
Agnew Law Office, P.C.

An Estate Planning Law Firm

POWER OF ATTORNEY FOR PROPERTY

Background

The Illinois Powers of Attorney for Property Law was created by the Legislature in 1987 and provides for a Statutory Short Form of Power of Attorney for Property.

The Power of Attorney for Property is designed to make it possible for families to handle problems of disability without resorting to the Probate Court. It provides the structure for financial and business decisions to be made by an agent during disability. This document is important to all persons, regardless of age, due to the authority that can be transferred under it without court intervention during those periods in which a person becomes disabled, which are often unpredictable and unexpected.

Purpose

Historically, an individual has the right to control all aspects of his or her financial and business affairs. However, if an individual becomes disabled, his or her right to control the aspects of his or her business and financial affairs may be denied unless that person has previously delegated this authority to another person. This is even true of spouses since, contrary to popular belief, marrying an individual does not give you any guardianship rights over that person. The only guardianship that is created inherently by a relationship is that of a parent over a minor child. All other guardianships must be approved and authorized by the Court.

Typically, in the case of disability, a guardian is appointed, and that guardian makes decisions on behalf of the disabled person based on what the guardian believes to be in the best interest of the disabled person. However, the appointment of a guardian can be a cumbersome and expensive process and does not assure the disabled person that his or her desires will be carried out.

The Powers of Attorney for Property Law provides an alternative to the appointment of a court ordered guardian. Essentially, through the Power of Attorney, an individual (the Principal) can delegate his or her decision making power to a trusted agent (the Agent) and can make sure that the Agent's power to make financial and business decisions for Principal will be effective to the same extent as though made by the Principal. The Power of Attorney for Property not only avoids the need for a court appointed guardian, but also allows the Principal, before he or she becomes disabled, to set forth specific instructions and preferences with respect to financial and business decisions to be acted upon after disability.

Choices

The basic form of the Power of Attorney is set forth in the Statutory Short Form Power of Attorney for Property Act. However, the form is very flexible and provides for numerous alternatives and modifications that may be made to the basic form in order to tailor it to the wishes and desires of the Principal executing the document. A summary of some of these choices and alternatives follows. You should carefully consider these choices when reviewing the Power of Attorney that has been prepared for you, and you should feel free to incorporate any of these alternatives into your particular document.

Section 1: Powers

In the first section of the document, you indicate who you want to be your Agent. You may name successor Agents to act in the event the originally named Agent is unable or unwilling to, but you may not name co-agents. The grant of power that is included in the first section makes reference to Section 3-4 of the "Statutory Short Form Power of Attorney for Property Law." This section lists 15 specific categories through which the Agent may be authorized to act under. The list of categories set forth in the Power of Attorney as are follows:

- (a) Real estate transactions.
- (b) Financial institution transactions.
- (c) Stock and bond transactions.
- (d) Tangible personal property transactions.

- (e) Safe deposit box transactions.
- (f) Insurance and annuity transactions.
- (g) Retirement plan transactions.
- (h) Social Security, employment and military service benefits.
- (i) Tax matters.
- (j) Claims and litigation.
- (k) Commodity and option transactions.
- (l) Business operations.
- (m) Borrowing transactions.
- (n) Estate transactions.
- (o) All other property powers and transactions

Each of the specific categories that are set forth in this list are then more fully defined in Section 3-4 of the Statutory Short Form Power of Attorney for Property Law referenced above. The reason for simply referencing Section 3-4 rather than defining each of the specific categories in the Power of Attorney is to cut down on the length of the document (i.e. thus the name "Short Form Power of Attorney").

The complete list of statutory definitions of the powers listed in this Section is attached to this summary for your convenience. If you desire to limit the specific powers granted to your Agent under this Section, you may simply cross off the category which you do not wish to grant.

Section 2: Limitations

Section 2 allows you to include any specific limitations to the powers set forth in Section 1 that you deem appropriate.

