

POWERS OF ATTORNEY FACT SHEET

A power of attorney is a legal document which allows a person, called the agent, or attorney-in-fact, to transact business on behalf of another person, called the principal. Business transacted by the agent on the principal's behalf pursuant to a power of attorney is binding on the principal.

A person of other entity is under no legal obligation to accept a power of attorney. Some businesses will only accept certain kinds of powers of attorney for specific acts. Therefore, it is always a good practice to check with the institutions with which the principal or his/her agent are expected to transact business to determine what specific requirements exist for that business.

Powers of attorney may be either general or special. The general power of attorney authorizes the agent to transact almost any kind of business on behalf of the principal. This may include writing, cashing, or otherwise negotiating checks, filing or collecting government claims, entering contracts or selling personal property. The special power of attorney only authorizes the agent to perform certain specified acts on behalf of the principal. Special powers of attorney may be created to allow the agent only to register an automobile, only to move household goods or only to conduct certain business for the principal. Persons leaving minor children in the care of an adult who is not their parent or legal guardian should give that adult a special power of attorney for child care. In South Carolina, a special power of attorney is needed to buy or sell real estate.

A power of attorney must be signed by the principal in the presence of a notary public. Judge advocates or civilian attorneys acting as Legal Assistance Officers may act as notaries public for active duty soldiers. Witnesses may or may not be required.

The principal must be competent at the time he/she executes a power of attorney. Therefore, a person who cannot legally transact his/her own affairs because of incapacity cannot legally give a power of attorney to another person. In executing a power of attorney, the principal must also be acting freely and voluntarily.

A power of attorney is automatically revoked by the death of either the principal or the agent. Normally, the document is also revoked at its expiration date. The principal may also decide to revoke the power of attorney at any time by executing and publishing a revocation document. A form for this purpose is available from the Legal Assistance Office. The most effective method of revoking a power of attorney is simply to recover it from the agent and destroy the document.

Only durable powers of attorney enable the agent to act on behalf of the principal once the principal becomes incompetent to handle his/her own affairs. Language making the power of attorney "durable" is required to make a general power of attorney durable. In South Carolina, a durable general power of attorney must be witnessed by two witnesses and acknowledged on each page by the principal. As with all powers of attorney, the general durable power of attorney must be notarized by a notary public. It must be filed in the County Court. There is a minimum fee for filing such a document.