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# QUESTIONS AND ANSWERS ON POWERS OF ATTORNEY

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COLUMBIA LEGAL SERVICES

AUGUST 2008

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## **1. What is a power of attorney?**

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It is often convenient – or even necessary – to have someone else act for you. When you give someone the authority to act for you, you give what is called a *power of attorney*. If you give a power of attorney, you are called the *principal* and the person you give it to is called the *agent* or the *attorney-in-fact*.

A paper signed by a principal giving powers to an agent is sometimes itself called a *power of attorney*.

A paper giving a power of attorney should be clear and understandable. It should give only those powers you want to give. The powers given may be very limited or very broad.

The basic laws about powers of attorney can be found in Chapter 11.94 of the Revised Code of Washington. The Revised Code of Washington should be available in most public libraries. You can find it on the Internet at [www.leg.wa.gov](http://www.leg.wa.gov) by selecting “Laws and Agency Rules.”

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## **2. What kinds of things may I authorize an agent to do?**

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Many things that people do may be done through agents. An agent may be authorized to:

- make health-care decisions for you or your minor children
- buy or sell things

- manage a business
- collect debts
- invest money
- cash checks
- manage financial matters generally
- sue on behalf of the principal

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## **3. When does a power of attorney take effect and how long does it last?**

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A power of attorney can be written either to take effect immediately or to take effect at some time in the future. The future time may be a specific date or may be defined by the occurrence of some event – for example, a certification by your doctor or by some other person of your choice that you are unable to make decisions on your own. A power of attorney can be written to last either for a limited period of time or indefinitely.

Your power of attorney ends when you die; so, it is not a substitute for a will. The effect of mental incapacity on a power of attorney is discussed in the next section.

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## **4. What is a durable power of attorney?**

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Unless your power of attorney specifically says otherwise, your agent’s power ends if you become mentally incapacitated. However, a power of attorney may say that it is to remain in effect in the event of future incapacity of the principal. A power of attorney that says this is called a *durable* power of attorney.

Durable powers of attorney can be written to cover two situations.

1. You want the agent to have authority only if you become unable to act for yourself; or
2. You want the power of attorney to take effect immediately and to continue in effect if you become incapacitated.

You must specify in the power of attorney document *what* powers are given to the agent and *when* those powers are to take effect.

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**5. Is a durable power of attorney an alternative to a guardianship?**

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Only if it is given before the principal becomes mentally incapacitated. To give a power of attorney, a principal must have the mental capacity to understand what he or she is doing. Once a person has lost that capacity, it is too late for that person to give a power of attorney. At that point, a court will have to appoint a guardian for the incapacitated person, if there is a need.

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**6. Can a power of attorney be used to make health care decisions?**

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Yes. A power of attorney can be written to include the power to make most health care decisions; but there are some exceptions. A court order is ordinarily needed to authorize certain treatments for someone who cannot personally consent to them. These include amputation, shock therapy, and mental health procedures that restrict a person’s freedom of movement.

A person wishing to give an agent broader authority to make decisions about mental health treatment can do so with a *mental health advance directive*. Information about mental

health advance directives is available from the Mental Health Division of the Department of Social and Health Services at (360) 902-0803 or on the Internet at the following address: [www1.dshs.wa.gov/mentalhealth/advdirectives.shtml](http://www1.dshs.wa.gov/mentalhealth/advdirectives.shtml).

If you give an agent the power to make health care decisions for you, it is important to explain how you want the power to be used. It can be helpful to give the explanation in writing, either as part of the power of attorney document or separately. The explanation can be very detailed – for example, “In the event of cardiac arrest, I do not want cardiopulmonary resuscitation (CPR)” – or very general – for example, “I want you to do whatever you think is best for me.”

If you want life-sustaining procedures withheld or withdrawn if death from an incurable, terminal condition is imminent, then it is a good idea to say so in what is called a *living will* (sometimes also called a *directive to physicians* or an *advance directive*). A Columbia Legal Services pamphlet on living wills should be available where this pamphlet on powers of attorney is available. It is also available on the web site [www.WashingtonLawHelp.org](http://www.WashingtonLawHelp.org). Select “Aging/Elder Law” and then “medical issues for seniors”; then scroll down to “Questions and Answers on Living Wills.”

The Department of Social & Health Services also has a pamphlet entitled “Your Legal Right to Make Decisions about Health Care and Advance Directives in Washington,” available on its web site at [www.aasa.dshs.wa.gov/Library/publications](http://www.aasa.dshs.wa.gov/Library/publications) or by writing to DSHS Warehouse, P.O. Box 45816, Olympia, WA 98504-5816, and asking for “DSHS 22-015(X).”

