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Powers of Attorney under Arkansas Law

Warning: A Power of Attorney is a very important document. In accordance with Army Regulation 27-3, any person requesting a General Power of Attorney for use by someone who is not a trusted spouse or relative should be cautioned as to the serious legal problems that may arise from its misuse. Given the inherent risk of fraud, Servicemembers should attempt to manage their affairs without resorting to a General Power of Attorney.

What is a Power of Attorney? A Power of Attorney is a legal way of having one person act on behalf of another. The Power of Attorney document gives someone authority to act on your behalf in matters that you list in the document. The power can be specific to a certain task or can cover many duties, including financial and medical issues. The power can start immediately or after some event occurs, such as if you become mentally incompetent. A Power of Attorney does **NOT** take away your right to act on your behalf.

What are an Agent and Principal? The person who issues a Power of Attorney is called the Principal. The person who receives the authority is called the Agent (also known as the Attorney-in-Fact). Powers of Attorney signed by the principle and notarized by a notary public, formalize the legal relationship between you and your Agent, and give notice to third parties (banks, businesses, creditors, etc.) that the named Agent has permission to act for you. It is one of the strongest legal documents you can give to another person. Everything your Agent does within the authority of the Power of Attorney is legally binding upon you.

Which Power of Attorney should I use? There are different types of Power of Attorney. Each type has a different purpose and grants different levels of power to the agent. The type you use will depend on your individual circumstances.

a. A General Power of Attorney authorizes your Agent to do just about everything, and to do it in your name. For example, an Agent with a General Power of Attorney can rent or buy a house with your money, borrow money that you must repay, sell your car, sue someone for you, or remove all funds from your accounts. There are

some things, however, that cannot be delegated to an agency, such as a marriage ceremony or the execution of a will.

b. A Durable Power of Attorney remains or becomes effective upon the Principal becoming incompetent or unable to manage his or her affairs. Powers of Attorney created under Arkansas law on or after January 1, 2012, are automatically durable unless is specifically states that it is terminated by the incapacity of the principle.

c. A Durable Power of Attorney for Healthcare is an advanced healthcare directive.

It allows an Agent to make healthcare decisions for you, including the power to consent to or withdraw from any type of medical treatment, even if death results. The Agent may exercise the powers given through the Principal's life, even after the Principal becomes disabled, unless it is revoked or a court revokes it. A Principal may combine a Durable Power of Attorney with a Living Will. A Living Will is document in which a person states his or her wishes in case they are unable to make medical decisions for themselves.

d. A Special or Limited Power of Attorney authorizes the Agent to carry on a particular business or transaction for the principle. For example, you can authorize someone to register your car, to clear your quarters, to ship household goods or to buy or sell a house, without granting authority to do anything more. The focus is on the performance of a specific act. A Special or Limited Power of Attorney can give your Agent authority to do as many specific acts as desired.

Who Should I Name as My Agent? The most important rule in powers of attorney is: Choose your Agent wisely. You must be confident your Agent will act in your best interest only. It is vitally important you select only a person you trust without reservation. A spouse or a parent may be the wisest choice. Do not give General Powers of Attorney to friends or fellow soldiers known only for a short period of time. Never give a Power of Attorney to someone who is not absolutely trustworthy and capable.

What are the Benefits of a Power of Attorney? A Limited Power of Attorney can be helpful if you are temporarily hospitalized or if you will be traveling for an extended period of time. A Limited Power of Attorney is helpful if you will be unable to do your own banking or pay your bills for any other reason. For example, if you will be deployed and unable manage your bills (such as mortgage, car payments, loan

payments, etc.) you may authorize an Agent through a limited power of attorney to perform these tasks on your behalf.

When Does a Power of Attorney End? A Power of Attorney can end for the following reasons:

- a. By setting a specific date for it to end;
- b. If the Agent or Principal dies,
- c. If the Sole Agent resigns,
- d. If the Agent and Principal are married to each other and either person files for separation or divorce,
- e. If the Agent revokes the Power of Attorney. An Agent can revoke a Power of Attorney at any time by giving written notice to the Attorney-in-Fact. You should also file a copy of the letter revoking the Power of Attorney with the court. It is advisable to also notify banks, institutions or other places where the Agent conducted business on your behalf.
- f. A Court can revoke it. If the Power of Attorney is Durable and you become incompetent, only the court can revoke it during the time that you are incompetent. This could happen if an interest party petitions the court on your behalf, alleging the Agent has violated his or her responsibilities.

This handout is distributed by the Arkansas Office of the Staff Judge Advocate, Office of Legal Assistance as a preventive law service. This document and other helpful information on similar personal legal affairs topics can be found on the office's website located at <https://arkansas.nationalguard.mil/Home/JAG-Legal/>

For more information on this topic or to consult with a legal assistance attorney contact the Arkansas National Guard Office of Legal Assistance at 501-212-5040 to establish eligibility and appointment times.