Section 3: Additional Powers

If you wish to give the Agent any specific powers not included in the powers set forth in Section 1 you may add any such additional powers under this Section. Optional powers may include:

- ✓ The authority to make modifications to beneficiary designations or distribution instructions.

- ✓ The ability to make gifts to children and grandchildren up the annual gift exclusion amount (currently \$13,000 per person per year).
- ✓ The ability to make gift tax free payments for education and/or medical expenses on behalf of a spouse, children and/or grandchildren.

☐ **Section 4: Other Persons to Assist**

This section authorizes your Agent to employ other persons as are necessary to enable the Agent to properly exercise the powers granted under the Power of Attorney.

☐ **Section 5: Expenses and Compensation**

Your Agent will be entitled to reimbursement for all reasonable expenses incurred in acting under this Power of Attorney. Section 5 also provides that your Agent shall be entitled to receive reasonable compensation for the services rendered by the Agent under this Power of Attorney. If you do not wish your Agent to be compensated, this section can be stricken.

☐ **Section 6: Effective Date**

This section sets forth the effective date of the Power of Attorney. The Power of Attorney may become effective on a specific date, such as the execution date of the document, or at a future event during your lifetime, such as a determination by a physician of your disability.


☞ *As a result of the HIPPA Privacy Laws it has now become much more difficult to make a Power of Attorney effective upon incapacity due to the fact that the HIPPA Laws may very well prevent the physician from disclosing the medical information needed to prove incapacity and permit the named Power of Attorney to step up and Act. For this reason, consideration should be given to creating a Power of Attorney that is effective immediately.*

Section 7: Termination Date

This section sets forth the termination date of the Power of Attorney. The Power of Attorney may be terminated on a future date, on a future event, upon your written revocation, or upon a court order.

Section 8: Successor Agents

If you wish to name a successor Agent or Agents, their names should be included in this section.

 *It is advisable to have at least one successor agent in the event the agent initially named is unable or unwilling to act.*

Other Provisions in Act

Some other pertinent provisions contained in the Powers of Attorney for Property Law are as follows:

- Your Agent will be required to keep a record of all receipts, disbursements, and significant actions taken under the Power of Attorney.
- Although empowered, your Agent is under no duty to exercise the powers granted by the Power of Attorney or to assume control of or responsibility for any of the Principal's property, care or affairs, regardless of the Principal's physical or medical condition.
- Whenever a power is exercised, the Agent shall use due care to act for the benefit of the Principal in accordance with the terms of the Power of Attorney and shall be liable for negligent exercise.
- The Agent shall not be liable for any loss due to error of judgment nor for the act or default of any other person.

Validity

As a document created under the authority of the Illinois State Legislature and the Illinois Probate Laws, a Power of Attorney for Property executed in the State of Illinois pursuant to this Act may only be valid in the State of Illinois. However, because many states have now adopted Power of Attorney statutes, it is possible that a Power of Attorney for Property drafted and executed in Illinois will meet the requirements of a Property Power of Attorney statute in another state and *may* therefore be valid in that state. However, this determination must be made on a state by state basis. If you have a question as to whether or not a Power of Attorney for Property executed in Illinois would be valid in a particular state outside of Illinois, Agnew Law Office would be happy to review the Power of Attorney for Property Act of that State and make the determination for you.

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803-4. Explanation of powers granted in the statutory short form of power of attorney for property.

