

Powers of Attorney

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General

For a variety of reasons, people occasionally are unable to take certain legal actions by themselves and find it necessary or desirable to designate another to act in their stead. The vehicle most often used to accomplish that is a power of attorney.

This brochure is designed to provide a very general outline of powers of attorney. It is not designed to provide specific legal advice regarding a particular situation. If you believe a power of attorney would be desirable for you, contact an attorney and outline all of the facts that may be unique to your situation so that the attorney can properly advise you.

What is a Power of Attorney

A power of attorney is the authority which you (the "**grantor**") provide to another person, persons or entity (the "**attorney**", "**attorney-in-fact**" or simply the "**agent**") to take actions on your behalf. This can be done in a number of ways but it must be done properly if it is to be effective. The agent does not have to be a lawyer. There are four general classifications of powers of attorney:

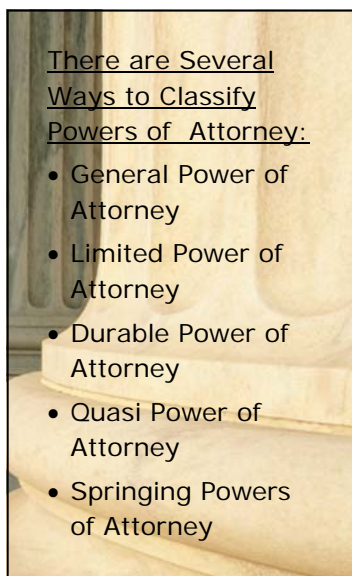
- ◆ **General Power of Attorney.** If you expect to be gone from your home or perhaps even outside of the country for an extended period of time, it may be beneficial to give someone a general power of attorney so that person can take any action which you could take if you were present.

The **general power of attorney** is by its nature *unlimited* and allows the holder of the power of attorney to sign promissory notes, mortgages and even sell property which you own. Obviously, a general power of attorney must be carefully given because its ramifications and powers are far reaching.

- ◆ **Limited Power of Attorney.** If someone contemplates the need for a power of attorney but does not want to provide the agent unlimited powers, the **limited power of attorney** may be used.

Occasionally someone may be absent from the state and require that action be taken, for example, at a loan closing or some other single event which is of limited duration.

Alternatively, there may be a single recurring task that a person is unable to accomplish because of their continued unavailability. To illustrate, a member of the armed forces may own a home or rental property and desire to provide a real estate broker the ability to manage and lease that property.



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- ◆ **Durable Power of Attorney.** Powers of attorney can be revoked in several ways to include incompetency. For this reason, the legislature has established a procedure to allow someone of advancing years to grant a power of attorney which will not be automatically revoked in the event the grantor becomes incompetent.

Or, the power may become effective on the incompetence of the grantor. This is called a "**springing**" power of attorney. This **durable power of attorney** can be either general or limited and can still be revoked by the grantor.

- ◆ **Quasi Powers of Attorney.** Persons occasionally grant certain powers to another to perform specific tasks for them. Arguably, these actions constitute a kind of power of attorney although not specifically designated as such.

By way of example, an elderly father may place his daughter's name on the signature card of his checking account at the bank to authorize the daughter to sign checks on his behalf. This is certainly is a kind of power of attorney. It is possible to establish such an account utilizing joint tenancy ownership but even that is not necessary and occasionally not advisable for legal or tax reasons depending upon the circumstances.

Revocation of Power

A power of attorney can be revoked in several ways and while a power can be made irrevocable in certain unique circumstances, that is advisable only on rare occasions.

- ◆ **Death of Grantor.** As a general proposition, acts taken by the agent can be no greater or more lasting than those of the grantor. Accordingly, the death of the grantor immediately and automatically revokes a power of attorney because a deceased person obviously cannot act.

This aspect of a power of attorney is one of the reasons which may cause misunderstandings about such powers.

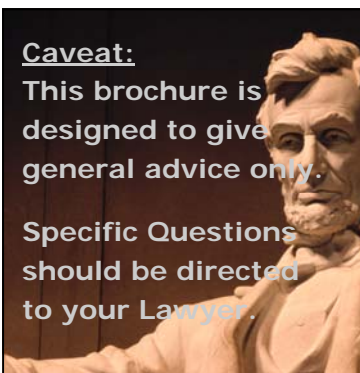
- ◆ **Death of Attorney.** Clearly the agent cannot act if he is deceased and thus his death revokes the power. Importantly, a power of attorney may permit the *agent* to appoint or substitute another agent to act in place of the original agent.
- ◆ **Incompetency of Grantor.** Likewise, an incompetent person is generally deemed unable to act on their own behalf. Thus the incompetency of the grantor automatically revokes the power of attorney unless the power specifically precludes that.

It is not easy and frequently quite difficult to determine if and when, a person becomes incompetent. Again, this creates misunderstandings about the utility of powers of attorney other than durable powers of attorney.

