

Consumer Pamphlet: Florida Power of Attorney

Table of Contents

About the Power of Attorney

Powers and Duties of an Agent

Using the Power of Attorney

Relationship of Power of Attorney to Other Legal Instruments

Termination of the Power of Attorney

Financial Management and the Liability of An Agent

Where To Learn More



Unless otherwise specified, the information in this pamphlet applies to powers of attorney signed on or after Nov. 1, 2014. Consult a lawyer regarding use and enforceability of powers of attorney executed before Oct. 1, 2011. Also, special rules for durable powers of attorney are noted.

About the Power of Attorney

WHAT IS A POWER OF ATTORNEY?

— WHAT ARE SOME USES OF A POWER OF ATTORNEY?

A power of attorney may be used to give another the right to sell a car, home or other property. A power of attorney might be used to allow another to access bank accounts, sign a contract, make health care decisions, handle financial transactions or sign legal documents for the principal. A power of attorney may give others the right to do almost any legal act that the maker of the power of attorney could do, including the ability to create trusts and make gifts.

WHERE MAY A PERSON OBTAIN A POWER OF ATTORNEY?

DOES A POWER OF ATTORNEY NEED WITNESSES OR A NOTARY?



PRINCIPAL, AGENT, THIRD PARTY... WHO ARE THEY?

WHAT ARE THE DIFFERENCES BETWEEN LIMITED, GENERAL, AND DURABLE POWERS OF ATTORNEY?

MUST A PERSON BE COMPETENT TO SIGN A POWER OF ATTORNEY?

WHO MAY SERVE AS AN AGENT?

WHAT HAPPENS IF THE POWER OF ATTORNEY WAS CREATED UNDER THE LAWS OF ANOTHER STATE?

Powers and Duties of Agent



Using the Power of Attorney

— WHEN IS A POWER OF ATTORNEY EFFECTIVE?

The power of attorney is effective as soon as the principal signs it. However, a durable power of attorney executed before Oct. 1, 2011, that is contingent on the incapacity of the principal (sometimes called a “springing” power) remains valid but is not effective until the principal’s incapacity has been certified by a physician. Springing powers of attorney may not have been created after Sept. 30, 2011.

MUST THE PRINCIPAL DELIVER THE POWER OF ATTORNEY TO THE AGENT RIGHT AFTER SIGNING OR MAY THE PRINCIPAL WAIT UNTIL SUCH TIME AS THE SERVICES OF THE AGENT ARE NEEDED?

HOW DOES THE AGENT INITIATE DECISION-MAKING AUTHORITY UNDER THE POWER OF ATTORNEY?

HOW SHOULD THE AGENT SIGN WHEN ACTING AS AN AGENT?

WHAT IF THE THIRD PARTY WILL NOT ACCEPT THE POWER OF ATTORNEY?

WHY DO THIRD PARTIES SOMETIMES REFUSE POWERS OF ATTORNEY?

WHAT IF A THIRD PARTY REQUIRES THE AGENT TO SIGN AN AFFIDAVIT BEFORE HONORING THE POWER OF ATTORNEY?

WHAT ELSE MAY THE THIRD PARTY REQUIRE?

MAY THE AGENT EMPLOY OTHERS FOR ASSISTANCE?

Relationship of Power of Attorney to Other Legal Instruments

WHAT IS THE DIFFERENCE BETWEEN AN AGENT AND AN EXECUTOR OR PERSONAL REPRESENTATIVE?

WHAT IS THE DIFFERENCE BETWEEN A “TRUSTEE” AND AN “AGENT”?

MAY A POWER OF ATTORNEY AVOID THE NEED FOR GUARDIANSHIP?

WHAT IF THE PRINCIPAL HAS A “GUARDIAN” APPOINTED BY THE COURT?



Termination of the Power of Attorney

— WHEN DOES A POWER OF ATTORNEY TERMINATE?

The authority of any agent under a power of attorney automatically ends when one of the following things happens:

- The principal dies.
- The principal revokes the power of attorney.
- A court determines that the principal is totally or partially incapacitated and does not specifically provide that the power of attorney is to remain in force.
- The purpose of the power of attorney is completed.
- The term of the power of attorney expires.

In any of these instances, the power of attorney is terminated. If, after having knowledge of any of these events, a person continues to act as agent, he or she is acting without authority.

WHEN DOES A PARTICULAR AGENT'S AUTHORITY TERMINATE?

WHAT IS THE PROCEDURE FOR A PRINCIPAL TO REVOKE A POWER OF ATTORNEY?

COURT PROCEEDINGS WERE FILED TO APPOINT A GUARDIAN FOR THE PRINCIPAL OR TO DETERMINE WHETHER THE PRINCIPAL IS INCAPACITATED. HOW DOES THIS AFFECT THE POWER OF ATTORNEY?

AUTHORITY AS AGENT HAS BEEN SUSPENDED BECAUSE GUARDIANSHIP PROCEEDINGS ARE PENDING FOR THE PRINCIPAL. NOW THERE IS AN EMERGENCY, BUT NO GUARDIAN HAS BEEN APPOINTED YET. WHAT NOW?





