

Frequently Asked Questions About Durable Power of Attorney

Question No. 1: **What is a Power of Attorney?**

Answer: A *Power of Attorney* means a writing or other record that grants authority to an *Agent* to act in the place of the *Principal*.

Question No. 2: **What is a *Durable Power of Attorney*?**

Answer: A *Durable Power of Attorney* according to Section 87-3-105 of the Mississippi Code Annotated, as Amended, is a power of attorney by which a *Principal* designates another his *attorney in fact* in writing contains the words "*This power of attorney shall not be affected by subsequent disability or incapacity of the principle, or lapse of time,*" or "*This power of attorney shall become effective upon the disability or incapacity of the principal,*" or similar words showing the intent of the *Principal* that the authority conferred shall be exercisable notwithstanding the *Principal's* subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

Question No. 3: **Who is the *Principal* and the *Agent* in a *Durable Power of Attorney*?**

Answer: The *Principal* is the person who is granting or delegating authority to the *Agent* in a power of attorney. Whereas, the *Agent* is the person granted the authority to act for a principal under a *Durable Power of Attorney*.

Question No. 4: **Who can execute or sign the *Durable Power of Attorney*?**

Answer: The *Durable Power of Attorney* must be signed by the *Principal* or in the *Principal's* *conscious* presence by another person who has been directed by the *Principal* to sign the *Principal's* name on the power of attorney. Please note that a signature on a power of attorney is presumed to be genuine if the *Principal* acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

Question No. 5: **When does a *Durable Power of Attorney* becomes effective?**

Answer: A *Durable Power of Attorney* is effective when signed unless the *Principal* provides in the *Durable Power of Attorney* that it becomes effective at a future date or upon the occurrence of a future event or contingency.

Question No. 6: **When does the power of the *Attorney-in-fact* or *Agent* terminates in a *Durable Power of Attorney*?**

Answer: A *Durable Power of Attorney* can terminate under the following circumstances:

- (1) The *Principal* dies;
- (2) The *Principal* revokes the *Power of Attorney*;
- (3) The *Durable Power of Attorney* provides that it terminates;
- (4) The purpose of the *Durable Power of Attorney* is accomplished; or
- (5) The *Principal* revokes the *Agent's* authority or the *Agent* dies, becomes incapacitated, or resigns, and the *Durable Power of Attorney* does not provide for another *Agent* to act under the *Durable Power of Attorney*.

Question No. 7: **Can a person (*Principal*) designate more than one person to act as his *Agents* or *Successor Agents*?**

Answer: Yes, even though we do not highly recommend such, the *Principal* does have the right to designate two or more persons to act as his *Co-agents* and each *Co-agent* may exercise its authority independently—unless the Durable Power of Attorney provides, otherwise. In addition, the *Principal* is vested with the authority to designate one or more successor *Agents* to act if an *Agent* resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. The *Successor Agent* has the same authority as that granted to the *Original Agent*.

Question No. 8: **What are some of the duties of the *Agent*?**

Answer: An *Agent* that has accepted the appointment has the following duties:

- (1) To act in accordance with the *Principal's* reasonable expectations or in the *Principal's* best interest;
- (2) Act in good faith;
- (3) Act loyally for the *Principal's* benefit;
- (4) Act so as not to create a conflict of interest that impairs the *Agent's* ability to act impartially in the *Principal's* best interest;
- (5) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;
- (6) Keep a record of all receipts, disbursements, and transactions made on behalf of the *Principal*, and
- (7) Cooperate with a person that has authority to make health-care decisions for the *Principal*.

Question No. 9: **Is an *Agent* allowed to resign from his position and, if so, what must he or she do in order to resign?**

Answer: Yes, an *Agent* may resign by giving notice to the *Principal* and, if the *Principal* is incapacitated then notice may be given to the following:

- (1) To the conservator or guardian, if one has been appointed for the *Principal*, and a *Co-Agent* or *Successor Agent*; or
- (2) If there is no person described in no. 1, above, then to:
 - (A) The *Principal's* Caregiver;
 - (B) Another person reasonably believed by the *Agent* to have sufficient interest in the *Principal's* welfare; or
 - (C) A governmental agency having authority to protect the welfare of the *Principal*.

Question No. 10: **Is it necessary to file the Durable Power of Attorney with the Chancery Clerk's Office in the county where the *Principal* resides?**

Answer: Yes, we highly recommend that you file your Durable Power of Attorney with the Chancery Clerk's Office where the *Principal* resides for two reasons:

- (1) If the *Principal* gave the *Agent* the power or authority to conduct transactions with real estate, then a copy of the Durable Power of Attorney needs to be filed in the Land/Deed Records Office of the Chancery Clerk's Office, and
- (2) The Durable Power of Attorney must be filed with the Chancery Clerk's Office where the *Principal* resides in order for it to be effective after the *Principal* becomes incompetent.