

Durable Power of Attorney

(Health Care and General)

What is a Durable Power of Attorney?

A Durable Power of Attorney is a document that provides authority to another person to make financial and/or health care decisions on your behalf. The person that you designate is generally referred to as the “Attorney in Fact” or as your agent.

Why should I have a Durable Power of Attorney?

It is generally advisable to have a Durable Power of Attorney for financial and healthcare decisions. Regarding health care decisions, the Attorney in Fact will determine all of your health care needs at such time that you are not able to make these decisions. For example, you could be in a comatose state that does not meet the definition of “terminal” covered in your living will. In addition, a person’s mental capacity can be inhibited as they grow older if they are afflicted with dementia, Alzheimer’s, etc. A person with these conditions may live many years at home or in an assisted living, nursing home, or other arrangement and will benefit from having a trusted family member or friend with authority to determine health care decisions, including living arrangements.

The same concerns apply to financial decisions. After a long life of hard work and saving, it is necessary to make sure that a trusted family member or friend can safeguard your assets and meet out your obligations in the event you suffer from diminished capacity. Having an Attorney in Fact for financial decisions means that person can pay bills, invest money, sell property, and otherwise transact business in your name. This can also be a layer of protection against fraud, which appears to be increasingly common with regard to elderly victims.

Who should I choose to be my Attorney in Fact?

The decision of whether to have a Durable Power of Attorney for health care or financial decisions is relatively simple. But who to choose as your Attorney in Fact can be more complicated. Everyone’s family and social situation is different, and the determination of an Attorney in Fact must be case-by-case. However, there are a few considerations that are paramount in nearly all cases: trust, capability, and location.

Trust is by far the most important consideration, because your Attorney in Fact will have the ability to determine, in certain circumstances, whether you live or die, where and how you live, and whether the family home should be sold or rented. It is also important that your Attorney in Fact be capable of making responsible, well-informed decisions about your health and finances. Location is also important in most cases, because it is much easier to discuss finances, visit banks, pay bills, meet with nurses at a care home, etc., when your Attorney in Fact lives in the same city. Living in the same city is not absolutely necessary, however, and location is less important than trust and capability.

It is advisable to appoint an alternate Attorney in Fact, in case the primary is deceased or unavailable to make an important, imminent decision.

How do I obtain a Durable Power of Attorney?

This pamphlet includes a Durable Power of Attorney for Health Care Decisions and a General Durable Power of Attorney. The health care document is based on the statutory form in K.S.A. 58-632, resulting in little variability between the needs of different persons. Regarding the general financial powers described in K.S.A. 58-654, choices can be made regarding which powers to delegate. These documents have been drafted in an attempt to provide a free document to a broad swathe of the public, and it is advisable to read the documents closely to determine whether they suit your individual needs. An attorney can be consulted regarding any concerns about how your health care and property decisions will be managed.

A separate spousal consent is also attached, and while this is optional, it is necessary for disposition of the home-stead.

Make sure you fill out the form completely in the presence of a public notary. After you have executed the document, make copies and provide them to your primary and alternate Attorney in Fact and physicians. Keep the original living will in a safe location (e.g. a fireproof and waterproof safe in a basement) that is accessible to your Attorney in Fact.

Can I disagree with my Attorney in Fact about a health care or financial decision?

Yes. K.S.A. 58-654(g)(3) provides that your Attorney in Fact cannot force you to take or abstain from any action against your will. You may also specifically limit the powers that are delegated. In addition, you can terminate your Durable Power of Attorney at any time. Make sure to memorialize the termination in writing, communicate the termination to anyone who has or had the document, and destroy all copies of the Durable Power of Attorney to prevent confusion.

Is a power of attorney document the same as a living will?

No. A power of attorney document allows other people to make medical or financial decisions, and a living will provides specific guidance regarding your final wishes in the event you are unresponsive and suffer from a terminal condition. It is generally advisable to have both a living will and a power of attorney document. Please see the KBA Pamphlet "Living Will."

General Durable Power of Attorney

Pursuant to the Kansas Power of Attorney Act, K.S.A. 58-650 to K.S.A. 58-665, I appoint the following person as my attorney-in-fact:

If the above person should be unable to perform in this capacity due to death, disability, disqualification, or incapacity, then I appoint the following person as my attorney-in-fact:

This is a durable power of attorney, and the authority of my attorney-in-fact shall not terminate if I become disabled or in the event of later uncertainty regarding whether I am alive or dead. This durable power of attorney shall become effective immediately. My attorney-in-fact shall not be obligated to furnish bond or other security as a condition to this instrument. No compensation shall be paid for services as attorney-in-fact, but reasonable expenses accrued therewith shall be compensated.

I. General Grant of Authority. The attorney-in-fact shall have general powers regarding all lawful subjects and purposes, including every action or power that an able adult may perform through an agent, except as specifically provided in Section II of this document. The following specific powers are listed for illustration and clarification purposes and not to limit this authority.

1. Collect Funds. To demand, receive, and collect all money or property now or hereafter due or owing to me; to receipt and make releases or other discharges therefore; and to settle, adjust, or compromise any and all claims, accounts, or debts owing to me, including to file any proof of debt and take any proceedings under the Bankruptcy Code or similar statutes.

