specific needs on a one-time basis or for a limited period of time are usually the best choice. The office of the Staff Judge Advocate is prepared to draft both types of powers of attorney for those eligible to receive legal assistance.

Basic Information

Military members are often called away from home on short notice. In such a circumstance, the proper power of attorney can provide someone with the authority to act on your behalf and to administer your personal affairs. Your attorney-in-fact may act on your behalf in handling business, personal, or legal matters. There are three types of powers of attorney: general, special, and medical (health care).

There is no law or regulation specifying when you must give another your power of attorney. But another person cannot normally act for you in business or legal matters without receiving your power of attorney. Thus, if you will be unable to act for yourself due to an assignment or temporary duty, you should consider using a power of attorney.

General Power of Attorney

A general power of attorney gives your agent the right to conduct financial and legal affairs on your behalf, including the right to obligate you in a variety of transactions (e.g. buy and sell property, liquidate bank accounts, and purchase items on credit.) Actions done under authority of a general power of attorney are treated as if you actually made the transaction.

Warnings

There are two important factors you should consider before you get a general power of attorney. First, there is no legal requirement that anyone recognize a power of attorney. Merely because your agent has your power of attorney does not mean that all businesses will allow your agent to act on your behalf. Second, even if the general power of attorney is accepted, your agent may obligate you in a way you never intended and for which you will be held accountable. The general power of attorney is very powerful and should be used sparingly.

Special Power of Attorney

DISCLAIMER: This handout has been produced by the office of the Staff Judge Advocate, 66 ABG/JA, Hanscom AFB, MA 01731. This handout is for general guidance only. It is not meant to be a substitute for legal advice and it cannot be cited as legal authority. Before taking any action, you should consult an attorney for guidance.

A special power of attorney is a limited power of attorney that only provides your agent the right to act for you to accomplish some specific purpose. Examples include: registering or selling your automobile or house, paying your taxes, shipping your household goods, obtaining medical care for your children, and cashing checks. The authority of the attorney-in-fact is spelled out in the document narrowly defining the areas in which you allow your agent to obligate you.

For example: Real Estate Power of attorney for real estate transactions require you to specifically state a legal description (contained in the deed) of the real property (along with the street address) that you want your attorney-in-fact to buy or sell on your behalf. Your special power of attorney must state that you specifically authorize your attorney-in-fact to enter into a sales contract on your behalf and should state that he or she is empowered to sell only that specific property. If your attorney-in-fact is acting as a buyer for you, the power of attorney should state that he is authorized and directed to comply with the state recording statutes by promptly recording the deed after purchase in the court clerk's office in the county where property is located.

Moreover, whenever a deed is signed pursuant to a power of attorney, both the deed and the power of attorney should be recorded and thus both need to be executed with the proper formalities (witnesses and notary).

Medical Power of Attorney

A medical power of attorney authorizes another to make medical decisions for you when you are unable to make decisions for yourself including the decision not to receive or continue artificial life support when there is no reasonable expectation of recovery.

Revoking Power of Attorney

A power of attorney is automatically revoked: (1) upon your death, (2) when the termination date specified in the document arrives, or (3) when you affirmatively revoke or terminate the power of attorney and thus your agent's powers.

To prevent misuse of a previously granted power of attorney you will need to destroy all copies of the document, including any copies held by the agent. Notice of the revocation should also be provided to your creditors. Limit the period that the power of attorney is in effect to the absolute minimum necessary to accomplish the task. Except in very unusual circumstances, no power of attorney should be granted for more than one year.

For more information, contact the Hanscom legal office at 781-377-2361. See also http://www.wpafb.af.mil/library/factsheets/factsheet_print.asp?fsID=6588&page=1