Certain people cannot be given power of attorney to make health care decisions for you. These include your doctor or your doctor's employees and the owner or employees of a health care facility you live in.

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**7. Must each power that is given be specifically mentioned in the paper?**

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Broad language giving an agent "all powers that the principal has" to manage the principal's financial affairs or make health care decisions may be enough for many purposes. But some powers are given only if they are specifically mentioned. Those requiring specific mention include:

- the power to make gifts of your money or other property
- the power to change your community property agreement
- the power to designate beneficiaries of your insurance policies

Some powers cannot be given to an agent. Those include:

- the power to vote in public elections
- the power to make or alter a will

Specifically authorized powers may be especially important for married or registered-domestic partners concerned about what would happen if one partner should become ill and need nursing-home care or other long-term care. Authority to revoke a community property agreement and to transfer property from the disabled partner to the healthy partner may be important for Medicaid eligibility purposes. On the other hand, *giving an agent broad powers to make gifts of your property may result in serious problems* if the agent turns out to be untrustworthy or

unwise. Individual consultation about these issues is recommended.

Pamphlets about Medicaid for nursing home residents and about Washington's COPES program for long-term care outside of nursing homes, with further information on the subject of transfers of property and Medicaid, are available on the Internet at [www.WashingtonLawHelp.org](http://www.WashingtonLawHelp.org). Select "Aging/Elder Law" and then "long-term care assistance."

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**8. Are there risks involved in giving someone a power of attorney?**

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Yes. With a power of attorney, an agent is often entrusted with important decisions. And the agent may have access to some or all of your money or other property. If the agent is not trustworthy, serious problems can result. For example, if the agent is dishonest and runs away with your money, it may be difficult or impossible to get the money back.

An agent is not permitted to use your property for his or her own benefit unless you have expressly authorized the agent to do so. But some agents violate their legal obligations, and you may not be able to get your property back or get compensation from your agent.

Also, a principal will ordinarily be bound by the agent's acts (even foolish acts) and will be responsible for the agent's negligence while the agent is acting for the principal. For example, if an agent is authorized to manage your financial affairs and signs a contract to purchase something on your behalf, you will ordinarily have to pay for it, like it or not.

It is obviously important to choose a trustworthy agent; if no trustworthy candidate is available, a power of attorney should not be

given. Just what powers to give an agent should also be carefully considered.

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**9. What rules should govern an agent’s judgment in making decisions for you?**

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Your agent has an obligation to act in accordance with your wishes so long as you have the mental capacity to make your own decisions. If you lose that capacity, your agent should attempt to do what you would have wished if you still had the capacity to act. In other words, the agent should try to act consistently with the values you embraced before you became incapacitated.

So, for example, if your agent knows that when you were fully competent you were always opposed as a matter of principle to a certain medical procedure or to investment in a certain company, then the agent should not consent to such a medical procedure or invest in such a company on your behalf.

An agent who cannot determine what you would have wanted if you were not incapacitated is required to act in what he or she judges to be your best interests.

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**10. Can I continue to act independently after giving a power of attorney?**

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Yes. Giving someone a power of attorney does not prevent you from making decisions or conducting business for yourself. If you and the agent disagree, your decision governs. (This assumes the decisions are announced at the same time. If an agent has decided to sell an item of property and has sold it, your later announcement that you do not want to sell it doesn’t invalidate the sale.) If the agent does not respect your wishes, you should cancel the power of attorney.

A delicate problem may arise if an agent with a durable power of attorney believes the principal now lacks the mental capacity to cancel the power of attorney, but the principal disagrees. In such a case, the most appropriate response may be for the agent to file a guardianship proceeding or a petition under RCW 11.94.090 (the power-of-attorney statute) and ask a court to determine whether the principal is mentally incapacitated. A pamphlet about guardianship is available at [www.WashingtonLawHelp.org](http://www.WashingtonLawHelp.org). Select “Aging/Elder Law” and then “guardianship & powers of attorney.”

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**11. Can powers of attorney be given to more than one agent at the same time?**

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Yes. You can give powers of attorney to two or more people at the same time, and you can name a second agent to take over under specified circumstances (such as the death of the first agent).

But before giving powers of attorney to more than one person at the same time, it is worth considering whether confusion or conflict is likely to result. It is probably wise to discuss the potential advantages and disadvantages (and ways to address the disadvantages) with a lawyer before giving powers of attorney to more than one person.

