



OFFICE OF THE STAFF JUDGE ADVOCATE 501st COMBAT SUPPORT WING RAF ALCONBURY / RAF CROUGHTON, UK



POWERS OF ATTORNEY AND NOTARIES

Introduction

A Power of Attorney (POA) is a written instrument that allows you (the "principal") to authorize your agent (your "attorney-in-fact") to conduct certain business on your behalf. It is one of the strongest legal documents that you can give to another person and, as such, should not be taken lightly. There are two types of POA: "general" and "special" (or limited). A general POA gives your agent very broad powers to act on your behalf and are usually discouraged. A special POA limits your agent's authority to act only on certain matters. Every act performed by your agent within the authority of the POA is legally binding upon you. Since a POA is such a powerful document, give it only to a trustworthy person, and only when absolutely necessary.

Warning – A third party has the right to refuse to accept a POA. When in doubt contact the business prior to getting a POA to see what requirements are necessary in order to use the POA.

There is no law or regulation specifying when you must give another your power of attorney and another person cannot normally act for you in business or legal matters without receiving your power of attorney. Thus, if you will be unable to act for yourself due to an assignment or a TDY, you should consider using a power of attorney.

A notary is a person authorized to witness signatures on documents and notarization is an official fraud-deterrent process that helps assure the signature is genuine.

General POAs

General POAs grant attorneys-in-fact broad powers and authority. They can be dangerous instruments in the hands of persons inexperienced in business matters, unstable in temperament, or anyone in whom the grantor does not have the utmost trust and confidence. The possibility of strained marital relations, particularly during an extended deployment, should be considered. The legal office recommends that if you have concerns, speak with someone from the legal office regarding the dangers of executing such a document. It's possible that a special or limited power of attorney could accomplish the purposes for which the general power is sought. Under no circumstances should a general power of attorney be drafted and executed unless it contains a specific termination date or other provisions for automatic revocation.

Warnings!! There are two important factors you should consider before you get a general POA. First, remember there is no legal requirement that anyone or any institution recognize a power of attorney. Merely because your agent has your power of attorney does not mean that all businesses will allow your agent to act on your behalf. Second, even if the general POA is accepted, your agent may obligate you in a way you never intended and for which you will be held accountable. The general POA is very powerful and should be used sparingly.

Special POAs

A special POA is a limited power of attorney that only provides your agent the right to act for you to accomplish some specific purpose. Examples include:

- a. Registering or selling your automobile
- b. Selling or buying a house,
- b. Paying your taxes,
- c. Shipping your household goods,
- d. Obtaining medical care for your children, and
- e. Cashing checks.

The authority of the attorney-in-fact is spelled out in the document, narrowly defining the areas in which you allow your agent to obligate you.

Income Tax - If you want someone to file your federal income tax return for you, you must give your attorney-in-fact a special IRS POA (Form 2848). You can find and download this form on the IRS web page at www.irs.gov. If you want someone to file a state income tax return for you, you must give your attorney-in-fact a special POA. A general POA is not sufficient.

Real Estate – A POA for real estate transactions requires you to specifically state a legal description (contained in the deed) of the real property (along with the street address) that you want your attorney-in-fact to buy or sell on your behalf. Your special POA must state that you specifically authorize your attorney-in-fact to enter into a sales contract on your behalf and should state that he or she is empowered to sell only that specific property.

If your attorney-in-fact is acting as a buyer for you, the POA should state that he/she is authorized and directed to comply with the state recording statutes by promptly recording the deed after purchase in the court clerk's office in the county where the property is located. Moreover, whenever a deed is signed pursuant to a POA, both the deed and the power of attorney should be recorded and thus both need to be executed with the proper formalities (witnesses and notary).

Durable Power of Attorney

A *durable power of attorney* is a document that authorizes a third party to make health care decisions in the event you become incapacitated. Unlike a living will where your wishes are provided, this document allows another person to “step in your shoes” and make decisions concerning your medical care on your behalf.

Not a Will Substitute

POAs do not replace wills and do not prevent probate. Because the authority you have given your agent will terminate upon your death (or the date your agent learns of your death) the POA will only serve to facilitate your business and personal affairs while you are away from home.

Revocation

A POA is automatically revoked when: (1) your agent learns of your death, (2) the date specified in the document arrives, or (3) you affirmatively revoke or terminate the POA and thus your agent's powers. To prevent misuse of a previously granted POA you will need to destroy all copies of the document, including any copies held by the agent. Notice of the revocation should also be provided to your creditors. Limit the period that the power of attorney is in effect to the absolute minimum necessary to accomplish the task. Except in very unusual circumstances, no power of attorney should be granted for more than one year.

Special Considerations

- a. Because we are overseas, you need to be aware that the POAs that we are discussing are U.S. based POAs. Thus, any dealings and affairs you may have off base while stationed here at RAF Croughton will need a local POA.
- b. A POA becomes void upon the death of the principal.
- c. A POA normally is void if the principal becomes physically or mentally incapacitated. However, appropriate "durability" language may be added to the POA, which will ensure that it remains valid during any period of incapacity.
- d. Any third party has the right to refuse to accept a POA.
- e. A POA should be given for only a limited time period (such as six months during a deployment). A third party is more likely to accept a POA with a recent date than one, which is many months or years old.
- f. Many financial institutions and other businesses have their own POAs which they prefer to be used to conduct business. It is a good idea to show your POA to all known third parties who may be dealing with your named attorney-in-fact to ensure that your POA is acceptable to them.
- g. Never give a general POA when a special POA will accomplish the mission. There is less opportunity for abuse when only limited powers are given.
- h. A special POA should be as specific as possible. For example, if you are authorizing an attorney-in-fact to sell a vehicle on your behalf, specify the vehicle, license number, vehicle identification number, the make/model/year of the vehicle, and any specific terms you will require. Your legal assistance attorney can help you tailor the POA to suit your precise needs.
- i. You may revoke a POA before its expiration date by executing a revocation of the POA. Notice of the revocation must be delivered to the attorney-in-fact, as well as to all third parties who you know relied on the POA. If possible, recover from the attorney-in-fact and destroy the original and all copies of the POA. Even though the POA has been revoked, you may be responsible to any third party who did not receive notice of the revocation.

Special POAs Offered

The types of special POAs offered at the legal office may be found at:
https://aflegalassistance.law.af.mil/apps/aflaass_public/bin/poa.php

Notaries

A "notary" or "notary public" is a person authorized to administer oaths and to certify documents as genuine. Military notaries are authorized by federal statute (Title 10, United States Code, Section 1044a). That statute also requires all states and US territories honor the notarial acts of military notaries.

Military notaries will be able to certify signatures on documents. However, military notaries are generally unable to certify documents as true and accurate copies. If you need a document certified as true and accurate, for a court proceeding for example, then you may obtain that from the actual custodian of the record.

Resources -<https://aflegalassistance.law.af.mil/>

Conclusion

A power of attorney allows your agent to act for you in your absence. Special POAs drafted to fit individual needs on a one-time basis or for a limited period of time are usually your best choice. Call or email the legal office for more guidance and help in determining whether you need a POA. Also, the legal office will be able to assist you with notaries.

RAF Alconbury and RAF Croughton Legal Office Hours

All Services by Appointment Only (email 501cswja@us.af.mil)

Tuesdays and Thursdays 1000-1200 & 1300-1400

Current as of May 2022