



## ASA DIX LEGAL BRIEF

A PREVENTIVE LAW SERVICE OF THE JOINT READINESS CENTER LEGAL SECTION  
UNITED STATES ARMY SUPPORT ACTIVITY DIX  
*KEEPING YOU INFORMED ON YOUR PERSONAL LEGAL NEEDS*

# ***POWERS OF ATTORNEY***

**Q: WHAT IS A POWER OF ATTORNEY?** A power of attorney is a written document that allows another person or institution (called your agent or attorney-in-fact) to act on your behalf. Thus, a power of attorney can be used to allow a friend to register your car, permit your spouse to ship or receive your household goods or allow a relative to manage your financial investments. It can also be used to sell or purchase property such as real estate, motor vehicles, furniture, and prized antique collections. A power of attorney can create valid legal debts in your name as well as authorize a person to pay off your debts.

**Q: ARE THERE DIFFERENT KINDS OF POWERS OF ATTORNEY?** Yes. There are three basic types of powers of attorney: general, special, and health care. A general power of attorney allows your agent to do most things that you could legally perform, from renting an apartment in your name to selling your house. A special power of attorney (also known as a limited or specific power of attorney) allows your agent to perform a particular act and limits the agent to that act. The agent can be authorized to do more than one legal act in a single special power of attorney. There is also a special power of attorney to act “In Loco Parentis” (in place of the parent), which grants parental authority to your child’s caregiver; such as consenting to medical treatment or picking up your child from day care. A health care power of attorney allows your agent to make health care decisions for you if you become incapacitated and can not make your own decisions. This topic is addressed in another Fort Dix Legal Brief entitled “Living Wills & Health Care Powers of Attorney”. General and special powers of attorney that take effect immediately and end if you become mentally incompetent, incapacitated and/or disabled are collectively referred to as “Nondurable Powers of Attorney”. In contrast, general and specific powers of attorney that take effect immediately and remain in effect if you become mentally incompetent or incapacitated are referred to as “Durable Powers of Attorney”. Absent an expiration date, durable powers of attorney (also referred to as enduring powers of attorney) remain in effect at all times since they contain a special durability provision which allows your agent to continue to manage your personal and financial affairs when you become mentally incompetent, incapacitated, and/or disabled. A power of attorney that becomes effective at a specified future time or designated special event is referred to as a springing power of attorney. A healthcare power of attorney is an example of a springing power of attorney. The event specified in the springing power of attorney should be described in detail.

**Q. WHAT IS A MILITARY POWER OF ATTORNEY?** It is a power of attorney prepared by military legal assistance offices and must be notarized in accordance with 10 U.S.C. Section 1044 (a), or other applicable State or Federal law. It contains a special preamble, or statement, indicating that Federal law exempts the power of attorney from any state requirements as to form, substance, formality or recording. This means that a military power of attorney executed in one state should be given legal effect in other states.

**Q: WHEN DOES A POWER OF ATTORNEY EXPIRE?** A power of attorney will generally expire on the date specified in the document. However, regardless of any specified expiration date, all powers of attorney will automatically terminate when revoked or when either you or your agent die (unless a substitute agent is named). Nondurable powers of attorney will automatically end when you become mentally incompetent, incapacitated, and/or disabled; whereas durable powers of attorney will continue under such circumstances. If, after having knowledge of any of the events that terminate a power of attorney, a person continues to act as

attorney-in-fact, he or she is acting without authority. While a power of attorney can be made indefinite, one should consider specifying an expiration date in the power of attorney so it will expire when its purpose has been served.

**Q: CAN I CANCEL OR TERMINATE A POWER OF ATTORNEY?** Yes. You may cancel or terminate a power of attorney before it expires. The most effective way to do this is to retrieve the original and all the copies that you have given to your agent, as well as all the photocopies that may have been made by banks, realtors, merchants, landlords and other people or institutions who are relying on the power of attorney you signed. You can also prepare and execute a Revocation of Power of Attorney. However, every person or institution that may have reasonably relied on the power of attorney should receive actual notice of the revocation to prevent further transactions under the power of attorney. In some states, you may also record the revocation in the County Clerk's Office where you live or if the power of attorney permits a real estate transaction, with the Register of Deeds where the property is located.

