

*Colombo, Kitchin, Dunn, Ball & Porter, LLP*  
*and Charlotte-Anne T. Alexander, Attorney at Law,*

are pleased to provide this legal information to our clients and to the public to help them better understand their legal rights, remedies and responsibilities.

**About Your Power of Attorney (N.C.G.S. §32C)**

**What is a “Power of Attorney”**

A Power of Attorney (“POA”) is the written grant of legal rights and powers by a person, the “Principal,” to another, the “agent”. The Agent basically stands in the shoes of the principal and acts for him or her on financial and business matters. The Agent can do whatever the principal may do – withdraw funds from bank accounts, trade stock, pay bills, talk to and negotiate with creditors and debtors, cash checks – except as limited in the POA. This does not mean that the Agent can just take your money and use it however he or she pleases. The Agent must use your finances as you might, for your benefit.

**Note:** when an Agent signs a check, contract or other document on behalf of the Principal, the Agent signs in that capacity, not as “POA”, as many people mistakenly do. The correct way to sign is “John Doe as Agent for Jane Doe” or “Jane Doe by Agent, John Doe”. Remember: the POA is the document; the Agent is the person.

**What does it mean to be “Durable”?**

Many POAs are Durable Powers of Attorney. The term “durable” means that the Power of Attorney “survives incapacity”. In other words, even if the Principal is incapacitated or incompetent at the time the document is used, the authority conferred by the document is still valid. Most documents (especially those drafted after January 2018) will contain the statutory phrase, “This power of attorney shall not be affected by my subsequent incapacity or mental incompetence”.

**When does the POA take effect?**

Many POAs are “effective immediately”. Some will state this explicitly and others will be silent on when the POA takes effect, in which case, the document is effective once it is signed by the Principal.

A POA also may be “springing”. A “springing” POA takes effect only when the event described in the POA itself takes place. Typically, this is the incapacity of the principal as certified by one or more physicians. The POA frequently indicates whether it is effective immediately or “springs” into effect upon the happening of the event(s) described in the POA.

There are important practical considerations in deciding when and how to make a POA effective and it is a good idea to talk to an experienced estate planning attorney to discuss what works best in each person’s situation.

**Does the POA take away my rights?**

No. Only a court can take away your legal rights, in a guardianship proceeding. Your Agent simply has the power to act, along with you, or to act on your behalf if you become incompetent to act on your own.

## **Can I appoint more than one Agent?**

Just as you and your Agent can have power to act at the same time, you can give more than one trusted family member or friend the power to act on your behalf. In most cases, they are given the right to act independently – or “severally” – of one another. You can also require them both to agree to any actions (co-agents), but this can be frustrating and difficult in practice. If possible, you should name one or more alternates in case the original Agent can no longer act.

## **How long does a POA last?**

It lasts as long as the Principal is alive, unless it has been revoked. Once the Principal dies, the POA is no longer effective.

## **Can I change my mind?**

Yes. You may revoke your POA at any time and for any reason. If your POA has not been recorded at the Register of Deeds Office, you must send a letter (preferably certified) to your Agent telling him or her that the appointment has been revoked. From the moment he or she receives the letter, he or she may no longer act as your Agent. Ideally, a POA should be revoked with the same degree of formality with which you created the POA (e.g. signed and witnessed by a notary). If you have filed your POA at a Register of Deeds Office, you should also file any revocation there, too.

## **What happens if a guardian is appointed?**

One of the purposes of a POA is to avoid the (expensive, time-consuming) need for the appointment of a General Guardian or Guardian of the Estate. In rare circumstances, a guardian may still need to be appointed (e.g. if there is a lawsuit). In most cases, the POA includes the nomination of the Agent or someone you designate to be your guardian if such appointment ever become necessary. This nomination is not absolutely binding, but may be followed by the court unless convincing evidence is presented that it would not be in your best interest.

## **Where do I record my POA?**

Generally, POAs are recorded at the Register of Deeds office where the Principal lives. Although the law changed in January 2018 such that POAs do not need to be recorded except in cases of real estate transactions, many financial institutions or businesses may not allow an Agent to act under a POA until it has been recorded with the local Register of Deeds office.

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*This document is not a substitute for legal advice and you should contact your attorney regarding how your POA works and when/whether you need one.*

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