

POWERS OF ATTORNEY



POWER OF ATTORNEY

A Power of Attorney is a written document authorizing someone you name (your "agent" or "attorney-in-fact") to make decisions for you. These decisions can include financial and business decisions. They may include health and medical care decisions. A Power of Attorney can also contain instructions or guidelines you want your agent to follow.

You will find two different forms of Power of Attorney in this section:

- Statutory Form Power of Attorney; and
- Durable Power of Attorney for Health Care and Medical Treatment.

The Statutory Power of Attorney form was created by the Montana legislature. It will allow you to decide the powers you want to delegate to another person. You will be able to decide when the authorization to act on your behalf will take effect.

You will also find a Durable Power of Attorney for Health Care and Medical Treatment form. If you should ever lose your capacity to make and/or communicate decisions because of a temporary or permanent illness or injury, the Durable Power of Attorney for Health Care allows you to retain some control over important health care decisions by designating a person to make health care decisions for you.

Without a Power of Attorney, many health care providers and institutions will make critical decisions for you, not necessarily based on what you would want. In some situations, a court appointed guardian may become necessary unless you have a health care power of attorney, especially where the health care decision requires that money be spent for your care.

A Durable Power of Attorney for Health Care is different from a Living Will. A Living Will is a written statement of your wishes regarding the use of medical treatments in end-of-life situations. The statement is to be followed if you are unable to provide instructions at the time the medical decision needs to be made. Living wills are recognized in Montana. However, they are limited to decisions about "life-sustaining procedures" in the event of "terminal illness" and when your life expectancy is a "short period of time."

The Health Care Power of Attorney applies to all medical decisions, unless you decide to include limitations. This Power can include specific instructions to your agent about any treatment you want done or want to avoid.

You need to be careful with the use of the Power of Attorney. The power you grant to another person may be broad and sweeping. The power will become effective immediately unless you state otherwise.

You need to have your signature notarized on your Power of Attorney by a Notary Public. You also need to give the original Power of Attorney to your agent so he/she will have the document when the time comes to make decisions for you. You want to make certain the person to whom you give the power is trusted and knows your intent.

You may revoke your Power of Attorney at any time. You will find a "Revocation of the Power of Attorney" form at the end of this section. You must sign and date the revocation. You must make a copy of the revocation and deliver it to the businesses, physicians, banks and hospitals that may be relying upon the Power of Attorney you originally executed.

MONTANA STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act, Title 72, chapter 31, part 2. This power of attorney does not authorize the agent to make health care decisions for you. You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you. Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions. This form provides for designation of one agent. If you wish to name more than one agent, you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions. If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent. This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I (Name of Principal) name the following person as my agent: Name of Agent:
Agent's Address:.....
Agent's Telephone Number:.....

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:
Name of Successor Agent:..... Successor Agent's
Address:..... Successor Agent's Telephone Number:.....

If my successor agent is unable or unwilling to act for me, I name as my second successor agent: Name of Second Successor Agent:.....
Second Successor Agent's Address:.....
Second Successor Agent's Telephone Number:.....

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act, Title 72, chapter 31, part 2: (INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- Real Property
- Tangible Personal Property
- Stocks and Bonds
- Commodities and Options
- Banks and Other Financial Institutions
- Operation of Entity or Business
- Insurance and Annuities
- Estates, Trusts, and Other Beneficial Interests
- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service Retirement Plans
- Taxes
- All Preceding Subjects

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent/person to whom the agent owes an obligation of support unless I have included that authority in the Special or Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

.....
.....
.....
.....
.....
.....
.....

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a conservator or guardian of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for conservator or guardian of my estate:

.....

Nominee's Address:.....

Nominee's Telephone Number:.....

Name of Nominee for guardian of my person:

Nominee's Address:

Nominee's Telephone Number:

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

(1) do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest; (2) act in good faith; (3) do nothing beyond the authority granted in this power of attorney; and (4) disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner: (Principal's Name) by (Your Signature) as Agent. Unless the Special Instructions in this power of attorney state otherwise, you must also: (1) act loyally for the principal's benefit; (2) avoid conflicts that would impair your ability to act in the principal's best interest; (3) act with care, competence, and diligence; (4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal; (5) cooperate with any person who has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and (6) attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

TERMINATION OF AGENT'S AUTHORITY

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include: (1) death of the principal; (2) the principal's revocation of the power of attorney or your authority; (3) the occurrence of a termination event stated in the power of attorney; (4) the purpose of the power of attorney is fully accomplished; or (5) if you are married to the principal, a legal action is filed with a court to end or annul your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

LIABILITY OF AGENT

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, Title 72, chapter 31, part 2. If you violate the Uniform Power of Attorney Act, Title 72, chapter 31, part 2, or act outside the authority granted, you may be liable for any damages caused by your violation. If there is anything about this document or your duties that you do not understand, you should seek legal advice.