2. Deposit and Withdraw Funds. To receive, endorse, deposit, withdraw, and transfer all funds of any type into and from any checking, savings, or other account. This authority shall include taxes, Social Security, Medicare, Medicaid, Veteran's Benefits, and any other public or private assistance program. I nominate my attorney-in-fact to serve as my representative payee with respect to the receipt, deposit, and use of Social Security benefits, and I release the Social Security Administration from any claims that my attorney-in-fact misused Social Security payments.

3. Safe Deposit Box. To enter any safe deposit box on which I am the tenant or a co-tenant; to open new safe deposit boxes; to add to and remove any of the contents of any such safe deposit box; and to close out any safe deposit box.

4. Property. To maintain, repair, improve, manage, insure, rent, lease, sell, convey, mortgage, or otherwise dispose of, deal with, or encumber any interest in property, whether real, personal, tangible, intangible, jointly owned, presently owned, or later acquired; to execute any instrument; and to transfer property to a revocable or living trust made by me and that benefits me while alive.

5. Homestead. To give consent on my behalf to the sale, gift, transfer, mortgage or other alienation of my homestead or any interest in my homestead. The street address of the homestead is _____, _____, and the legal description is _____. Nothing in this document shall be construed as a limitation or abridgement of the right of my spouse to consent or withhold consent to the alienation of the spouse's homestead or any rights therein under Article 15, Section 9 of the Kansas Constitution.

6. Transact Business. To transact any and all lawful business of any kind on my behalf, including to open accounts with financial institutions, and to buy, sell, endorse, transfer, hypothecate, and borrow against any stocks, bonds, or other securities, and to vote as my proxy regarding the shares. This also includes authority to pay any and all expenses incurred on my behalf.

7. Prosecute, Defend, and Settle Claims. To institute, prosecute, defend, settle, compromise, or otherwise dispose of any claim on my behalf, including appearance on my behalf in any proceedings before any court, agency, or other venue, and the retaining of counsel.

8. Power of Attorney Documents. To execute a power of attorney required by any agency or entity on my behalf authorizing my attorney-in-fact to transact with such group or legal entity.

9. Gifts. To make or revoke a gift of my property, whether in trust or otherwise, and to disclaim a gift or devise of property to or for my benefit.

10. Tax. To make, sign, and file Federal and state tax returns of any type or forms, documents, or agreements with the Internal Revenue Service (IRS) or any state taxing agency, to receive and pay any amounts with regard to tax matters, and to represent me before the IRS as my attorney-in-fact (including signing Form 2848 authorizing my attorney-in-fact to act on my behalf). This shall include consenting that any gift made by my spouse was made one-half by me for gift tax purposes. It is not, however, my intention to grant a general power of appointment to my attorney-in-fact for purposes of any federal or state gift, estate, or generation skipping tax law.

11. Public Assistance. To apply for Medicaid, Social Security, Veteran's Benefits, Medicaid, or any other public or private assistance program, and to execute any documents or actions that are required to receive benefits, optional, or advisable for the optimal preservation of assets.

12. Insurance. To purchase, pledge, liquidate, borrow against or make claim against any insurance policy of any type. However, my attorney shall have no power arising to an incidence of ownership over any policy on my attorney-in-fact's life, including, without limitation, the power to surrender the policy, borrow on it, pledge it, or distribute it to any person, except that my attorney-in-fact may pay, out of my assets, any premium on such policies.

13. Nomination of Guardian and/or Conservator. If protective proceedings are commenced pursuant to my disability or incapacity, I nominate my attorney-in-fact to be my guardian and/or conservator and authorize my attorney-in-fact to name a guardian and/or conservator for my benefit.

14. Medical Care. My attorney-in-fact shall have the authority to, on my behalf:

A. Consent, refuse consent, or withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition, and to make decisions about organ donation, autopsy, and disposition of the body, including payment of the expenses of my funeral and the burial, cremation, or other disposition of the body.

B. make any and all arrangements at any hospital, psychiatric hospital, or psychiatric treatment facility, hospice, nursing home, or similar institution in Kansas or any other state or country; make arrangements for my release and removal from any institution; employ or discharge health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses, therapists, or any other person who is licensed, certified, authorized, or permitted by law to administer health care, as the agent shall deem necessary for my physical, mental, and emotional well being;

C. request, receive, and review any verbal or written information regarding my personal affairs or physical or mental health, including medical and hospital records, to execute any releases that may be required to obtain this information, and to consent to the disclosure of this information.

D. I waive my patient-physician privileges relating to this General Durable Power of Attorney.

15. HIPAA Release. I intend for my agent to be treated as I would be with respect to my rights regarding the use and disclosure of my individually-identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320(d) and 45 C.F.R. 160-164. I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the Medical Information Bureau Inc. or other health care clearinghouse that has provided treatment or services to me or that has paid for

or is seeking payment from me for such services, to give, disclose, and release to my agent, without restriction, all of my individually-identifiable health information and medical records regarding any past, present, or future medical or mental health condition, including all information relating to the diagnosis and treatment of any transmitted diseases, mental illness, and drug or alcohol abuse. The authority given my agent shall supersede any prior agreement that I may have made with my healthcare providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider. The authority granted my agent under this paragraph shall be effective immediately.

16. All Other Acts. To do anything necessary or proper in handling and managing my affairs.

II. Powers Prohibited. Pursuant to K.S.A. 58-654(g), the attorney-in-fact shall not have authority:

1. To make, publish, declare, amend, or revoke any will.
2. To make, execute, modify, or revoke a living will, "do not resuscitate" order, a general durable power of attorney, or a durable power of attorney for health care decisions.
3. To require me, against my will, to take or refrain from taking any action.
4. To carry out any action that I have specifically forbidden while not disabled or incapacitated.

III. Accounting Waived. I waive the necessity of my attorney-in-fact to provide an accounting to me or any other person during my lifetime or upon my death.

IV. Disability or Incapacity Defined. Disability or incapacity means the person's ability to receive and evaluate information effectively or communicate decisions is impaired to the extent that the person lacks the capacity to manage personal financial resources or exercise a reasonable level of care with regard to the duties of an attorney-in-fact, as determined by the certification of one licensed physician, and shall apply if the person cannot take any effective actions due to involuntary detention or disappearance, as determined by affidavit of one party with such knowledge.

V. Revocation. I hereby revoke all of my previous powers of attorney, except any separate Durable Power of Attorney for Health Care Decisions, any separate power of attorney executed on Form 2848 appointing an agent to represent me before the IRS, and any separate Power of Attorney for Homestead Property. I retain the right to revoke or amend this document in whole or in part.

VI. Attorney-Client Privilege. I hereby authorize my attorney to provide my attorney-in-fact with any information that is necessary for my attorney-in-fact to adequately exercise the authority granted herein. I waive any attorney-client privilege for this limited purpose.

VII. Execution and Construction. This instrument is executed pursuant to the Kansas Power of Attorney Act and amendments thereto, and any questions surrounding this document shall be addressed pursuant to those statutes. Any question concerning the power or authority of my attorney-in-fact shall be construed in favor of the attorney-in-fact having such power or authority.

Signed: _____

Dated: _____

State of Kansas

County of _____

This instrument was acknowledged before me on _____, _____, by _____.

Notarial Officer

Title

My Appointment Expires:

CONSENT OF SPOUSE

_____, spouse of _____, consents to this General Durable Power of Attorney, which provides that the attorney-in-fact may consent to the sale, gift, transfer, mortgage, or other alienation of the homestead or an interest therein. I understand that the attorney-in-fact may alienate the interest described therein, and I agree that the consent of the attorney-in-fact will constitute the consent required by Article 15, Section 9, of the Kansas Constitution.

Signed: _____

Dated: _____

State of Kansas

County of _____

This instrument was acknowledged before me on _____, _____, by _____.

Notarial Officer

Title

(SEAL)

My Appointment Expires:

Durable Power of Attorney for Health Care Decisions

Pursuant to K.S.A. 58-625 to K.S.A. 58-632, I appoint the following person as my attorney-in-fact for health care decisions:

If the above person should be unable to perform in this capacity due to death, disability, disqualification, or incapacity, then I appoint the following person as my attorney-in-fact:

This is a durable power of attorney, and the authority of my attorney-in-fact shall not terminate if I become disabled or in the event of later uncertainty as to whether I am alive or dead. This durable power of attorney shall become effective immediately. This authority shall not include the ability to revoke or invalidate any declaration made in accordance with the Natural Death Act (a "Living Will" or similarly-titled document).

My attorney-in-fact shall have the authority to, on my behalf:

1. Consent, refuse consent, or withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition, and to make decisions about organ donation, autopsy, and disposition of the body.
2. Make any and all arrangements at any hospital, psychiatric hospital, or psychiatric treatment facility, hospice, nursing home, or similar institution in Kansas or any other state or country; make arrangements for my release and removal from any institution; employ or discharge health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses, therapists, or any other person who is licensed, certified, authorized, or permitted by law to administer health care, as the agent shall deem necessary for my physical, mental, and emotional well being;
3. Request, receive, and review any verbal or written information regarding my personal affairs or physical or mental health, including medical and hospital records, to execute any releases that may be required to obtain this information, and to consent to the disclosure of this information. I hereby waive my patient-physician privileges in relation to this Durable Power of Attorney for Health Care Decisions. Further, I intend for my agent to be treated as I would be with respect to the use and disclosure of any individually-identifiable health information or other medical records pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320(d) and 45 C.F.R. 160-164.

I hereby revoke any previous Durable Power of Attorney for Health Care Decisions. This revocation does not extend to any previous General Durable Power of Attorney. I reserve the right to revoke this document by subsequent writing executed in the same manner as this document. This document shall continue in full effect until the earlier of the following: 1) my death; or 2) my revocation of this document.

Signed: _____

Dated: _____

State of Kansas

County of _____

This instrument was acknowledged before me on _____, _____, by _____.

Notarial Officer

Title

My Appointment Expires: