



DURABLE POWERS OF ATTORNEY FACT SHEET



Power of Attorney Basics

A Power of Attorney is a written document in which one person (the “principal”) appoints another person to perform certain acts or functions on behalf of the principal (the “agent”). The agent is authorized to perform certain acts on behalf of the principal as defined in the document. Powers of Attorney are routinely granted to allow the agent to take care of a variety of transactions for the principal, such as signing for household goods, handling tax preparation, or maintaining a safe-deposit box.

Powers of Attorney can be written to be either general (full) or limited to special circumstances (e.g. register an automobile). The Legal Assistance Office has a variety of Powers of Attorney, both general and limited (special). All power of attorney documents end and are no longer effective when the principal dies. Most Powers of Attorney also end when the principal becomes incompetent. A principal can revoke the power of attorney at any time.

How do I make my Power of Attorney valid if I become incompetent?

A "durable" Power of Attorney differs from a traditional Power of Attorney in that it continues the agency relationship beyond the incapacity of the principal. There are two types of durable powers of attorney. One becomes effective immediately upon execution and can be used immediately. The second type, called a “springing” power, is effective only upon the incapacity of the principal; until then, it has no legal effect at all. When the specific event occurs, such as the disability of the principal, it “springs” into action. Most often, Durable Powers of Attorney are created to deal with decisions involving either property management or health care issues.

Before the Durable Power of Attorney was created, the only way to handle the affairs of an incapacitated person was to appoint a guardian. This process frequently involves complex and costly court proceedings, as well as the often humiliating determination that the principal is wholly incapable and in need of protection. With the Durable Power of Attorney, an agent acting in the best interests of the principal can act inexpensively and without costly legal action.

All fifty states recognize some version of the Durable Power of Attorney. In Georgia, there are some practitioners who do not favor springing durable powers, but their objections can often be overcome by careful drafting. Certain powers cannot be delegated, including the powers to make, amend, or revoke a will, change insurance beneficiaries, contract a marriage, and vote. September 2013 If you have any questions or are interested in creating a Durable Power of Attorney or Durable Health Care Power of Attorney, please call our office at 706-545-3281 to schedule an appointment with an attorney.



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