



Power of Attorney

What is a power of attorney?

A power of attorney is a document authorizing someone to act on your behalf. You determine how much power the person will have over your affairs. Your power of attorney may be a general or limited power of attorney. A general power of attorney authorizes your agent to conduct your entire business and affairs. A limited or special power of attorney authorizes your agent to conduct specified business, perform specified acts, or make certain decisions on your behalf.

In any power of attorney, you are considered to be the “principal” and the person to whom you assign the power is your “agent” or “attorney-in-fact.” Your attorney-in-fact does not have to be a lawyer, but it should be someone you trust a great deal.

What is a durable power of attorney?

When a power of attorney is considered “durable,” it remains valid even if you become incompetent or incapacitated. An ordinary power of attorney expires if a person becomes unable to make his or her own decisions. Durable powers of attorney can be prepared either to take effect immediately or to go into effect only if and when you become unable to make decisions for yourself (a “springing durable power of attorney”).

The power of attorney form should indicate what kind of power of attorney you want. You may want to consult an attorney regarding the type of power of attorney you want.

When should I use a power of attorney?

You may want to use a power of attorney if you are unable or unwilling to handle your financial affairs yourself. You may also use a power of attorney to allow another individual to take care

of your responsibilities at the time you become incapacitated. Having a power of attorney does not restrict you from doing these things on your own but instead shares these responsibilities with someone else.

How much power does a power of attorney have?

You may give your attorney-in-fact as much or as little power as you wish. You could choose to give your attorney-in-fact power to do some or all of the following:

- Use your assets to pay your everyday expenses and those of your family;
- Buy, sell, maintain, pay taxes on and mortgage real estate and other property;
- Manage benefits from Social Security, Medicare or other government programs or civil or military service;
- Invest your money in stocks, bonds and mutual funds;
- Handle transactions with your bank and other financial institutions;
- Buy and sell insurance policies and annuities for you;
- File and pay your taxes;
- Operate your small business;
- Claim property you inherit or are otherwise entitled to;
- Hire someone to represent you in court; and
- Manage your retirement accounts.

How do I create a power of attorney?

You don't need an attorney to prepare a power of attorney. However, you should know that powers of attorney are required to be:

- In writing;
- Signed by you in front of a notary public;
- Dated appropriately; and
- Clear on what powers are being granted.

If you want to create a durable power of attorney, you must include a statement such as: "This power of attorney shall not be affected by incapacity or incompetence of the principal."

In the back of this booklet in the *Sample Forms* section on page 33, you will find Minnesota's standard power of attorney form, as set out in Minn. Stat. § 523.23 (2010). This form allows you to choose whether or not you want the power of attorney to be durable. In addition, an alternative form may be prepared by the Commissioner of Military Affairs for use by active service members. A legal power of attorney form can also be purchased at legal forms stores or drawn up on your own.

Some banks and brokerage companies have their own power of attorney forms. If you want your attorney-in-fact to have an easy time with these institutions, you may need to prepare two (or more) durable powers of attorney, one using your own form and one or more using the forms provided by the institutions with which you do business.

What happens if I don't have a durable power of attorney for finances?

If you become incapacitated and you haven't prepared a durable power of attorney for finances, a court proceeding for conservatorship is probably

inescapable. Your spouse, closest relatives or companion will have to ask a court for authority over at least some of your financial affairs.

If you are married, your spouse has some authority over property you own together. He or she may pay bills from a joint bank account, for example. There are significant limits, however, on your spouse's right to sell property owned by both of you.

If your relatives go to court to get someone appointed to manage your financial affairs, they must ask a judge to rule that you cannot take care of your own affairs and request that the judge appoint a conservator. When this person is appointed, you may lose the right to control your own money and property. Conservatorships are discussed more starting on page 16.

When does a power of attorney end?

If you are mentally competent, you may revoke your original power of attorney at any time with a signed document, such as the form found on page 36 in the *Sample Forms* section. The revocation is not effective until the attorney-in-fact has received notice of the revocation. If you do not revoke it, a power of attorney ends at your death. If you want your attorney-in-fact to have authority to wind up your affairs after your death, use a will to name that person as personal representative.

Also, if you get a divorce and your spouse is your attorney-in-fact, your ex-spouse's authority is automatically terminated. Finally, if there is no one to serve as attorney-in-fact, the power of attorney ends. To avoid this problem, you can name an alternative attorney-in-fact in your document.

The maker of the power of attorney may hold the original power of attorney document. This can allow the maker to remain in control and generally results in a simple revocation.