§ 3-4. Explanation of powers granted in the statutory short form power of attorney for property. This Section defines each category of powers listed in the statutory short form power of attorney for property and the effect of granting powers to an agent. When the title of any of the following categories is retained (not struck out) in a statutory property power form, the effect will be to grant the agent all of the principal's rights, powers and discretions with respect to the types of property and transactions covered by the retained category, subject to any limitations on the granted powers that appear on the face of the form. The agent will have authority to exercise each granted power for and in the name of the principal with respect to all of the principal's interests in every type of property or transaction covered by the granted power at the time of exercise, whether the principal's interests are direct or indirect, whole or fractional, legal, equitable or contractual, as a joint tenant or tenant in common or held in any other form; but the agent will not have power under any of the statutory categories (a) through (o) to make gifts of the principal's property, to exercise powers to appoint to others or to change any beneficiary whom the principal has designated to take the principal's interests at death under any will, trust, joint tenancy, beneficiary form or contractual arrangement. The agent will be under no duty to exercise granted powers or to assume control of or responsibility for the principal's property or affairs; but when granted powers are exercised, the agent will be required to use due care to act for the benefit of the principal in accordance with the terms of the statutory property power and will be liable for negligent exercise. The agent may act in person or through others reasonably employed by the agent for that purpose and will have authority to sign and deliver all instruments, negotiate and enter into all agreements and do all other acts reasonably necessary to implement the exercise of the powers granted to the agent.

(a) Real estate transactions. The agent is authorized to: buy, sell, exchange, rent and lease real estate (which term includes, without limitations, real estate subject to a land trust and all beneficial interests in and powers of direction under any land trust); collect all rent, sale proceeds and earnings from real estate; convey, assign and accept title to real estate; grant easements, create conditions and release rights of homestead with respect to real estate; create land trusts and exercise all powers under land trusts; hold, possess, maintain, repair, improve, subdivide, manage, operate and insure real estate; pay, contest, protest and compromise real estate taxes and assessments; and, in general, exercise all powers with respect to real estate which the principal could if present and under no disability.

(b) Financial institution transactions. The agent is authorized to: open, close, continue and control all accounts and deposits in any type of financial institution (which term includes, without limitations, banks, trust companies, savings and building and loan associations, credit unions and brokerage firms); deposit in and withdraw from and write checks on any financial institution account or deposit; and, in general, exercise all powers with respect to financial institution transactions which the principal could if present and under no disability.

(c) Stock and bond transactions. The agent is authorized to: buy and sell all types of securities (which term includes, without limitation, stocks, bonds, mutual funds and all other types of investment securities and financial instruments); collect, hold and safekeep all dividends, interest, earnings, proceeds of sale, distributions, shares, certificates and other evidences of ownership paid or distributed with respect to securities; exercise all voting rights with respect to securities in person or by proxy, enter into voting trusts and consent to limitations on the right to vote; and, in general, exercise all powers with respect to securities which the principal could if present and under no disability.

(d) Tangible personal property transactions. The agent is authorized to: buy and sell, lease, exchange, collect, possess and take title to all tangible personal property; move, store, ship, restore, maintain, repair, improve, manage, preserve, insure and safekeep tangible personal property; and, in general, exercise all powers with respect to tangible personal property which the principal could if present and under no disability.

(e) Safe deposit box transaction. The agent is authorized to: open, continue and have access to all safe deposit boxes; sign, renew, release or terminate any safe deposit contract; drill or surrender any safe deposit box; and, in general, exercise all powers with respect to safe deposit matters which the principal could if present and under no disability.

(f) Insurance and annuity transactions. The agent is authorized to: procure, acquire, continue, renew, terminate or otherwise deal with any type of insurance or annuity contract (which terms include, without limitation, life, accident, health, disability, automobile casualty, property or liability insurance); pay premiums or assessments on or surrender and collect all distributions, proceeds or benefits payable under any insurance or annuity contract; and, in general, exercise all powers with respect to insurance and annuity contracts which the principal could if present and under no disability.

(g) Retirement plan transactions. The agent is authorized to: contribute to, withdraw from and deposit funds in any type of retirement plan (which term includes, without limitation, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and other retirement plan, individual retirement account, deferred compensation plan and any other type of employee benefit plan); select and change payment options for the principal under any retirement plan; make rollover contributions

from any retirement plan to other retirement plans or individual retirement accounts; exercise all investment powers available under any type of self-directed retirement plan; and, in general, exercise all powers with respect to retirement plans and retirement plan account balances which the principal could if present and under no disability.

