



Legal Briefs

POWERS OF ATTORNEY

What are Powers of Attorney?

Soldiers who are PCSing, deploying or on TDY, or anticipating extensive field time often provide family members and/or friends with legal authority to manage financial or other matters during their upcoming absence. Powers of attorney, signed by the grantor and notarized by a notary public, formalize the legal relationship created between the soldier and the person selected to help with those matters. Whether the soldier chooses his or her spouse, a different family member, a friend, or perhaps even a fellow soldier, the power of attorney defines the scope of the arrangement. In legal terms, the power of attorney creates an “agency” relationship.

The Agency Relationship - a “Principal” and an “Agent”:

The agency relationship legally binds you, the principal, and the person you name in the power of the attorney, the agent. With the power of attorney, you authorize the agent to do certain things or to perform certain acts on your behalf. Providing your designated agent with a power of attorney gives notice to third parties (banks, businesses, creditors, etc.) that the named agent has permission to act for you.

Third Parties - No Obligation to Honor a Power of Attorney:

Third parties are not required to honor powers of attorney, but most will. The third party will most likely require presentation of the original power of attorney before allowing the agent to act for you. For that reason, be sure you give the original power of attorney to your agent. Photocopies are not an acceptable substitute.

NOTE: Banks and other financial institutions often draft and make available their own unique powers of attorney. Those institutions may not accept powers of attorney prepared by other offices. The individual financial institution can answer questions about acceptance of other powers of attorney.

Types of Powers of Attorney:

Powers of attorney are designated as either “general” or “special” depending on what you empower your agent to do. A **general power of attorney** authorizes your agent to do just about everything, and to do it all in your name. That includes authority to borrow money in your name, to buy or sell things in your name, and to make contracts in your name. Because the agent’s authority is almost without limit, it is vitally important you select only persons you trust without reservation. You must be confident they will act in your best interests only. A spouse or a parent may be the wisest choice. Do not give general powers of attorney to friends or fellow soldiers who you have known for only a short period of time. Do not set yourself up for failure.

Special powers of attorney grant limited authority to do specific things. For example, a special power of attorney can authorize someone to register your car, conduct banking, care for children, to clear your quarters, to ship household goods, or to buy or sell a house without granting authority to do anything more. The focus is on the performance of one or two isolated acts. As with a general power of attorney, be sure the named agent is someone you trust without reservation.

Considerations to Remember:

First, make sure you choose agents wisely. This is the cardinal rule. It is a rule that cannot be repeated too often. Powers of attorney should be given to the persons you trust the most, and to no one else. Avoid problems from the outset by protecting yourself at the beginning. Second, plan ahead and determine what acts you will need to have your agent accomplish on your behalf. This will allow you to provide your agent with one or more special powers of attorney instead of a general power. This will limit your agent's ability to perform unauthorized acts on your behalf. As a rule, you should avoid giving general powers of attorney.

Third, determine approximately how long you will need the agent to act for you. Powers of attorney should list an expiration date on which the agent's authority ends. It is advisable to keep the time frame as short as possible. If you later find you need to give the agent more time, you can always execute another power of attorney and mail it back to your agent. Remember - think before you authorize someone to act for you. The person will be acting in your name. It's your name, your credit, your reputation, and your money on the line.

Revocation:

A power of attorney may be revoked at any time prior to its stated expiration date. The principal must give notice to the agent that the power is revoked. Thereafter, the agent will lack authority to bind the principal. Notice should be given in writing, although an oral revocation can be effective. Notice of the revocation should be given to all third parties that previously relied on the power of attorney and to all third parties that may unwittingly rely on it in the future.

Tearing

up the power of attorney is the most effective method of revocation. To do that, the principal obviously has to receive it back from the agent. One final note: If the power of attorney was somehow recorded as part of a public record, a properly acknowledged revocation should be recorded as well.

If you have any questions concerning these matters, please call the Office of the Staff Judge Advocate at 317-247-3449 between the hours of 8:00AM and 4:00PM Monday-Friday.
