

# Durable Power of Attorney in Texas

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## Information Not Legal Advice

This pamphlet is for information only and is not a substitute for the advice of an attorney.

## What is a durable power of attorney?

A durable power of attorney gives someone else the ability to act on your behalf if you become unable to do so for yourself.

Legal Hotline for Texans  
P. O. Box 41256  
Austin, Texas 78704  
800-622-2520

## A durable power of attorney is a legal document.

A durable power of attorney allows you to choose someone you trust to be your attorney-in-fact or agent. The person who chooses an agent is called the *principal*. The person who is chosen to act for the principal is called the *agent* or the *attorney-in-fact*. By signing a durable power of attorney the principal gives the agent the right to do many things. In most cases, the agent can do banking, pay bills, deal with a landlord, make investments, and more. A durable power of attorney lists the things that an agent can do. A durable power of attorney gives the agent the power to make many decisions for you. Sometimes the agent may make decisions without you knowing about it. And, most decisions made by an agent are legal.

## Why is it called a durable power of attorney?

If you become incapacitated or unable to handle your affairs, your agent can take care of things for you. Neither a physical nor a mental disability ends the durable power of attorney. Often this is the very time that you need help. This is the purpose of a durable power of attorney: to give an agent the power to handle a person's affairs when the person cannot do it on their own.

## What makes a durable power of attorney legal?

1. Only an adult can execute a durable power of attorney. You must be at least 18 years old to sign one.
2. Only a person of sound mind can execute a durable power of attorney. You have to understand what you are doing to sign one. A person who has been declared incompetent by a court or who has a court appointed guardian cannot sign a durable power of attorney.
3. A durable power of attorney has to be in writing, and it has to be signed by the principal and notarized.
4. A durable power of attorney has to contain special words. These special words are explained below.

If the durable power of attorney is not going to start until the principal becomes unable to handle his or her own affairs, the document must say, "This power of attorney becomes effective on the disability or incapacity of the principal."

If the durable power of attorney is going to start immediately when it is signed, and the principal wants it to continue even if he or she become unable to handle his or her affairs, the document must say that it continues after the principal's disability or incapacity with words similar to "This power of attorney is not affected by subsequent disability or incapacity of the principal."

You must sign the durable power of attorney before a notary public.

## Who should I name to be my agent?

Someone who is honest and trustworthy. Since this person can do anything as if they were you, they must be honest and must be someone you trust completely. Carefully consider each of the powers that you give this person.

You can limit the power of your agent. For example, if Mr. Jones was about to have surgery and wanted his daughter to be able to pay his bills while he was recovering, he could limit the power of his agent.

## How do I limit my agent's powers?

The Texas Legislature has approved a form for durable powers of attorney. The form has a list of the powers that a person can give to an agent. If you are filling out a power of attorney form, and you want to limit the powers of your agent, cross out the things that you do not want your agent to be able to do.

## When does a durable power of attorney start?

The power of attorney starts when you say it starts. It can start at the time you sign it. Or, it can start when you become disabled or incapacitated. Or, you can some other time for it to start.

If you have a power of attorney that starts when you become incapacitated, your doctor has to say that you are unable to manage your financial affairs before the power of attorney starts. The doctor's statement has to be in writing.

## What if I disagree with something my agent does?

As long as your agent thought they were acting in your best interest, there is probably nothing that you can do. If you believe that your agent has done something harmful to you, for example, that your agent has taken your money and used it for himself or has wasted your assets, then you can ask for an accounting. You must ask in writing. An accounting is a list of every action that the agent has taken using the durable power of attorney.

## Can I undo a durable power of attorney?

Sometimes. To undo a power of attorney is called *revoking* it. You can revoke a power of attorney as long as you are still of sound mind. Once a doctor has signed a statement saying that you cannot handle your own affairs anymore, then you cannot revoke the power of attorney.

To revoke a power of attorney, you should write and sign a statement saying that you are revoking the power of attorney. Because the durable power of attorney is notarized, it is a good idea to have a document revoking a power of attorney notarized. You must tell your agent that you have revoked the power of attorney, and you must also tell all the persons or businesses that your agent dealt with that the power of attorney has been revoked.

### **How do I get a durable power of attorney?**

It is best to contact a lawyer to get a durable power of attorney. The form must be correct, or it will not be effective. Also, making a durable power of attorney is a big decision. It is important that you have someone who can review the document with you and answer any questions that you may have.

### **For more information...**

Texas Law Help has useful information on many areas of the law. Go to [www.texaslawhelp.org](http://www.texaslawhelp.org).

### **Legal Hotline for Texans: (800) 622-2520**

Call our attorney-staffed legal hotline. Advice is free for Texans 60 and over or for anyone eligible for Medicare.

**REVOCATION OF  
POWER OF ATTORNEY**

**THE STATE OF TEXAS**

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**KNOW ALL MEN BY THESE PRESENTS**

**COUNTY OF \_\_\_\_\_**

I, \_\_\_\_\_, hereby revoke all Powers of Attorney executed prior to today's date, made by me and appointing \_\_\_\_\_, as my Attorney-in-Fact, and \_\_\_\_\_ as my successor Attorney(s)-in-Fact.

I understand that this revocation is not effective until I give actual notice to any and all third parties relying on the power of attorney, whether one or more, which I am now hereby revoking.

**IN WITNESS WHEREOF**, I have hereunto set my hand on this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Signature of Person Revoking Power of Attorney

\_\_\_\_\_  
Printed Name of Person Revoking

**STATE OF TEXAS**

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**COUNTY OF \_\_\_\_\_**

**BEFORE ME**, the undersigned authority, on this day personally appeared \_\_\_\_\_, who, having been duly sworn, states that she / he is executing this Revocation of Power of Attorney for the purposes therein expressed.

**SWORN TO, SUBSCRIBED AND ACKNOWLEDGED BEFORE ME** by the said \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas