

The Power of the Power of Attorney

UNITED STATES MARINE CORPS

CONSOLIDATED LEGAL ASSISTANCE OFFICE

OFFICE OF THE STAFF JUDGE ADVOCATE

MARINE CORPS BASE

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POWERS OF ATTORNEY

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The power of attorney is a document by which you give authority to some person to act on your behalf. The agent that you designate does not have to be an attorney, and usually is not an attorney, even though the agent is technically referred to as your "attorney in fact." [Specialized powers of attorney that deal with health care issues are beyond the scope of this article.]

There are endless varieties of powers of attorney, but there are two basic categories.

- The special power of attorney and
- The general power of attorney.

In a special power of attorney, you give your agent specific, limited powers. You give your agent authority to do only those tasks you designate, and no others. Here are some of the more common examples of specific grants of authority:

- Sell/purchase a home
- Manage real property
- Maintain, register, insure your vehicle
- Accept a shipment of household goods from TMO
- Accept government quarters

Establish or terminate allotments of pay

- Borrow money
- Cash or deposit checks
- Withdraw money from your account
- Obtain medical care for your minor dependents
- Sign a lease for privatized Base housing and authorize the allotment of BAH to pay the rent

You can also choose to obtain a General Power of attorney, by which you give your agent an unlimited grant of authority to take ANY lawful action on your behalf that you could take yourself if you were present.

PRIVATIZED BASE HOUSING

For a variety of reasons, many military installations, including Camp Lejeune, are turning to private companies to construct and manage Base housing. These Public / Private ventures are becoming increasingly common. As a result, more and more service members will be living aboard the installation in houses managed by a private company. The United States government is no longer the landlord; a private company is. Like any other landlord, the private company (at Camp Lejeune, Atlantic Marine Corps Communities, AMCC) will expect you to sign a lease. If you are not present, some one, generally your spouse, will need to sign the lease for you, using a power of attorney. Furthermore, the rent in PPV housing is equal to your Basic Allowance for Housing (BAH). Typically, the service member's pay is arranged such that the BAH is transferred automatically to AMCC. For those service members for whom electronic funds transfer (EFT) is not available, you will have to initiate an allotment to pay the rent this way.

The Camp Lejeune legal assistance office has special powers of attorney available that authorize the agent to take action with respect to AMCC. Also, we have revised our General Powers of Attorney so that they also include the language necessary to accomplish the above mentioned functions. This language is typically contained in two paragraphs in boldface print. If you are deploying and if you are at all concerned about your agent's ability to conduct business with AMCC, ensure your POA contains this language. This may be particularly important for people on a waiting list for Base housing.

POA DRAWBACKS &* LIMITATIONS

The Power of Attorney is a very useful document; that is why it is so popular. But there are drawbacks:

First, there is the problem of the untrustworthy agent. Remember, the agent has tremendous power, especially with a general power of attorney. With that General Power of Attorney, your agent can:

- make expensive purchases you don't want to make,
- sell all of your property
- withdraw all your money from your bank account,
- or obligate you to long term financial deals with years of high monthly payments

Secondly, there is the problem of the incompetent agent, the agent that just can not perform the required task. Incompetence may take many forms:

- Physical Inability. The agent on life support may be very smart, but is physically unable to take care of your business.
- Distance. The agent that lives in New York may not be the best choice to take care of your real estate deal in California.
- Minority. Nor is the 15 year old who is not yet legally authorized to sign contracts or conduct other business.

- Gullibility. And finally, there are those people who are easily confused or deceived into doing something foolish

Thirdly, you should be aware that the POA is NOT a contract. It authorizes your agent to take certain actions, but does not require him to do so. Here's an example:

Just before going on a three month exercise to 29 Palms, Sgt X gives Sgt Y a POA to take care of his car: to make sure payments are made and the car is registered and insured.

But while Sgt X is gone, Sgt Y doesn't do any of those things. When Sgt X gets back, his car is unregistered, uninsured, and impounded.

Sgt X is unlikely to win in a lawsuit against Sgt Y. The POA allowed Sgt Y to take those actions; it did not require him to.