Caveat:

This brochure is designed to give general advice only.

Specific Questions should be directed to your Lawyer.



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- ♦ **Revocation by Grantor.** Regardless of the kind of power of attorney, the grantor can in almost in every case revoke the power. This is true even of the durable power of attorney. In some limited instances a power of attorney can be made irrevocable; however, those normally involve extraordinarily complex business transactions and generally should be avoided.
- ♦ **Resignation by Attorney.** Unless contractually obligated to continue, the attorney can typically resign at any time thus revoking the power.

Uses of Power

A power of attorney has many uses. Here are a few examples:

- ♦ **Service Member.** A member of the armed forces about to go overseas where communications are poor, may grant a *general power of attorney* to a parent or spouse to act in his stead on all conceivable business transactions that may occur in his absence.
- ♦ **Sale or Management of Property.** Someone in the process of selling, buying or leasing property who must be absent for closing the transaction can give a *limited power of attorney* to a trusted associate or relative with the authority to sign necessary legal documents at closing.

Importantly, a power of attorney for the sale of real property to execute a deed may create problems. An artful lawyer can usually overcome those problems.

- ♦ **Older Persons.** Frequently, a person who is advancing in age may realize they could become unable to care for themselves and manage their business affairs. Before disability or incompetency ensues, that person may want to consider granting a *durable power of attorney* to a child or trusted friend or relative.

Importantly, because the conventional power of attorney is revoked by incompetency, those powers of attorney may not fulfill the needs of such older persons. In these instances the durable power of attorney should be considered. The durable power of attorney is not revoked if the person becomes incompetent and thus transactions could still be consummated regardless of the mental state of the grantor.

- ♦ **Mundane Business Tasks.** Frequently, a corporation may be required to execute a number of routine documents which ordinarily would require the president and another corporate officer with the seal to be available to sign. A corporation can grant a limited power of attorney to an agent authorizing that person to sign routine business documents such as releases of oil and gas leases without the need for the corporate officers being directly involved.

The Author

Larry D. Lahman, the author of this publication, was born in Carmen, Oklahoma. He attended Northwestern Oklahoma State University receiving a Bachelor of Science in Chemistry, Mathematics and Physics in 1965.

Lahman subsequently attended graduate school at OSU and later received a Juris Doctorate Degree from the OU Law School.

He is admitted to practice before all state and local federal courts including the United States Supreme Court.

Lahman served as President of the Garfield County Bar Association and numerous other organizations.

He was a parachute officer with the U.S. Army Special Forces – the Green Berets – in Vietnam and retired as a Lieutenant Colonel in the U.S. Army Reserves.

Our Law Firm

P.C. Simons, who served as Attorney General of Oklahoma Territory, organized the predecessor to **Mitchell & DeClerck** in the early 1900's.

The Firm has been in continuous existence for more than 90 years and is the oldest law firm in Enid, Oklahoma, while also one of the oldest law firms in the state of Oklahoma.

For decades the Firm has held the highest possible "A" rating by the Martindale-Hubbell Legal Directory.

The Firm has long been listed in the "Bar Register" of preeminent law firms in the United States and "Best's Directory of Recommended Insurance Attorneys."

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"A well drafted power of attorney granted to a competent and honest person can be extraordinarily valuable in the management of business affairs."

Disadvantages

Depending upon the type of power of attorney used, the relative advantages and disadvantages can be significant. Regardless of the kind of power of attorney, dishonesty or incompetence of the person to whom the power is given is clearly the greatest danger. If you give a power of attorney to someone who is dishonest and the agent steals or fails to utilize your money for the purpose for which it is intended, you have little, if any, recourse to recover the money other than to look solely to the attorney-in-fact.

Likewise, a gullible agent who fails to understand the ramifications of signing a document can legally bind the grantor of the power of attorney with his signature if the power of attorney is unlimited or the act taken by the attorney is authorized by the power of attorney.

Additionally, with the exception of a durable power of attorney, the fact that incompetency voids the power of attorney may create problems where one desires to sell real property. Someone who is incompetent is deemed incapable under the law of conveying the title to real property and therefore a prudent purchaser will seldom be willing to rely solely upon a power of attorney to execute the deed. An alternative to this is to utilize a durable power of attorney.

Summary

A well drafted power of attorney granted to a competent and honest person can be extraordinarily valuable in the management of business affairs. It can save substantial time and money as well as allowing business transactions to proceed which otherwise might have been difficult or impossible to consummate.

Finally, the durable power of attorney can be extraordinarily useful to someone of advanced age or someone who anticipates disability through illness by saving a substantial amount of time, money and delay in allowing for the orderly management of the affairs of the disabled person.

"A power of attorney is the authority which you . . . provide to another person . . . to take actions on your behalf. This can be done in a number of ways but it must be done properly if it is to be effective."