



FROM COUNSEL

A Preventive Law Service of The Office of The Judge Advocate General
Keeping You Informed On Personal Legal Affairs

Power of Attorney

A power of attorney (POA) is a legal document that allows someone (called an “agent”) to act on behalf of someone else (called a “grantor”). It is a very powerful legal document that should be used cautiously. It can be used, for example, to:

- allow a friend to sell your car,
- let your spouse ship your household goods,
- authorize a relative to take your child to the hospital.

Depending on how it is written, a POA can give one power, or it can give many powers. Most POAs have a fixed expiration date, usually two years or less. POAs that last for longer than two years are seldom accepted by businesses because of uncertainty that the agent is still authorized to act on the grantor’s behalf.

Here are some Questions & Answers to help you decide if you need a POA.

Q. When should I use a power of attorney (POA)?

A. A POA is most commonly used when you cannot be present and you want someone to do something for you, such as to sell your car while you are deployed. You also may want to have a power of attorney for certain emergency situations. You may use a *durable* POA if you want it to remain in effect if you become disabled or incapacitated. If you do not have a durable POA, your agent’s authority to act for you ends upon your disability or incapacity. Remember that no one is required to accept a POA -- it is totally within their discretion to do so. Some businesses and government agencies, such as the Internal Revenue Service, require you use their own form POA. You should check with the business or agency where your agent will use your POA to be sure it will be accepted.

Q. Who should I name as my agent in my POA?

A. POAs most commonly name a spouse, a relative, or a trusted friend as agent. The person you designate must be at least 18 years old, and be capable of handling your affairs and carrying out your wishes. The person should also be trustworthy, mature, and capable of understanding the great responsibility that goes with having a POA. Keep in mind that when your agent acts on your behalf using a POA, his or her actions legally bind you.

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Q. Which type POA should I use?

A. The answer depends on why you need one and whether another arrangement may work. Many people use a *special* POA to authorize an agent to do only one thing, such as ship your household goods, and nothing more. A *general* POA allows your agent to do almost everything you can do. A general POA has enormous potential for abuse - it can be used to empty your bank account or sell your most cherished possessions. Because of the risks of a general POA, its duration should be limited. A special POA is normally better than a general POA because it is limited and it narrows your agent's authority. If a general POA is more than you need or are willing to grant, but you still need to appoint someone to act for you, consider a special POA.

Q. Will a POA work for everything?

A. No, there are some actions that cannot be accomplished by using a POA because some actions are so personal that they cannot be delegated. For example, a marriage ceremony or the execution of a will cannot be done by POA.

Q. All this sounds good. Why doesn't everyone have a POA?

A. A POA can be very useful, but it can also be abused. For example, a husband who just separated from his wife might use the POA she gave him to clean out her individual bank account. Be very careful in selecting your agent.

Q. What if I gave my spouse a POA and now we are separating or divorcing?

A. When you no longer want your agent to continue in that position, revoke your POA. The best way to do so is to get the original POA back from your agent, but that might not be possible. You can also fill out a revocation form and deliver it to your agent and all the creditors, banks, companies, and individuals that your agent has dealt with or is likely to deal with on your behalf. You may have to publish it in the newspaper or file it in court (if the POA was filed in court initially). Check with Legal Assistance to prepare such a revocation or to learn about state law requirements.

Q. I may deploy. Should I prepare a POA?

A. First ask yourself, "Do I need a POA?" Some Soldiers prepare POAs so their spouses can bank, receive household goods shipments, register the car, and do other such things when they are deployed. Many single-Soldier parents and dual-military couples with children use a POA as part of their family care plans to set up guardianship arrangements for their minor children. However, if you and your spouse have a joint checking account and your pay is directly deposited into that account, and you are not planning to buy or sell a car or house, then you probably do not need a POA.

Q. Where can I learn more about a power of attorney?

A. Consult your installation Legal Assistance Office.

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