

## Informational Brochure

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# Power of Attorney Forms

### What is a power of attorney?

A power of attorney is your legal permission for another adult to act on your behalf. The permission can be granted for a specific, limited purpose and period of time or for much broader purposes (such as handling all of your financial affairs) and an unquantified period of time (such as until your death). The first type is called a "conventional power of attorney," and the second type is called a "durable power of attorney."

### When would I want to give someone my power of attorney?

If you are going on an extended vacation and there are financial transactions that will need to be completed during that time (for instance, buying or selling a house, closing a mortgage, or buying or selling stock), it might be convenient or necessary to have an attorney-in-fact who can complete those transactions for you. Similar reasoning applies if you know you will be away on military duty. Another important use for a power of attorney is if you become incapacitated. Establishing a power of attorney in advance allows you to plan for who will be making decisions that affect your legal, financial and/or medical well-being.

### Who can I name as my attorney-in-fact?

The person who holds your power of attorney is called your attorney-in-fact. Your attorney-in-fact, in effect, steps into your shoes for the decisions you authorize that person to make. The attorney-in-fact must be an adult and must have the legal ability to enter into a contract. The person you choose can be (but does not have to be) a relative of yours. The person you name as attorney-in-fact should be someone you trust. You should also have that person's agreement to act as your attorney-in-fact before naming them, since acting as an attorney-in-fact is voluntary and no one can be required to serve as your attorney-in-fact.

The person who agrees to act as your attorney-in-fact will owe you a fiduciary duty, which means that they must always place your best interests first while acting as your attorney-in-fact. The attorney-in-fact does not have to be compensated, but particularly if the duties are complicated or time-consuming, you may wish to consider compensation.

### What is a durable power of attorney?

A durable power of attorney is designed for use in case you become incapacitated (such as through illness or by accident) and are no longer able to make decisions for yourself. The regular durable power of attorney becomes effective when it is signed and notarized. A "springing" durable power of attorney becomes effective on the day in the future that you become incapacitated. If you never become incapacitated, it does not become effective, and your attorney-in-fact exercises no authority over you or your assets.

Both types of durable power of attorney remain valid and in effect until you specifically revoke or cancel the power of attorney or until you die (and your attorney-in-fact can still act on your behalf until actual notice of your death is received). Both types of durable power of attorney allow your attorney-in-fact to deal with the financial and property matters you specify in the document. You may not want your attorney-in-fact to have authority over certain assets, such as a mutual fund you want to pass by will, or your house. And remember, a power of attorney is not a substitute for a will. You still should have a will for the disposition of your property after you die.

### Where can I get power of attorney forms?

Your public library or county law library may have books with forms and instructions on how to prepare your own form. Office supply stores and financial institutions also may have forms available. You should be aware that a pre-printed form normally is intended for a specific purpose and that, if your purpose is more complex, you may wish to consult a lawyer. As always you should discuss your purpose and the cost of preparing your power of attorney with the lawyer upfront.

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### What is a durable power of attorney for health care?

The Nevada Legislature has enacted a specific law dealing with this type of power of attorney. Nevada Revised Statutes § 162A.860 provides a specific form for durable power of attorney for health care decisions. The form allows you to give your attorney-in-fact broad authority to make health care decisions for you, including consent or refusal, or withdrawal of consent for any care related to your physical or mental condition. The form also allows you to choose if you want life-prolonging treatments to be used if you are in a coma or have a terminal condition, or if you want artificial nutrition or hydration to be withheld. You are also allowed to designate an alternate attorney-in-fact. The statute containing the form is available at most public libraries. The form and the instructions it contains should be copied and followed as closely as possible.

### Does a power of attorney have to be in writing and be notarized?

The power of attorney must be in writing and contain your signature to be effective. It may also – but need not be – notarized. If the document is not notarized, the alternative is to have your signature witnessed by two adult witnesses who personally know you.

However, neither of the witnesses may be any of the following: (a) a provider of health care; (b) an employee of a provider of health care; (c) an operator of a health care facility; (d) an employee of a health care facility; or (e) your attorney-in-fact. Moreover, at least one of the witnesses must be a person who is: (a) not related to you by blood, marriage or adoption; and (b) to the best of the witnesses' knowledge, not entitled to any part of your estate upon your death. The original should be kept in a safe place. In the case of a springing power of attorney, which becomes effective upon your incapacity in the future, the document must also be kept in a place that is accessible to the attorney-in-fact. For example, the attorney-in-fact may have no way of retrieving the document if it is in your safety deposit box.

### How should my attorney-in-fact sign documents of my behalf?

The signature should have your name followed by the name of the attorney-in-fact. For example: John Doe by Mary Roe, his attorney-in-fact.

### How can I revoke or cancel a power of attorney?

You can revoke a power of attorney by notifying your attorney-in-fact that you are revoking the power of attorney. You can use a simple one-page form that states that you are revoking the power of attorney. The form should be signed by you, and your signature should be notarized. If the power of attorney involves your incapacity, you may want to have witnesses also sign the revocation document. You should then deliver the revocation notice to the attorney-in-fact and deliver copies to any person or business to which the attorney-in-fact may have presented the power of attorney. Because Nevada law requires all power of attorney forms that allow the sale of real estate to be recorded (or if you recorded it for any other reason), you should also record the notice of revocation with your county recorder.

### How do I find an attorney with experience in power of attorney matters?

You can contact the State Bar of Nevada's Lawyer Referral & Information Service at (702) 382-0504, toll-free in Nevada at 1 (800) 789-5747 or look in the yellow pages of your telephone directory. You can also ask friends and/or relatives if they can recommend a good lawyer. The state bar's main office (see numbers listed below) can tell you whether or not an attorney is licensed in Nevada and in good standing.

## CONTACT INFORMATION

### Las Vegas Office

3100 W. Charleston Blvd., Suite 100  
Las Vegas, NV 89104  
Ph: (702) 382-2200 or toll-free 1(800) 254-2797



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### Reno Office

9456 Double R Blvd., Suite B  
Reno, NV 89521  
Ph: (775) 329-4100  
Fax: (775) 329-0522

### Written and/or Edited:

Ismail Amin  
The Amin Law Group, NV, LTD

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