

What is a power of attorney?

A **power of attorney** is a written document that authorizes one person to act on behalf of another. The person giving the power of attorney is the ‘principal’ and the person authorized to act on behalf of the principal is the ‘agent.’

The principal must be able to understand the nature and consequences of the power of attorney at the time he or she signs it for the power of attorney to be legally valid. Then it is still valid even if you later become incapacitated (severely mentally or physically hurt or ill so that you can’t handle your own business). This means the power of attorney is “durable.”

Virginia law requires language indicating that you want the power of attorney to remain in effect upon your disability; otherwise, the power of attorney would automatically end.

What is a general and a limited power of attorney?

The **general power of attorney** gives the agent broad power to do almost anything for you, the principal.

A **limited power of attorney** gives the agent authority to do only certain specific things spelled out in the

document. An agent cannot make a will for you.

Why should I sign a power of attorney?

A durable general power of attorney could be very useful to you if you ever become temporarily or permanently incapacitated and are unable to handle some or all of your affairs. Your agent can step in and take care of your affairs for you right away.

Having a power of attorney may avoid the need for a guardianship. If you become incapacitated and have not signed a power of attorney, someone may be forced to petition the court to have a guardian and/or conservator appointed for you. A guardianship and/or conservatorship proceeding can be an expensive, unpleasant, and slow process for you, your family, and your friends.

Will I still be able to handle my own business after signing a power of attorney?

Yes. Signing a power of attorney does not mean you will lose the right to take care of your own affairs and make your own decisions. You should tell the agent to use the power of attorney only if you become incapacitated or you instruct him to act.

However, a verbal (not written) request to your agent to only act if you are incapacitated is NOT binding. If you feel that this condition is necessary, it should be included in writing in the power of attorney. However, this may make it difficult for your agent to act when he needs to. This is why it is important to have an agent whom you completely trust.

What are my agent’s obligations to me when using a power of attorney to handle my business?

Under Virginia law, the agent you name must act only in your best interests. Your agent should keep records and papers showing what he or she has done for you. You have the right to ask the agent for these records.

Can I later change or revoke the power of attorney?

You can revoke or change the power of attorney at any time as long as you are still mentally able to understand what you are doing. If you are no longer able to understand what you are doing, a court could appoint a guardian or conservator and revoke the power of attorney if it is necessary.

What can be done if an agent misuses the power of attorney or doesn't properly handle my business?

If you are still mentally able to understand what you are doing and you believe your agent is not acting in your best interests, you can revoke the power of attorney. You should **notify the agent** that he is no longer authorized to act on your behalf. You should also **notify any bank or other institution** with which your agent may have done business for you so that they know the agent is no longer authorized to handle your business.

Under Virginia law, a person interested in your welfare (for example, a family member or a co-agent) can make a written request to your agent asking him or her to disclose any actions taken on your behalf within the last five years and to allow reasonable inspection of any records about these actions. If the agent refuses to comply with this request within 60 days, the person can bring a case in circuit court to get a court order requiring the agent to provide the request records.

This brochure is intended for information purposes only and is NOT a suitable substitute for legal advice from a certified attorney.

If you have a specific question, please consult Legal Aid WorksSM at:

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