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**LEGAL SERVICES OF  
NORTHERN  
VIRGINIA, INC.**



**GENERAL DURABLE  
POWER OF  
ATTORNEY  
(UPDATED 2011)**



## 1. WHAT IS A POWER OF ATTORNEY?

Virginia defines a power of attorney as a writing or other record that grants authority to an agent to act in the place of a principal for matters concerning the personal or business affairs of the principal.

## 2. WHAT ARE THE DIFFERENT TYPES OF POWER OF ATTORNEY DOCUMENTS ?

**General Power of Attorney:** The general power of attorney gives the agent broad power to perform tasks for the principal.

**Springing Power of Attorney:** A power of attorney is normally effective as soon as the principal signs it unless it contains language stating that it will not go into effect until a specified time in the future (for example, if you later become unable to handle your own affairs). A power of attorney with this language is called a springing power of attorney.

**Limited Power of Attorney:** A limited power of attorney gives the agent authority to do only certain specific things specified in the document.

**Durable Power of Attorney:** A durable power of attorney will allow the principal's agent to act on the principal's behalf even if the principal is incapacitated. Prior to a revision in the Virginia Code, no power of attorney was durable unless there was specific language making it durable. Currently, all powers of attorney documents signed after July 1, 2010 are durable

## 14. CAN MY AGENT BE HELD PERSONALLY RESPONSIBLE FOR MY DEBTS?

In most situations the agent is shielded from personal liability regarding the principal's debts when acting for the principal. When using the power of attorney, the agent is acting on behalf of the principal. Therefore, he or she is not personally liable (responsible) for any debts of the principal.

An agent can be held personally liable for the principal's debts if he or she does not indicate that he or she is acting on behalf of the principal when signing the document. This may occur when the agent signs only his or her name on a document without indicating that he or she is signing on behalf of the principal. When signing a document on behalf of a principal, the agent should always indicate that he or she is signing as "power of attorney for" or "agent for" the principal. This will help to avoid confusion as to what capacity the agent used in signing the document.

**\*\*\*IMPORTANT DISCLAIMER:**  
EVERYONE'S SITUATION IS DIFFERENT AND MOST EVERY RULE HAS EXCEPTIONS. THE INFORMATION IN THIS BROCHURE IS INTENDED FOR INFORMATIONAL PURPOSES AND SHOULD NOT BE SUBSTITUTED FOR INDIVIDUAL LEGAL ADVICE SPECIFIC TO A PARTICULAR CIRCUMSTANCE. PLEASE CONTACT A LAWYER FOR INDIVIDUAL ADVICE. \*\*\*\*\*

## **11. CAN A POWER OF ATTORNEY BE TERMINATED?**

If you ever feel that you no longer need the agent or are not satisfied with the agent's work, you may revoke his or her authority. If you choose to revoke a power of attorney, the agent's ability to act for you terminates as soon as you inform the agent, either verbally or in writing, of your wishes for the agent to no longer act for you. Once you have revoked the agent's authority, you should contact all third parties that may have had dealings with your agent to notify them that your agent no longer has the authority to act on your behalf. This is very important because, if you do not notify third parties that you have revoked the power of attorney, those third parties will not know to refuse to allow your previous agent to act for you.

## **12. SHOULD I GIVE MY AGENT A COPY OF THE POWER OF ATTORNEY DOCUMENT?**

Your agent should be given a copy of the document and you should keep the original document for your records. Please note that a copy of the document is just as good as the original, so if you are using a copy of the document, it should be honored as if it were the original.

## **13. IS MY AGENT ENTITLED TO COMPENSATION?**

Your agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal, and to compensation that is reasonable under the circumstances.

unless the document expressly provides that it is terminated by the incapacity of the principal.

## **3. WHO IS THE PRINCIPAL?**

The principal is the individual that grants authority to an agent to act on the principal's behalf. In order to appoint an agent, the principal must be able to understand the purpose and significance of signing the power of attorney. The principal must understand the nature and consequences of appointing an agent when he or she signs the document.

## **4. WHO MAY BE AN AGENT?**

An agent, also referred to as attorney-in-fact, is a person granted authority to act for a principal under a power of attorney document. To qualify as an agent, the individual must be at least 18 years old and capable of performing the duties outlined in the documents. Virginia does not require that the agent be a resident of the Commonwealth.

## **5. WHO SHOULD I APPOINT AS MY AGENT?**

The choice of what individual should act as your agent can be very difficult. An agent should be a trusted family member or close friend. Before selecting any individual, it would be wise to speak with them to make sure that they are willing to act as your agent.

## **6. CAN I APPOINT MORE THAN ONE AGENT?**

Virginia allows you to name a substitute agent who can step in if your original agent is unable to act for you. It is a good idea to name a substitute agent in case your first agent is unavailable or unwilling to perform his or her duties. It is also possible to appoint two people, called co-agents, who can both act as your agent at the same time. One disadvantage to having co-agents is that matters can become complicated if the co-agents cannot agree on what decision to make on your behalf if you are incapacitated.

## **7. WHY DO I NEED A POWER OF ATTORNEY?**

A General Durable Power of Attorney is useful in case you become incapacitated and cannot handle your personal or business affairs. In this situation, your agent could quickly take care of your affairs if you had created a General Durable Power of Attorney before you became incapacitated. Once an individual becomes incapacitated, it is too late to create a power of attorney document because the individual no longer has the legal capacity to sign such a document. If you become incapacitated and have not previously created a power of attorney, your family or friends may be forced to petition the Circuit Court to have a guardian and/or conservator appointed over you in order to handle your personal business affairs. Guardianship and conservatorship proceedings are an expensive, slow process, and ultimately the Court

may appoint someone to be your guardian who you would not have chosen. The expense, hassle, and loss of autonomy that guardianship proceedings create can be easily avoided by making a power of attorney.

## **8. IS A POWER OF ATTORNEY FROM ANOTHER STATE VALID IN VIRGINIA?**

A power of attorney executed in another state will be valid in Virginia provided that the document was executed properly under the laws of the state where it was executed.

## **9. I SIGNED A POWER OF ATTORNEY GIVING MY AGENT AUTHORITY TO ACT ON MY BEHALF. IS HE/SHE THE BOSS OF ME?**

Signing a power of attorney does not mean the principal loses the right to make decisions for him or herself. The agent is only permitted to perform duties as directed by the principal if the principal has capacity. If the principal does not have capacity, the agent is required to do what is in the principal's best interest.

## **10. MUST I FILE THE DOCUMENT WITH THE COURT?**

Virginia does not require that your power of attorney document be filed with the court, however, you may file it with the Circuit Court if you wish. This will ensure that the document is in a safe place, and available should you need another copy.