

## POWERS OF ATTORNEY IN FLORIDA

Sometimes one person needs to give another the power to enter into contracts, buy or sell property, access bank accounts or generally act on his behalf when he is injured or unavailable. In this event the first person, called the principal, can designate the other as his agent by using a power of attorney. Because this can allow the agent to do everything the principal can do, the parties should carefully consider the ramifications of giving someone that power, and should be familiar with the laws governing its use and effectiveness.

There are basically three types of powers of attorney in Florida. A general power gives the agent the right to do anything the principal can do. A special power only gives the agent the right to take specific acts. Both general and special powers are automatically revoked if the principal becomes incompetent (such as by age or disability). This is why the Florida legislature authorized a third type known as a durable power of attorney, which allows the agent to continue to act notwithstanding the incapacity of the principal (subject to some exceptions). This type of power can also be used to arrange for and consent to medical procedures for the principal. However, it must meet specific requirements to be valid, so it's important to have the power drafted by an attorney who is familiar with the requirements.

All powers of attorney are automatically revoked on the death of the principal, although courts may uphold them to protect someone dealing with the agent who doesn't know that the principal is dead. Since this is hard to prove, it is appropriate for anyone dealing with an agent to get an affidavit from the agent stating that the principal is still alive and the power hasn't been revoked.

Powers of attorney must be signed with the same formalities as the instruments which the principal would sign if he were doing the authorized acts himself. This means that if the agent is going to sign a deed, the power of attorney must be signed the same way as a deed (by including two witnesses and a notary). Powers of attorney are subject to what the courts call "strict scrutiny," meaning that unless clear authority is plainly stated, the agent's powers will be subject to question. This is why general powers of attorney should include a list of all the possible things an agent can do. Powers of attorney aren't sufficient to allow the agent to transfer or mortgage real estate unless it is specifically authorized. Any time the use of a power of attorney involves real estate, it should be recorded at the Courthouse along with the deed or other documents affecting the real estate.

A few tidbits: Agents are prohibited from using a power of attorney to their own advantage without the principal's consent, so the agent shouldn't use it to transfer assets to himself. Companies can't give powers of attorney except by resolution of the directors or partners, so a power of attorney from an officer of a corporation is ineffective to allow an agent to act for the corporation. Many banks won't rely on a power of attorney unless their own form is used (even though your form may be legally sufficient). There are special provisions limiting

the use of a power of attorney when the principal is missing in action in a military conflict. Finally, when an agent signs documents he should sign the principal's name as well as his own and specify that he is acting under power of attorney.

Because the principal may not be around when the agent exercises his authority, it's important to make sure in advance that the power of attorney is drafted and signed correctly and can be used for what was intended. Durable powers of attorney will need special attention to meet statutory requirements. That's why it's always appropriate to have an attorney involved when you are granting or obtaining a power of attorney, or transacting business with an agent who is using a power of attorney.