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**12. Must a power of attorney be notarized or recorded?**

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Sometimes. If you want to give an agent the power to sell land, or to transfer or encumber title to land in some other way, the power of attorney must be signed in front of a notary, who must declare that you signed it voluntarily for the purposes mentioned in it. Before using the power of attorney for a real

estate transaction, it must be recorded in the county office where deeds are recorded. A copy will be made for the public record, and the original will be returned to the person submitting it.

If no land is going to be dealt with, it is not legally necessary to sign a power of attorney in front of a notary or to have it recorded; but both notarization and recording may still be wise. Some institutions or individuals may doubt the validity of a power of attorney that has not been notarized; if the principal is not available to confirm its validity, they may be reluctant to honor it. As for recording, it offers the advantage of allowing the agent to obtain certified copies, which can be useful.

In King County, powers of attorney should be recorded in Room 311 of the King County Administration Building at 4<sup>th</sup> and James in Seattle. There is an \$42 charge for the first page of the document and a \$1 charge for each additional page. Recording in other counties may be done in the office of the county recorder or auditor.

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**13. Can a power of attorney be canceled?**

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Yes. To cancel a power of attorney, you should give written notice to the agent and, if possible, to anyone who has been relying on the power of attorney. If the power of attorney has been filed with a county records department, the paper canceling (or revoking) the power of attorney should be filed in the same place. (A form that can be used to cancel a power of attorney is attached to this pamphlet.)

If you have named a spouse or registered domestic partner as your agent, his or her authority to act under the power of attorney is automatically terminated in the event of

divorce, legal separation or termination of the registered domestic partnership.

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**14. Is there court supervision of a power of attorney?**

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An agent with power of attorney ordinarily acts without any court supervision. However, a court can be asked to consider certain issues relating to a power of attorney. The request can be made by the principal, the agent or certain other interested individuals. A court may, for example, decide whether a third person must honor a power of attorney, it may order an agent to give an accounting to the principal or to a third party, it may interpret or modify the power of attorney or remove the agent.

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**15. Is a lawyer needed to prepare a power of attorney?**

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There is no legal requirement that a power of attorney be prepared or reviewed by a lawyer. However, if important powers are going to be given to an agent, it is wise to get individual legal advice before signing a complicated form. A person who signs a power of attorney without fully understanding what it means, and without considering risks and alternatives, is asking for trouble.

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**16. Where can I get individual legal advice about powers of attorney?**

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Lawyers who work with wills and probate, or who refer to their area of practice as “elder law” should be knowledgeable about powers of attorney.

In King County, the King County Bar Association Lawyer Referral Service refers

people to private lawyers. Its number is (206) 267-7010. There is a \$35 referral fee, which covers the first half hour of consultation. Some free and low fee services are available for people of modest means through the King County Bar Association. Information about these services is available at (206) 267-7055. Some other counties have similar services. For more information, contact your county bar association or call the Northwest Justice Project at 1-888-201-1014.

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**Sample forms - and a warning.**

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Three sample forms are provided with this pamphlet. They are (1) a durable power of attorney, (2) a power of attorney designed for a limited purpose, and (3) a form that revokes a power of attorney.

While it is possible to fill in the blanks and use these forms, they may not be appropriate for your individual situation. It is best to have a power of attorney tailored to your individual needs. It should give only those powers you want to give, and should go into effect only under the conditions in which you want it to.

Powers of Attorney 8-08 (8-11-08)

Prepared by  
Columbia Legal Services

Filed for record at the request of:

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## DURABLE POWER OF ATTORNEY

I, \_\_\_\_\_, resident of the State of Washington, revoke any powers of attorney I may have given in the past and give \_\_\_\_\_ (referred to below as "the agent") a durable power of attorney. I intend that it not be limited by any disability I may have in the future.

### 1. POWERS

A. The agent shall act on my behalf and for my benefit, and shall have all powers over my estate that I have or acquire. These shall include, but not be limited to, the following: the power to make deposits to, and payments from, any account in my name in any financial institution; the power to open and remove items from any safe deposit box in my name; the power to sell, exchange or transfer title to stocks, bonds or other securities; the power to sell, convey or encumber any real or personal property.