AGENT CERTIFICATION – OPTIONAL FORM

Agent’s Certification is an optional form and may be used by an agent to certify facts concerning a power of attorney.

****Note: The Legal Service Developer Program recommends this form be signed by the agent.**

AGENT’S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT’S AUTHORITY

State of _____

County of _____

I, _____ (Name of Agent), certify under penalty of perjury that _____ (Name of Principal) granted me authority as agent or successor agent in a power of attorney dated _____

I further certify that to my knowledge:

- (1) the principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney and the power of attorney and my authority to act under the power of attorney have not terminated;
- (2) if the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;
- (3) if I was named as a successor agent, the prior agent is no longer able or willing to serve;

and

- (4) _____

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

Agent's Signature

Date

Agent's Name Printed

Agent's Address

Agent's Telephone Number

This document was acknowledged before me on _____
(Date)

By _____

(Name of Agent) _____

Signature of Notary

My commission expires: _____

This document prepared by: _____

**DURABLE POWER OF ATTORNEY
FOR HEALTH CARE AND MEDICAL TREATMENT**

I, _____ of the City of _____,
State of Montana, do hereby make, constitute, nominate and appoint
_____ presently residing in _____,
County, State of Montana, as my true and lawful attorney-in-fact to act for me and
in my place and stead for the purpose of making any and all decisions regarding my
health and, medical care and treatment at any time that I may be, by reason of
physical, mental disability, incompetency or incapacity, incapable of making
decisions on my behalf.

- 1.** I grant said attorney-in-fact complete and full authority to do and perform all and every act and thing whatsoever requisite, proper and necessary to be done in the exercise of the rights herein granted, as fully for all intents and purposes as I might or could do if personally present and able with full power of substitution or revocation, hereby ratifying and confirming all that said attorney-in-fact shall lawfully do or cause to be done by virtue of this Power of Attorney and the rights and powers granted herein.
- 2.** If, at any time, I am unable to make or communicate decisions concerning my medical care and treatment, by virtue of physical, mental or emotional disability, incompetency, incapacity, illness or otherwise, my said attorney-in-fact shall have the authority to make all health care decisions and all medical care and treatment decisions for me and on my behalf, including consenting or refusing to consent to any care, treatment, service or procedure to maintain, diagnose or treat my mental or physical condition.
- 3.** In the absence of my ability to give directions regarding my health care, it is my intention that my said attorney-in-fact shall exercise this specific grant of authority and that such exercise shall be honored by my family, physicians, nurses, and any other health care provider(s) or facility in which or by which I may be treated, as a final expression of my legal rights.
- 4.** This Power of Attorney is durable and will continue to be effective if I become disabled, incapacitated, or incompetent.

5. This Durable Power of Attorney is effective in any state that I may seek or receive medical-treatment and health care.

6. I specifically direct all health care providers, including physicians, nurses, therapists and medical and hospital staff to follow the directions of my attorney-in-fact and such decisions are superior to, and shall take precedence over, any decisions made by any member of my family.

7. The rights, powers, and authority of said attorney-in-fact herein granted shall commence and be in full force and effect immediately.

8. If any agent named by me dies, becomes incompetent, resigns or refuses to accept the office of agent, I name the following persons (each to act alone and successively, in the order named) as successor(s) to the agent:

A. _____

B. _____

9. Special instructions: On the following lines I give special instructions limiting or extending the powers granted to my agent.

10. I hereby designate _____ to determine whether I am unable to make or communicate decisions concerning my medical care and treatment by virtue of my physical, mental, or emotional disability, incompetency, incapacity, illness or otherwise. This determination will be provided in writing and attached to this Durable Power of Attorney for Health Care and Medical Treatment.

Dated this _____ day of _____, _____.

Signature of Principal: _____

State of Montana

County of _____

Subscribed, sworn to and acknowledged before me this _____ day
of _____, _____.

(NOTARIAL SEAL)

(Signature of Notarial Officer)

Printed Name: _____

Notary Public for the State of Montana

Residing at: _____

My Commission Expires: _____

REVOCATION OF POWER OF ATTORNEY

I, _____, hereby revoke all Powers of Attorney granted to _____ on _____. This is a full revocation and is effective immediately. (Date)

Dated this _____ day of _____, _____.

State of Montana
County of _____

Subscribed, acknowledged, and sworn to before me this _____ day of _____, _____.

(NOTARIAL SEAL)

(Signature of Notarial Officer)
Printed Name: _____
Notary Public for the State of Montana
Residing at: _____
My Commission Expires: _____