

# Powers of Attorney

By Captain Christopher Cusmano, Fort Meade Legal Assistance Attorney

## *What is a Power of Attorney?*

A power of attorney is a legal document that provides written authorization for another person to act for you or on your behalf. Through a power of attorney, you can assign another person you trust to make legal, financial or medical decisions for you and to conduct your affairs. As the person signing the power of attorney, you are the “principal” or “grantor” and the person you are naming to act on your behalf is the “agent” or “attorney-in-fact.” The principal can always limit the powers they grant to their agent as appropriate. In fact, since the principal will be responsible for the actions of the agent, it is often necessary to carefully limit the scope of the agent’s authority. Under Maryland law, a power of attorney must be signed by two witnesses and notarized to be become legally valid.

## *Types of Powers of Attorney*

There are generally two types of powers of attorney: general or limited. A general power of attorney gives the agent nearly complete authority to act on behalf of the principal in all financial and personal matters, such as opening and closing bank accounts, paying bills, purchasing and selling real estate, entering into binding contracts, applying for government benefits and filing lawsuits. On the other hand, a limited power of attorney only allows the agent to do what the document specifically allows. For example, the principal can authorize the attorney-in-fact to only handle real estate transactions, file your tax return or register your car; but the agent cannot take actions that you haven’t specifically authorized. Because there is more control over the agent, one is usually advised to seek a limited power of attorney.

A common type of limited power of attorney is a medical power of attorney, which will be discussed later in this article. As the name suggests, this documents limits the agent to only medical decision making.

## *How to Limit a Power of Attorney*

Preparing a power of attorney is an important decision, and it can have tremendous consequences. The document gives your agent the authority to act on your behalf. Barring exceptional circumstances, you will be responsible for the agent’s actions, and will not be able to undo their actions after the fact. Because of these risks, there are a number of steps that a principal should consider to limit the power of attorney before it is signed.

First, unless necessary, it is often advisable to draft a limited power of attorney that will achieve exactly what the principal needs and no more. Second, the principal should very carefully select who will serve as his or her agent. Family members, such as a spouse or older children often make the most sense since they are generally trustworthy and more familiar with the goals of the principal. A principal may, however, select non-family members, such as neighbors or friends that they trust. Third, the principal may place an expiration date on the document. For example, a retiree who is traveling out of the country for three months or a soldier deploying for one year, should draft the power of attorney so it expires when no longer

needed. On the contrary, a medical power of attorney should not include an expiration date as it is unknown when the document will actually be needed. Finally, a principal can decide when the power of attorney becomes effective. A power of attorney can become effective immediately upon its signing. For a soldier stationed in Maryland who needs family back home to carry out their affairs, this makes sense. On the contrary, in the situation where a soldier wants a medical power of attorney in case of a future disability, the document should be “springing,” which means that the agent has no power to act unless and until the principal becomes disabled.

#### *Who May Create a Power of Attorney?*

To create a legally valid power of attorney, the principal must be at least 18 years old; intend to give the agent the powers designated in the document, and be mentally competent. Before a power of attorney, the witnesses must confirm that the principal understands what a power of attorney means, the specific powers they are giving to their agent, and the implications of their decision.

#### *Responsibilities of the Agent*

An agent owes a fiduciary duty to the principal. As such, the agent is required to act in the best interest of the principal and only within the powers specifically granted. The agent must do what they think the principal would have wanted them to do under the circumstances to the best of their ability. The agent should keep a record of the actions undertaken while serving as power of attorney. The agent does not have a right to receive specific payments for their work (unless such payment was authorized), but they may be reimbursed for reasonable expenses paid while acting on behalf of the principal.

#### *When Does the Power of Attorney end?*

There are a few ways in which the power of attorney terminates. First, a power of attorney generally only lasts while the principal is alive—though an agent may make decisions regarding the principal’s funeral or disposition of remains if authorized. Second, the power of attorney will automatically end if it included a specific expiration date at that time. A principal should be aware of such an expiration date, as the agent will not be able to act unless a new power of attorney was signed. Finally, the principal always retains the right to revoke a power of attorney while they are mentally competent. The only sure way to revoke a power of attorney is to obtain the original document and destroy it. If the principal is unable to get the original power of attorney, they may alternatively sign a formal revocation. The principal must provide the signed revocation to the agent, and should also send a copy to all business establishments, financial institutions and agencies that the principal deals with, and request a signed and dated confirmation of receipt, to ensure that all necessary parties are aware of the revocation.

#### *Will a Third Party Accept the Power of Attorney?*

Under Maryland law, a power of attorney created in accordance with Maryland statutes must be accepted by third parties. A third party, such as a bank or financial institution, that refuses to honor the power of attorney can be compelled by a court to accept the document and will be liable for attorney’s fees if the agent must go to court to have the power of attorney accepted. In reality, however, this type of legal solution may not be useful, as the agent will have to petition a court, expend money for an attorney and wait for a court to review the document and make a decision. Instead, a principal is advised to speak with the third parties the

agent will likely deal with, in advance, to ensure that the document is valid and will be accepted. Due to fraud, some banks, for example, are more cautious about honoring a power of attorney, and may have their own documents to prepare. A principal who is proactive and speaks with their bank ahead of time can avoid issues down the road and ensure that the power of attorney can work as intended.

#### *Special Note about Medical Powers of Attorney*

A medical power of attorney is a type of limited power of attorney whereby the principal appoints a “healthcare agent” to make medical decisions on the principal’s behalf if the principal becomes incapacitated. If a valid medical power of attorney exists, when a doctor determines that a patient is no longer capable of making informed medical decisions due to their medical condition, the healthcare agent will be contacted and have the power to make medical decisions. The principal can authorize the healthcare agent to make decisions regarding the type of treatment, the selection of a healthcare professional and facility, and also end of life decisions, such as the donation of viable organs or where the principal wishes to be buried. Since the principal will be unable to make medical decisions while they are incapacitated, a medical power of attorney can be an important document to ensure that someone you trust has the ability to interact with doctors.

Powers of attorney are important legal documents with many potential consequences that should be understood before any individual authorizes an agent to act on their behalf. While there are risks, powers of attorney are also useful documents that enable principals to complete financial, business, medical and personal issues if they are unable to do so themselves for whatever reason. Located within the Office of the Staff Judge Advocate building at 4217 Roberts Avenue, the Fort Meade Legal Assistance office can help clients to understand whether and what type of power of attorney is appropriate, and can prepare, witness and notarize powers of attorney on a walk-in basis between 0800 and 1600 Monday through Friday.