

## Durable Power of Attorney (DPOA) Information Sheet

The Power of Attorney is a document that grants others the authority to manage your personal affairs. The person named as your attorney-in-fact has the right to act on your behalf for matters designated. A *Durable* Power of Attorney (also known as a DPOA) extends the powers granted beyond the time when the you become incapacitated or absent, until the time of your death.<sup>1</sup>

Effective Date. The DPOA may become active immediately, at some future time of your choosing, or only when you are deemed to be incapacitated by one or more physicians or licensed mental health professionals. Sometimes people complete a DPOA that is effective immediately, but do not give it to anyone until they are ready for its use. If you create a DPOA effective only when you are determined to be incapacitated, consider whether to provide copies of your DPOA to relevant institutions before it is effective, so that it can be accessed easily when needed.

Types of Powers. The document may be limited to certain types of affairs (such as medical *or* financial) or it may be more general, to include multiple types of personal affairs (such as medical, financial, property, contracts, etc.). It is your responsibility to decide which type of DPOA to execute. Some choose to assign specific powers to different people; such as a medical DPOA appointing one person to make medical decisions and a financial DPOA appointing a different person to make financial decisions.

One or more broadly written DPOAs, for health and non-health decisions, together with an Advance Directive, should preclude any need for seeking legal guardianship. Without these documents, the only way to take over someone else's affairs is through a court proceeding to get that person declared partially or fully incompetent and have another person appointed by a judge as their guardian.

Revocability. The DPOA is a revocable document -- you may revoke the document by writing a new DPOA or by writing a revocation. You must be of sound mind at the time of revocation. When changing or revoking a DPOA, you must advise those who have a copy of the earlier one that it is no longer valid. You should therefore keep track of the distribution of your DPOA for future reference.

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<sup>1</sup> A limited power of attorney, is valid for a specific period of time and may be designed for specific uses only. A typical example is use of a limited power of attorney to close on a house purchase if you cannot be present. Granting permission for a stock broker to initiate stock purchases and sales is another example of a limited power of attorney. A limited power of attorney ceases to be effective when the grantor becomes incapacitated.

Other requirements. DPOA document requirements include the following:

- You must be at least 18 years of age and of sound mind
- The person appointed as DPOA must be at least 18 years of age
- The Statutory Form does not require witnesses, but does need to be notarized. Other forms must be signed in front of two witnesses and a notary public.

Examples. We have included three examples of Durable Power of Attorney forms, and recommend that you consult an attorney prior to executing any form. Free legal consultations are available to people over 60 through the Tulsa office of Legal Aid Services of Oklahoma (918-284-4357).

1. Oklahoma Statutory Power of Attorney Form (excludes health care powers)  
This form has been approved by the Oklahoma legislature, and covers all non-health related areas of personal business, real and tangible property, financial and business, insurance and retirement, etc. The form itself lists these powers briefly, and allows you to select any or all of them. We have included the full statute as well, because it provides complete definitions of each of the powers you may select.

The Statutory Power of Attorney form allows you to say whether or not you intend for it to be ‘durable’, to remain in effect after you become incapacitated. It becomes effective immediately, unless you direct otherwise in the section titled “Special Instructions”. This section may also be used to specify an alternate person to serve, and any other information you want to add, such as specific language for IRS filings as now required, or nomination of guardian if ever needed.

2. Durable Power of Attorney (with health care powers only)  
This form is authorized by the Oklahoma Department of Human Services, and relates to health care only. It lists a number of specific powers regarding medical decisions about treatment, selection of health care providers, where you live and get health support, election of hospice, etc., but excludes the life sustaining questions addressed in the Advance Directive. You should also execute the Advance Directive. This form *does not take the place of* the health proxy declaration in the Advance Directive.

This form allows you to choose whether it becomes effective immediately or when your attending physician determines you are no longer able to “manage your person.”

It also has a section where you may provide additional guidance and extend or limit your agent's powers if you choose.

3. Durable Power of Attorney (includes both health care and non-healthcare powers)

This form is an example of a durable power of attorney form that provides for both healthcare and non-health care powers. It also includes the HIPAA information release authorization for the person designated as your attorney-in-fact, and provides for you to nominate someone to be your guardian, should that ever be necessary. It recites which powers you wish to delegate, in considerable detail, more closely resembling the definitions provided separately to the Statutory Form Power of Attorney, and identifies some specific prohibitions, such as taking out loans or making gifts. If you wish to use this type of customized form, you must find out from your attorney whether the wording can substitute for the health care proxy portion of an Oklahoma Advance Directive, because the requirements are quite stringent. Any choices you make in an Advance Directive override choices made here, if there is a conflict.

This is the type of form which a lawyer would likely draw up for you, as it is crafted to include those powers and specific instructions you want, rather than having a list from which you choose. It also can be more specific and respond to changes in regulations. (e.g. specific language re IRS tax filing forms and dates in paragraph 3.13). Because all powers are given to the same person in this example, including health care, custodial, and financial, it eliminates any potential for conflict. However, it would be inappropriate, should you wish to have different people responsible for your financial or health care powers.

This example also takes effect only when you are determined to be disabled or incapacitated, and gives specific instructions for how that determination is made, and for how it can be reversed later, should your condition change.