(h) Social Security, unemployment and military service benefits. The agent is authorized to: prepare, sign and file any claim or application for Social Security, unemployment or military service benefits; sue for, settle or abandon any claims to any benefit or assistance under any federal, state, local or foreign statute or regulation; control, deposit to any account, collect, receipt for, and take title to and hold all benefits under any Social Security, unemployment, military service or other state, federal local or foreign statute or regulation; and, in general, exercise all powers with respect to Social Security, unemployment, military service and governmental benefits which the principal could if present and under no disability.

(i) Tax matters. The agent is authorized to: sign, verify and file all the principal's federal, state and local income, gift, estate, property and other tax returns, including joint returns and declarations of estimated tax; pay all taxes; claim, sue for and receive all tax refunds; examine and copy all the principal's tax returns and records; represent the principal before any federal, state or local revenue agency or taxing body and sign and deliver all tax powers of attorney on behalf of the principal that may be necessary for such purposes; waive rights and sign all documents on behalf of the principal as required to settle, pay and determine all tax liabilities; and, in general, exercise all powers with respect to tax matters which the principal could if present and under no disability.

(j) Claims and litigation. The agent is authorized to: institute, prosecute, defend, abandon, compromise, arbitrate, settle and dispose of any claim in favor of or against the principal or any property interests of the principal; collect and receipt for any claim or settlement proceeds and waive or release all rights of the principal; employ attorneys and others and enter into contingency agreements and other contracts as necessary in connection with litigation; and, in general, exercise all powers with respect to claims and litigation which the principal could if present and under no disability.

(k) Commodity and option transactions. The agent is authorized to: buy, sell, exchange, assign, convey, settle and exercise commodities futures contracts and call and put options on stocks and stock indices traded on a regulated options exchange and collect and receipt for all proceeds of any such transactions; establish or continue option accounts for the principal with any securities or futures broker; and, in general, exercise all powers with respect to commodities and options which the principal could if present and under no disability.

(l) Business operations. The agent is authorized to: organize or continue and conduct any business (which term includes, without limitation, any farming, manufacturing, service, mining, retailing or other type of business operation) in any form, whether as a proprietorship, joint venture, partnership, corporation, trust or other legal entity; operate, buy, sell, expand, contract, terminate or liquidate any business; direct, control, supervise, manage or participate in the operation of any business and engage, compensate and discharge business managers, employees, agents, attorneys, accountants and consultants; and, in general, exercise all powers with respect to business interests and operations which the principal could if present and under no disability.

(m) Borrowing transactions. The agent is authorized to: borrow money; mortgage or pledge any real estate or tangible or intangible personal property as security for such purposes; sign, renew, extend, pay and satisfy any notes or other forms of obligation; and, in general, exercise all powers with respect to secured and unsecured borrowing which the principal could if present and under no disability.

(n) Estate transactions. The agent is authorized to: accept, receipt for, exercise, release, reject, renounce, assign, disclaim, demand, sue for, claim and recover any legacy, bequest, devise, gift or other property interest or payment due or payable to or for the principal; assert any interest in and exercise any power over any trust, estate or property subject to fiduciary control; establish a revocable trust solely for the benefit of the principal that terminates at the death of the principal and is then distributable to the legal representative of the estate of the principal; and, in general, exercise all powers with respect to estates and trusts which the principal could if present and under no disability; provided, however, that the agent may not make or change a will and may not revoke or amend a trust revocable or amendable by the principal or require the trustee of any trust for the benefit of the principal to pay income or principal to the agent unless specific authority to that end is given, and specific reference to the trust is made, in the statutory property power form.

(o) All other property powers and transactions. The agent is authorized to: exercise all possible powers of the principal with respect to all possible types of property and interests in property, except to the extent the principal limits the generality of this category (o) by striking out one or more of categories (a) through (n) or by specifying other limitations in the statutory property power form.