



Wiesbaden Legal Center Legal Assistance Office



Which Power of Attorney is Right for You?

A Power of Attorney (POA) is a written instrument that allows you (the "principal") to authorize your agent (the "attorney-in-fact") to conduct certain business on your behalf. It is one of the strongest legal documents that you can give to another person. There are two types of POA; "general" and "special" (or limited). A General Power of Attorney (GPOA) gives your agent very broad powers to act on your behalf; and a Special Power of Attorney (SPOA) limits your agent's authority to act only on certain matters. Every act performed by your agent within the authority of the POA is legally binding upon you. Since a POA is such a powerful document, give it only to a trustworthy person, and only when absolutely necessary. Your local legal assistance office can advise you about, and prepare for you, the appropriate type of POA needed for your situation.

For example, a Soldier's attorney-in-fact may use the Soldier's POA to—

- Clear government quarters.
- Ship the Soldier's car.
- Apply for and receive a loan under the Soldier's name.
- Access the Soldier's DFAS account.

You may hear that you need a General Power of Attorney so someone else can take care of your affairs if you are absent. This is probably not true. In fact, it is highly unlikely that you will ever need a GPOA.

General Power of Attorney (GPOA): A GPOA gives your agent the authority to do most things you could do yourself, such as write checks and pay bills, borrow money, and sign contracts in your name. Your agent cannot perform certain actions which require your personal attention, such as taking an oath. General POA'S may not be accepted for the performance of certain acts, such as opening and closing accounts, or conducting real estate transactions.

Special (Limited) Power of Attorney (SPOA): A SPOA authorizes your agent to do only a specified act, such as sell your car, ship your household goods, or access DFAS. A SPOA can accomplish almost any need - access to a particular bank account; closing on a house; medical care for your children; or movement of your household goods. The SPOA, as its name implies, restricts the other individual's action to a particular purpose, which you have chosen. This is much safer than giving a GPOA, which grants another individual almost complete legal power over your personal and financial affairs. Also, the SPOA is more likely to be accepted by those with whom the individual you have designated will be trying to do business. Because it is drawn for a specific purpose, it is often considered to be a more reliable measure of your actual intent. Some acts may only be accomplished with a SPOA. For example, authorizing someone to buy or sell real estate in your name requires a SPOA, which describes in great detail, the property and the specific acts to be done by your agent.

Special Power of Attorney to Act "In Loco Parentis": This is a common type of special power of attorney. The phrase "in loco parentis" means "in the place of the parent." This type of SPOA grants parental authority to another (such as a babysitter) to perform a range of functions which can include picking up a child from school, buying food and clothing, and consenting to medical treatment of the child in the event of illness or injury. If you have children, you will almost surely want a SPOA to provide for their non-emergency medical care when you and your spouse are away. Service medical regulations clearly provide that your children may be treated if a true emergency exists, and you or your spouse cannot be reached. In a non-emergency situation, however, consent is required before treatment. The special medical power of attorney is, in effect, transfer of your authority to consent to that treatment to another individual whom you have chosen to act for you. You cannot designate a medical facility; you must designate a specific person or two, for example, a husband or wife, either of whom you would trust with decisions concerning medical care for your children. Also, the individual whom you designate must be an adult.

Without this type of SPOA a day care center, school, store, hospital or clinic, fearing legal repercussions, may refuse to follow the directives of the babysitter or other agent, and require the specific authorization of the actual parent. This grant of authority will assist the agent in the daily business of looking after the child, and can avoid unnecessary delays in emergencies. Furthermore, the SPOA provides legal protection for the facility, and also for the agent who might otherwise fear taking action on behalf of the child.

Special Considerations:

1. A POA becomes void upon the death of the principal.
2. A POA normally is void if the principal becomes physically or mentally incapacitated; however, appropriate "durability" language may be added to the POA which will ensure that it remains valid during any period of incapacity.
3. Any third party has the right to refuse to accept a POA.
4. A POA should be given for only a limited time period (such as six months or one year). A third party is more likely to accept a POA with a recent date than one that is many months, or years, old.
5. Many financial institutions and other businesses have their own POAs, which they prefer to be used to conduct business. It is a good idea to show your POA to all known third parties who may be dealing with your named attorney-in-fact to ensure that your POA is acceptable to them.
6. Never give a general POA when a special POA will accomplish the mission. There is less opportunity for abuse when only limited powers are given.
7. A SPOA should be as specific as possible. For example, if you are authorizing an attorney-in-fact to sell a vehicle on your behalf, specify the vehicle, license number, vehicle identification number, the make/model/year of the vehicle, and any specific terms you will require. Your Legal Assistance staff can help you tailor the POA to suit your precise needs.

8. You may revoke a POA before its expiration date by executing a revocation of the POA. Notice of the revocation must be delivered to the attorney-in-fact, as well as to all third parties who you know relied on the POA. If possible, recover the original from the attorney-in-fact and destroy it as well as all copies. Even though the POA has been revoked, you may be responsible to any third party who did not receive notice of the revocation.

Below is a list of some of the more common types of POAs:

Financial Transactions:

Cash checks: To endorse, cash and receive the proceeds of any check or other negotiable instrument

File claims: To institute and prosecute, or to appear and defend, any claims or litigation involving me

Start allotment; Stop allotment; Change Allotment

Receive my Leave and Earning Statement(s)

Borrow money from service relief organizations (e.g., Army Emergency Relief)

Quarters

Accept military quarters, including signing and taking possession

Clear/terminate quarters

Household Goods:

To ship household goods, personal baggage, or other personal property

To accept delivery of, and receipt for, household goods and/or unaccompanied baggage

Real Property:

To sell, buy, rent, lease, manage, and/or mortgage real property

Motor Vehicle:

To use and operate

To sell, buy, ship, accept delivery

Child(ren):

Temporary custody, Loco Parentis/School enrollment - Do all acts necessary or desirable for maintaining the health, education, and welfare of my child, including the registration and enrollment of my child in educational programs and schools; and to maintain the customary living standard of my child, including, but not limited to, provisions of living quarters, food, clothing, medical, surgical and dental care, entertainment and other customary matters; and, specifically, to approve and authorize any and all medical treatment deemed necessary by a duly licensed physician and to execute any consent, release or waiver of liability required by medical or dental authorities incident to the provision of medical, surgical or dental care to my child, by qualified medical personnel; to act in loco parentis to name/date of birth of child(ren).

Medical care - to do all that is necessary or desirable for maintaining the health of my child(ren); specifically, to approve and authorize any and all medical treatment deemed necessary by a duly licensed physician and to execute any consent, release or waiver of liability required by medical or dental authorities incident to the provision of medical, surgical or dental care to my child(ren) by qualified medical personnel.

Please speak with your Legal Assistance staff for assistance in determining which POA would best suit your needs, or if you have additional questions.