**Q: WHAT ARE SOME OF THE THINGS A SPECIAL POWER OF ATTORNEY CAN DO?** A special power of attorney can allow your agent to perform almost all acts that you could legally perform yourself, such as:

1. Purchase or sell real estate;
2. Register your car;
3. Conduct your banking transactions such as cashing checks or withdrawing money from your bank account;
4. Sign your name to a lease agreement, such as a motor vehicle lease or apartment lease;
5. Cash or deposit tax refund checks;
6. Transfer stocks and bonds.
7. Enroll your children in summer camp.

**Q: ARE THERE THINGS A POWER OF ATTORNEY CANNOT DO?** A power of attorney cannot authorize your agent to perform certain acts which are considered so personal in nature that they cannot be delegated to another. For example, a marriage ceremony or the execution or revocation of a Will in some states, and voting in a presidential election cannot be done by power of attorney.

**Q: ALL THIS SOUNDS LIKE A GOOD DEAL. WHY DOES NOT EVERYONE HAVE A POWER OF ATTORNEY?** While a power of attorney can be very useful if you are unable to conduct your own affairs, it can also be harmful if abused. For example, a husband recently separated from his wife might use the power of attorney she gave him to withdraw all the funds from her individual bank account or to sell her jewelry collection. A person who was given a power of attorney by an elderly relative might cash the relative's Social Security checks and keep the money for him or herself. The important thing to remember is that so long as your agent has acted within the power stated in the document, you are going to be held legally responsible for the acts of your agent. Therefore, you must exercise great care in choosing your agent.

**Q: WHAT STEPS CAN I TAKE TO PREVENT IMPROPER USE OF MY POWER OF ATTORNEY?** There is no way to guarantee that your power of attorney will not be misused by your agent. However, the following guidelines and precautions will help to prevent abuse:

1. Make sure you only give a power of attorney to someone you trust and have known for a long period of time.
2. Never give a power of attorney unless you really need one.
3. Unless it is a health care power of attorney, specify an expiration date in your power of attorney and make sure the expiration date is for the shortest period of time possible. While this will vary from one person to another; periods of one, two or three years are not uncommon for powers of attorney.
4. Never use a general power of attorney when a special one will accomplish your intentions.
5. Revoke a power of attorney that you no longer need.

**Q: DOES EVERY BUSINESS OR BANK HAVE TO ACCEPT MY POWER OF ATTORNEY?** No.

Every business, bank, government agency or any other institution is free to accept or reject a power of attorney. Some businesses and financial institutions require that the power of attorney be recorded and others may only accept a special power of attorney. The best rule is to check with the business, bank or other institution before obtaining or using a power of attorney to ensure that it will be accepted; especially since such places may prefer to use their own standardized powers of attorney forms.

**Q: ARE THERE ANY SPECIAL REQUIREMENTS FOR POWERS OF ATTORNEY?** In most states, any person 18 years of age or older can execute (sign) a power of attorney if they are mentally competent and are doing so as their voluntary act. However, check with your state's laws to determine the age at which one is eligible to execute a power of attorney. In most states, the power of attorney must be signed in front of a notary public. Some states, such as Arizona, also require that the power of attorney be witnessed. Since no one is ever legally required to accept a power of attorney, not even a military power of attorney despite the language in its preamble, it is advisable to follow the state's rules for witnesses. You may record the power of attorney at the County Clerk's Office where you reside or if it involves a real estate transaction, at the Register of Deeds where the property is located. However, as a general rule, a power of attorney does not need to be recorded in order to be effective. An exception to this rule is when a power of attorney is used to transfer land or to transact business on behalf of a person who has become incapacitated; it may have to be recorded, depending upon state law.

**Q. HOW SHOULD YOUR AGENT SIGN DOCUMENTS?** Let us assume John Doe has appointed his wife, Jane Doe, as the agent/attorney in fact in his power of attorney. Jane needs to sign her husband's name in a loan application; she will sign the document as follows: John Doe, by Jane Doe under POA, or Jane Doe, attorney-in-fact for John Doe.

**Q. WHO SHOULD HAVE THE ORIGINAL POWER OF ATTORNEY?** Your agent **MUST** be given the original power of attorney and you should keep a copy for your records.