*This information is available at
www.ag.state.mn.us*

**STATUTORY SHORT FORM POWER OF ATTORNEY
MINNESOTA STATUTES, SECTION 523.23**

IMPORTANT NOTICE: The powers granted by this document are broad and sweeping. They are defined in Minnesota Statutes, section 523.24. If you have any questions about these powers, obtain competent advice. This power of attorney may be revoked by you if you wish to do so. This power of attorney is automatically terminated if it is to your spouse and proceedings are commenced for dissolution, legal separation, or annulment of your marriage. This power of attorney authorizes, but does not require, the attorney-in-fact to act for you.

PRINCIPAL (Name and Address of Person Granting the Power)

ATTORNEY(S)-IN-FACT
(Name and Address)

SUCCESSOR ATTORNEY(S)-IN-FACT (Optional)
To act if any named attorney-in-fact dies, resigns,
or is otherwise unable to serve.
(Name and Address)

First Successor _____

Second Successor _____

NOTICE: If more than one attorney-in-fact is designated, make a check or "x" on the line in front of one of the following statements:

Each attorney-in-fact may independently exercise the powers granted.

All attorneys-in-fact must jointly exercise the powers granted.

EXPIRATION DATE (Optional)

Use Specific Month, Day and Year Only

I, (the above-named Principal) appoint the above named Attorney(s)-In-Fact to act as my attorney(s)-in-fact:

FIRST: To act for me in any way I could act with respect to the following matters, as each of them is defined in Minnesota Statutes, section 523.24:

(To grant to the attorney-in-fact any of the following powers, make a check or "x" on the line in front of each power being granted. You may, but need not, cross out each power not granted. Failure to make a check or "x" on the line in front of the power will have the effect of deleting the power unless the line in front of the power N is checked or x-ed.)

Check or "x"

- (A) real property transactions;
I choose to limit this power to real property in _____ County, Minnesota,
described as follows:
(Use legal description. Do not use street address.)

(If more space is needed, continue on the back or on an attachment.)

- (B) tangible personal property transactions;
 (C) bond, share, and commodity transactions;
 (D) banking transactions;
 (E) business operating transactions;
 (F) insurance transactions;
 (G) beneficiary transactions;
 (H) gift transactions;
 (I) fiduciary transactions;
 (J) claims and litigation;
 (K) family maintenance;
 (L) benefits from military service;
 (M) records, reports, and statements;
 (N) all of the powers listed in (A) through (M) above and all other matters.

SECOND: (You must indicate below whether or not this power of attorney will be effective if you become incapacitated or incompetent. Make a check or "x" on the line in front of the statement that expresses your intent.)

- This power of attorney shall continue to be effective if I become incapacitated or incompetent.
 This power of attorney shall not be effective if I become incapacitated or incompetent.

THIRD: (You must indicate below whether or not this power of attorney authorizes the attorney-in-fact to transfer your property to the attorney-in-fact. Make a check or "x" on the line in front of the statement that expresses your intent.)

- This power of attorney authorizes the attorney-in-fact to transfer my property to the attorney-in-fact.
 This power of attorney does not authorize the attorney-in-fact to transfer my property to the attorney-in-fact.

FOURTH: (You may indicate below whether or not the attorney-in-fact is required to make an accounting. Make a check or "x" on the line in front of the statement that expresses your intent.)

My attorney-in-fact need not render an accounting unless I request it or the accounting is otherwise required by Minnesota Statutes, section 523.21.

My attorney-in-fact must render _____ accountings to
(Monthly, Quarterly, Annual)

me or _____
(Name and Address)

during my lifetime, and a final accounting to the personal representative of my estate, if any is appointed, after my death.

In Witness Whereof I have hereunto signed my name this ____ day of _____, 200 ____.

(Signature of Principal)

(Acknowledgment of Principal)

STATE OF MINNESOTA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200 ____.

by _____
(Insert Name of Principal)

Signature of Notary Public or other Official

This instrument was drafted by:

Specimen Signature of Attorney(s)-in-Fact
(Notarization not required)

REVOCATION OF POWER OF ATTORNEY
Minnesota Statutes, § 523.11

TO WHOM IT MAY CONCERN:

I _____, **revoke and declare null and void** the
POWER OF ATTORNEY I granted to _____ which is dated
_____, 200_____.

Please be advised that the above-named person no longer has power to act as my attorney-in-fact in any way.

Date: _____

(Principal)

STATE OF MINNESOTA

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____ 200_____.

by _____.

Notary Public