Finally, the biggest limitation of all may be that no business or agency is required to accept the POA. No matter what language is in it, no matter how fancy the embossed seal, anyone can simply refuse to accept the POA. It is true that some states, including North Carolina, have POA statutes that provide for civil penalties for the unreasonable refusal to honor a POA. [see NC General Statute 32A-41]. As a practical matter, enforcement of such a provision is time consuming, costly, and uncertain. It is far better to contact the business that your agent will be conducting business ahead of time and see what their POA policy is, thereby avoiding this problem.

There is a range of business responses to the POA.

One very typical response to the POA is to accept it.

- Most military agencies are familiar with and accept the POA.
- Many businesses will as well: after all, it allows them to make a sale or transaction even though the buyer isn't there.
- Some businesses prefer a General Power of Attorney.
- Often, businesses prefer a special power of attorney: one that specifically lists only the transaction they are asked to perform. If that transaction is specifically listed, the business has a greater degree of assurance that you really wanted your agent to take that action.

Sometimes, a business will give a rather bureaucratic response. They will accept a POA, but require you to use their form. Some IRS agents take this view with respect to filing a tax return using a POA.

A third response is flat out refusal to do business by POA. Sometimes, it may be just that a lower level employee is unfamiliar with POAs and a more senior employee will accept the POA. And sometimes, the answer is just NO.

If you know the business that your agent will be dealing with, contact that business before you deploy. Find out what their POA policy is.

POA DURATION

How long does the POA last?

- **Expiration Date.** Many POAs will have an expiration date. You designate when a POA expires. It should last at least long enough to take care of the transaction desired, or to cover the maker's absence from the area.
The older a POA is, the less likely a business will accept it. For this reason, many legal assistance offices have policies limiting the duration of the POA.
- **Durability.** Sometimes the General Power of Attorney will have a durability clause. That is, it may indicate that it will continue in effect if the maker becomes incapacitated due to illness or injury.
- **Death of Maker.** The POA, unlike a will, has no effect after the death of its maker.
- **Death of Agent.** And of course, the POA has no effect after the death of the agent.
- **Revocation.** Finally, the POA has no effect after it has been revoked.

REVOKING A POA

An effective revocation, one that really works, is very difficult to accomplish. In order to effectively revoke a POA, you should

- tell you agent immediately that it is revoked.
- send written notice to your agent of the revocation. Send certified to prove he got it.
- send notices of revocation to all of the businesses that you think you agent might attempt to deal with. Send them certified, too.
- Obtain the original and all copies of the POA and destroy them.
- some jurisdictions also require that, if a POA was recorded, the revocation must also be recorded; that is, filed.

What happens if your fired agent, against your wishes, continues to use that POA to obligate you to make various payments?

You can be sure that the creditors will come after you for payment. Their position will be that you still need to pay for the acts of the fired agent as long as they, the creditors, had no actual knowledge that the agent had been fired. Indeed, the creditor's position may well prevail. The actions of the fired agent may well bind the principal where the third party has no notice of the revocation. Your only recourse may be to sue the fired agent.

The bottom line is that effective revocation is very difficult. Choosing your agent with care, and limiting the POA as to duration and type of authority can greatly reduce the likelihood of POA disaster.

COMMENCEMENT DATE OF POA

We have discussed when the POA ends. When does it begin?
In most cases, the POA is effective as soon as it is signed.

However, there is another option, the springing power of attorney. This type of power of attorney, has no effect once it is signed. It springs into effect only when the maker is incapacitated.

EXECUTING THE POA

Once you have determined the kind of POA you need, and its duration, and its terms, you can obtain this document from your legal assistance office.

You will be asked to sign the document in front of either a civilian or military notary. The function of the notary is to certify that the signature of the maker is genuine. You should therefore be prepared to show the notary some identification to prove your identity. You may use your Armed Forces Identification Card for this purpose. After you sign the document, the notary will sign as well.

By Federal law, your legal assistance officer is designated as a notary in every state.

Although a seal is not required for legal assistance officer notarization, your legal assistance office will probably seal the document for you. The seal gives additional assurance of its authenticity and increases the likelihood that the business or agency will accept it.

Used wisely, the power of attorney is a very important and useful legal document. It will help someone else take care of your personal affairs while you turn your attention to the important business of defending our nation.