

INTRODUCTION TO POWERS OF ATTORNEY

- **What is a Power of Attorney?**
 - A Power of Attorney is a legal document by which a parent (the “Principal”) gives another person (the “Agent”) the authority to act on his or her behalf in certain ways. The document should state the ways the Agent can act for the Principal, which might include things like ensuring that the Principal’s children are cared for.

- **What are the benefits of executing (completing and signing) a Power of Attorney?**
 - A Power of Attorney is especially useful when a parent becomes unable to manage his or her own affairs. This is typically because the parent is physically or mentally incapacitated, or because the parent is missing, out of the country, or otherwise physically unavailable. A Power of Attorney can allow parents to plan in advance so someone they trust can manage their affairs when they cannot do it themselves.

- **What are the risks of executing a Power of Attorney?**
 - By executing a Power of Attorney, a parent is allowing the Agent to act on his or her behalf in ways that will be legally binding on the Principal, just as if he or she had undertaken those actions. In some cases, even if the Agent exceeds or abuses the authority granted by the Power of Attorney, the Principal may still be legally bound by the Agent’s actions. If that happens, the Principal might need to file a lawsuit against the Agent to remedy the damage.

- **When does the authority of the Agent begin?**
 - Unless otherwise provided in the document itself, the Power of Attorney begins when the Principal signs it. A Power of Attorney can also be written to come into force only when certain conditions are met (called a “springing” Power of Attorney). For example, some conditions that a Principal may want to trigger the Agent’s authority are:
 - (1) The Principal is deported;

- (2) The Principal is detained by the government for immigration enforcement purposes;
- (3) The Principal is detained by the government for any civil or criminal purpose; and/or
- (4) The Principal is medically or mentally incapacitated.

- **When does the authority of the Agent end?**

- A Power of Attorney automatically ends if the Principal dies or if the Agent dies. The Principal may also revoke the authority of the Agent at any time in writing. Additionally, an Agent may withdraw from that role if they do not want to continue, thus ending their authority. The document can also be written to end when other conditions are met.

- **What are the duties of an Agent?**

- The person named as the Agent in a Power of Attorney does not have a legal duty to serve as Agent, and can refuse the appointment if they wish. However, if the person accepts the appointment and begins to use the authority granted in the Power of Attorney, he must act reasonably and in the Principal's best interest within the scope of authority given by the Power of Attorney document. An Agent must also keep a record of all receipts, disbursements, and transactions made on the Principal's behalf (for Powers of Attorney over Property).

- **Legally, who can be designated as an Agent?**

- Any competent adult may be designated as an Agent. (The Agent does not need to be present or sign the Power of Attorney when it is executed.) In practice it is probably best to designate someone who will not be afraid to advocate for the Principal's interests with business and government offices or even in the courts. Because of this, it may be wise to name someone who has valid immigration status as Agent.

- **Who should a Principal designate as his or her Agent?**
 - Because a Power of Attorney gives important legal authority to the Agent—authority which could be abused—the Principal should only appoint **someone he or she trusts completely.**

- **How should the Principal prepare the Agent?**
 - Because being an Agent is a big responsibility, the Principal should discuss this with the Agent before executing the Power of Attorney. The Principal should make sure the person understands the duties of an Agent, when they begin and end, and that she is willing and able to perform those duties for him or her. The Principal should talk with the Agent about how he or she would like her to use the authority granted in the Power of Attorney. Once the Power of Attorney is executed, the Principal should give the Agent several copies of the document along with the Agent Certification form and instructions.

- **Does the Principal need to meet with a lawyer to complete a Power of Attorney?**
 - Because of the serious legal effects of a Power of Attorney, we recommend that parents do not execute one without consulting with a licensed attorney about it, either directly or through an assistant trained and supervised by an attorney.
Beware: In the United States, a Notary is not the same as an attorney. It is illegal for a Notary, or anyone else, to give legal advice unless he is also an attorney licensed to practice law in Virginia. Only a licensed attorney, or an assistant trained and supervised by an attorney, can answer specific questions about a Power of Attorney or give advice on executing one.