

## INFORMATION PAPER

SUBJECT: Powers of Attorney

1. **PURPOSE.** To provide individuals with information regarding the uses and types of powers of attorney.
2. **BOTTOM LINE.** A power of attorney (POA) is a very powerful legal document that should be used cautiously.
3. **DISCUSSION.** A POA gives your agent authority to make decisions and act for you. You may give a few powers or you may give many powers. Most POA last from a definite start time for a specific time-limited period (for example one year). You may issue a POA that lasts an indefinite period of time. Many businesses, however, seldom accept a POA that is more than one or two years old because of uncertainty that the agent is still authorized to act any longer.

Here are some frequently asked questions & answers.

### **Q. When should I use a power of attorney?**

A. Most often, you may use a power of attorney when you cannot be present and you want someone to accomplish something for you. For example, you want your agent to sell your car while you are deployed. You also may want to have a power of attorney for certain emergency situations. Depending on the purpose—what you want your agent to do—and the length of your absence, you may wish to put certain limiting instructions in your power of attorney. You may use a *durable* power of attorney if you want it to continue in effect if you become disabled or incapacitated. If you do not have a durable power of attorney, your agent's authority to act for you ends upon you becoming disabled or incapacitated.

**NOTE: third parties (e.g., banks, businesses) need not accept or acknowledge your power of attorney; it is totally within their discretion to do so. Some businesses and government agencies (e.g., Internal Revenue Service) require that you use their specific form power of attorney. Other agencies or businesses are subject to law or regulation that restricts their ability to accept POA ( e.g., DFAS regulations require a special power of attorney). You should check with the business or agency where your agent will use your power of attorney to be sure it would be accepted.**

### **Q. Which type power of attorney should I use?**

A. The answer depends on why you need one and whether another arrangement may work. Many people use a special POA to authorize an agent to do only one or a few of the items listed below. A *general* POA allows your agent to do almost everything you could do if you were present. A general POA has enormous potential for abuse. For example, the holder of a general POA can contractually bind you, empty your bank account, or sell your most cherished possessions. The disadvantage of a general POA is the same as its advantage: your agent can do almost anything in your name. If the person who holds your general POA cannot be trusted or turns against you when you are away, watch out! Your car could be sold or your bank account cleaned out when you return. Because of the dangers of a general power of attorney, you should limit its duration. When it expires, third parties cannot legally rely on it. This protects you from liability for your agent's acts after it ends. A *special* POA is normally better than a general one

AEAJA-MC

SUBJECT: Powers of Attorney

because it is limited and you narrow your agent's authority. If a general POA is more than you need (or are willing) to grant, but you still need to appoint another to act for you consider a *special* POA. It allows you to limit your agent's authority to a specific matter. For example, you might limit your attorney-in-fact's authority to selling a specific car or to shipping your household goods.

**Q. Will a power of attorney work for everything?**

A. No, there are some actions that cannot be accomplished by using a POA because these actions are so personal in nature they cannot be delegated to another. For example, a marriage ceremony or the execution of a will cannot be done by POA.

**Q. All this sounds good. Why doesn't everyone have a power of attorney?**

A. A POA can be very useful if you have one when you need it. But it can be abused as well. For example, a husband who just separated from his wife might use the POA she gave him to clean out her individual bank account. A well-meaning older person might give a POA to a younger relative, only to discover that the relative squandered and spent the assets of the older person. Remember you are legally responsible for your agent's acts. Therefore, be very careful in selecting your agent.

**Q. What if I gave my spouse a power of attorney and now we are separating or divorcing?**

A. When you no longer desire your appointed attorney-in-fact to continue in that position, revoke your power of attorney. The best way to do that is to get the original back from your agent, but that might not be possible. You can also fill out a revocation form (see your Legal Assistance Office) and deliver it to your agent and all the creditors, banks, companies, and individuals that your agent has dealt with or is likely to deal with on your behalf. You might also have to publish it in the newspaper or file it in court (if the POA was filed in court initially). Check with Legal Assistance for your state law requirements.

**Q. My spouse or I may deploy or frequently travel. Should I prepare a power of attorney?**

A. Possibly, but first ask yourself "Do I *need* a POA?" Some military members prepare a POA for deployment so that their spouse can bank, receive household goods shipments, register the car, and do other such things when the member is away. Many single-soldier parents and dual-military couples with children use a POA as part of their family care plans to set up short- and long-term guardianships for their minor children. You may decide, however, you do not need a POA. If you and your spouse have a joint checking account, your pay is directly deposited into your joint account, and you are not planning on purchasing or selling any large jointly titled items such as a car or a house, then you probably do not need a POA.

**Q. Where can I learn more about a power of attorney?**

A. Consult your installation Legal Assistance Office or check our Legal Services web site: <http://www.jagcnet.army.mil/legal>, in the Estate Planning Information Center.

APPROVED: JEFF PEDERSEN, LTC, JA  
Chief, Military and Civil Law Division

DATE: 17 NOV 05