B. The agent shall have the power to consent to, or to withhold consent from, medical treatment, shall have all powers necessary or desirable to provide for my support, maintenance, health and comfort; the agent shall be entitled to obtain and use any of my medical records or other individually identifiable health information to the same extent as I would myself. This is intended as a full release of all information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

C. I authorize the agent to revoke any community property agreement and to transfer any property to my spouse or registered domestic partner as a gift. \_\_\_\_\_ (*Initial* here if revocation of a community property agreement and gifts to a spouse or registered domestic partner are authorized. If they are not authorized, cross out all of paragraph C.)

D. I authorize the agent to make gifts of my property to the following person or persons: \_\_\_\_\_.

Gifts under this paragraph may be:

\_\_\_\_\_ in any amount

\_\_\_\_\_ not more than \$\_\_\_\_\_ per year

(If gifts are authorized under paragraph D, either *initial* next to “in any amount” or *initial* next to “no more than” and fill in a dollar amount. If gifts are not authorized, cross out all of paragraph D.)

No gift may be made under this power of attorney, except to a spouse or registered domestic partner if authorized under paragraph 1(C), unless authorized by this paragraph.

## **2. EFFECTIVE DATE, REVOCATION AND DISPOSITION OF REMAINS**

A. This power of attorney shall become effective (initial the choice that applies):

\_\_\_\_\_ immediately

\_\_\_\_\_ only when my agent certifies in writing that I lack the mental capacity to make important decisions independently. (This certification may be made using the box at the end of this document, or may be made in a separate writing.)

B. It shall remain in effect until revoked or until my death.

C. After my death, my agent shall have the authority to act as my representative for purposes of controlling the disposition of my remains, as authorized under RCW 68.50.16, if I have not otherwise made lawful provision for their disposition.

D. I may revoke this power of attorney by giving written notice to the agent and, if the power of attorney has been recorded, by recording the written instrument of revocation in the county office where deeds are recorded.

E. If I give notice of revocation after my agent has certified that I lack the mental capacity to make important decisions, then my agent’s power or attorney shall be suspended unless and until a court determines that the revocation was not effective.

**3. RIGHTS AND DUTIES OF THE AGENT**

A. My estate shall hold the agent harmless from, and indemnify the agent for, all liability for acts done for me in good faith based on this power of attorney.

B. The agent shall be required to account to any subsequently appointed personal representative.

**4. NOMINATION OF GUARDIAN**

I nominate the agent for consideration by the court as my guardian or limited guardian in the event that any guardianship proceeding for my person or estate should be commenced.

**5. SUBSTITUTE AGENT**

I appoint \_\_\_\_\_ to serve as substitute agent in place of the agent named in paragraph 1 above, if the agent named in paragraph 1 is unable or unwilling to serve. A statement signed by the substitute agent, affirming that the agent named in paragraph 1 is unable or unwilling to serve shall be sufficient to establish that the agent is unable or unwilling to serve.

(If no substitute agent is named, this paragraph should be crossed out.)

Dated: \_\_\_\_\_

\_\_\_\_\_

On \_\_\_\_\_, a person I know to be \_\_\_\_\_ appeared before me in person, signed above, and acknowledged that the signing was done freely and voluntarily for the purposes mentioned above.

Dated: \_\_\_\_\_

\_\_\_\_\_

Notary Public, State of Washington,

residing at:

Commission expires:

**Certification of Incapacity**

I certify that the principal lacks the mental capacity to make important decisions independently.

dated: \_\_\_\_\_

\_\_\_\_\_

signature

printed name: \_\_\_\_\_

address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

telephone: \_\_\_\_\_

Filed for record at the request of:

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**POWER OF ATTORNEY**  
[LIMITED PURPOSE]

I \_\_\_\_\_, resident of the State of Washington, give  
\_\_\_\_\_ (referred to below as "the agent") a power of  
attorney for the following purpose:

\_\_\_\_\_

The power shall remain in effect until \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_

On \_\_\_\_\_, a person I know to be \_\_\_\_\_  
appeared before me in person, signed above, and acknowledged that the signing was  
done freely and voluntarily for the purposes mentioned above.  
Dated: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public, State of Washington,  
residing at:  
Commission expires:

Filed for record at the request of:

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**REVOCAION OF POWER OF ATTORNEY**

I revoke the power of attorney I gave to \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_

On \_\_\_\_\_, a person I know to be \_\_\_\_\_  
appeared before me in person, signed above, and acknowledged that the signing was  
done freely and voluntarily for the purposes mentioned above.

Dated: \_\_\_\_\_

\_\_\_\_\_

Notary Public, State of Washington,  
residing at:  
Commission expires: