

From the desk of:  
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## POWER OF ATTORNEY MEMO

1. **INTRODUCTION.** This memo concerns the following is a brief explanation of why a **POA** can be useful to you and why I draft my **POAs** the way that I do.
  - 1.1. **Purpose.** At some point, you may be injured, ill, disabled, out of town or otherwise physically unavailable to make decisions for your finances or your health needs. A **POA** is the most efficient and cost effective way to have another person make or authorize decisions on your behalf.
  - 1.2. **General.** A **POA** is a legal document in which a person (the “**Principal**”) gives another person (“Attorney in Fact,” or “**AIF**”) authority to act on the Principal’s behalf for legal and/or financial matters.
  - 1.3. **Disclaimer.** This Memo is a brief introduction into the how’s and why’s of **POAs**. This Memo is not a substitute for a deeper understanding of the various issues related to **POAs**. You should refer to this Memo from time to time as a review.
2. **DEFINED TERMS.** Defined terms (capitalized and/or in bold) have the following meanings:
  - 2.1. **AIF.** An “Attorney in Fact.” The person designated by a **POA** to act as the agent for and fiduciary to a **Principal**.
  - 2.2. **POA.** A “Power of Attorney.”
  - 2.3. **Principal.** The person who executes a **POA** to authorizing an **AIF** to act on behalf of the **Principal**.
3. **REQUIREMENTS.** The following are requirement for a **POA** to be valid:
  - 3.1. **Writing.** It must be in writing.
  - 3.2. **Selection Of AIF.** The **AIF** and the extent of his/her powers must be specified.
  - 3.3. **Contents.** The **POA** statute holds that the **Principal** can grant to the **AIF** all powers that the **Principal** has. However, various financial and governmental entities, such as banks, stock brokers, insurance companies, etc. take the position that the **AIF** must be granted specific powers to deal with their entity. In order to save time and effort, I have included those specific powers that have created issues in the past. This is why the **POA** is as long as it is.
  - 3.4. **Execution.** The **Principal** must be competent at time of execution and the decision to execute must be freely given. The **POA** must be executed in the presence of a notary and the **Principal’s** signature must be notarized.
4. **DURABILITY.**
  - 4.1. **Common Law.** Under common law, an **AIF** can act only if the **Principal** can also act. So, for example, the **POA** ceases when the **Principal** dies. The **POA** would also cease if the **Principal** becomes disabled (physically, mentally or psychologically), under the theory that since the **Principal** could not act on his/her own behalf, neither could an **AIF**.
  - 4.2. **Statutory Options.** Most jurisdictions, including the State of Washington, created “Durable Powers of Attorney.” The term “Durable” can refer to two attributes: (a) the **POA** becomes effective only upon the disability of the **Principal**; and (b) the **POA** continues, even after the **Principal** becomes disabled. A **POA** may be durable under one of the definitions, both of them or neither of them.

**Note A.** *I prefer not to requiring that the **POA** becomes effective only upon the disability of a **Principal**. **POA’s** are frequently needed at times of crisis and/or stress. It is difficult and time consuming to prove disability to the satisfaction of the party with whom you are acting. For*

*example, banks and other financial institutions are very difficult to deal with. If the **Principal** can trust his/her an **AIF** while disabled, the **Principal** should be able to trust the **AIF** not to abuse the **POA** while the **Principal** can monitor decisions made by the **AIF**. I strongly recommend that the **POA** remains valid if the **Principal** becomes disabled. This provision can avoid the necessity of a guardianship.*

5. **AIF.**

5.1. **Selection.** The **AIF** must be a person who can always be trusted to act with the best interests of the **Principal** first and foremost. The **AIF** will not put his/her interests before those of the **Principal**. The **AIF** will usually act when the **Principal** is not able to observe or review the actions of the **AIF** due to disability.

5.2. **Multiple AIFs.** Because we never know what will happen in the future, I like to have multiple **AIFs**. Your primary **AIF** may not be able to serve for numerous reasons, including the primary **AIF**'s disability, unavailability or death.

**Note B.** *Similar to the concerns referred to in Note A (§4.2), I do not like naming primary and secondary **AIFs** because it can be difficult to prove the disability or unavailability of the primary **AIF** to the satisfaction of the party with whom you are acting. For example, banks and other financial institutions are very difficult to deal with. You should informally tell your **AIFs** the priority that you want them to follow.*

6. **RECORDING.**

6.1. **When To Record.** If the **POA** is used in a real estate transaction, it must be recorded in the County where the real estate is located. There are benefits to recording the **POA** even for non-real estate transactions, in the County in which the **Principal** resides. Recording is accomplished by delivering the original **POA** to the County Recorder/Auditor. Recording fees are approximately \$80 per recording.

6.2. **Advantages Of Recording.** The primary advantages of recording a **POA** are:

6.2.1. **Certified Copies.** Once recorded, you can get an unlimited number of certified copies for approximately \$10 each. Each certified copy may be used as an original. Many entities require a certified copy to prove authority.

6.2.2. **Loss.** If recorded, you need not worry about misplacing or losing the original.

6.3. **Disadvantages Of Recording.** The primary disadvantages of recording are:

6.3.1. **Costs.** It costs approximately \$80 per recording plus messenger fees.

6.3.2. **Public Record.** Once recorded, a **POA** becomes a public record and can be accessed by anyone.

Please feel free to contact us regarding any questions or concerns you have.

Irv Sonkin