



Power of Attorney

QUESTIONS & ANSWERS

GENERAL QUESTIONS

Q: What is a power of attorney (POA)?

A: A power of attorney is a legal instrument that allows someone else to act as your legal agent. The agent, called an Attorney-In-Fact, is authorized to perform important duties that you specify in your POA, such as financial, familial, medical and retirement decisions and transactions.

Q: Why do I need a power of attorney for retirement matters?

A: A power of attorney will enable your Attorney-In-Fact to perform important duties relating to your retirement account, such as filing applications, making benefit elections, designating beneficiaries, designating a bank account for electronic transfer of retirement benefits, changing your address or name, choosing tax withholdings, etc. The agent's ability to act on your behalf could be necessary if you became incapacitated.

Q: Are there different types of powers of attorney?

A: Yes, there are several different kinds that can be used for different purposes.

General. A general power of attorney allows your Attorney-In-Fact to do anything that you could do legally. You could use a general power of attorney if you were not incapacitated but still needed someone to help you with financial matters. A general power of attorney expires on the earlier of your incapacity, any expiration date listed in the document, or your death—unless you terminate it earlier.

Special. A special (or limited) power of attorney lists a particular act(s) that your Attorney-In-Fact is authorized to perform and limits the agent to that act(s). It usually expires on the earlier of your incapacity, any expiration date listed in the document, or your death—unless you terminate it earlier.

Durable. A durable power of attorney can be general or special, but it remains in effect after you become incapacitated. Without a durable power of attorney, if you become incapacitated, no one can perform actions on your behalf unless a court appoints a conservator or guardian. A durable power of attorney will remain in effect until your death, unless you terminate it while you are still competent to do so.

Springing. A springing power of attorney can allow your Attorney-In-Fact to act for you if you become incapacitated, but it does not become effective until you are incapacitated. KCERA's Special Durable Power of Attorney form allows you to elect whether you want the Power of Attorney to be "springing" (i.e., to become effective only upon your incapacity).

Q: If my Attorney-in-Fact dies or becomes incapacitated, may I name another agent?

A: Yes, you can name an alternate Attorney-In-Fact in your power of attorney. However, if you do not name an alternate agent or you wish to grant different powers to an alternate agent, you must complete a new POA, assuming you are competent to do so. You are not required to grant your new agent the same powers to transact business that you granted to your original agent, unless you choose to do so.

Q: Does a power of attorney authorize my Attorney-In-Fact to conduct business after my death?

A: No.

KCERA-RELATED QUESTIONS

Q: Why is KCERA's form called a Special Durable Power of Attorney?

A: "Special" means the POA can be used by your agent only for KCERA matters, such as filing for retirement, making benefit elections, designating beneficiaries, designating a bank account for electronic transfer of retirement benefits, updating your address, making tax-withholding elections, , etc. "Durable" means the POA will remain in effect after you become incapacitated.

Q: Would KCERA accept a power of attorney that was not prepared using KCERA's form?

A: Yes, but other POAs may be too general or fail to address certain retirement matters. The advantage in using KCERA's POA is that it contains the "durable clause" and specifically authorizes your Attorney-In-Fact to conduct your retirement business with KCERA. You are urged to use KCERA's form, as its content has been pre-approved by KCERA.

Q: Can I execute KCERA's Special Durable Power of Attorney outside of California?

A: Yes, as long as the document is properly notarized or witnessed, as required on the form.

Q: After my KCERA Special Durable Power of Attorney is executed, what should I do with it?

A: You can keep your original POA in a safe location until it needs to be used by your Attorney-In-Fact, or you can provide an advance copy to KCERA. The POA must be given to KCERA before your agent can act on your behalf according to the terms of the POA.

Q: Can I have more than one KCERA Special Durable Power of Attorney on file?

A: No, submitting a new POA revokes all earlier ones on file with KCERA.

Q: Can my KCERA Special Durable Power of Attorney be changed after it is executed?

A: No, but it can be replaced by a new POA. To do so, you must complete a new POA form reflecting the changes you want to make. Then, inform KCERA in writing that the old document is no longer valid. Lastly, provide a copy of the new POA to KCERA.

Q: If I decide that I no longer want my KCERA Special Durable Power of Attorney, can I terminate it?

A: Yes, as long as you are still competent, you may submit a written statement to KCERA requesting that it be revoked or terminated immediately.

Q: Can I still handle my own retirement affairs after submitting my Special Durable Power of Attorney to KCERA?

A: Yes, you can handle your retirement affairs until you become incapacitated. However, depending upon the effective date and the authorizations you select when completing KCERA's Special Durable Power of Attorney form, your Attorney-In-Fact also may be able to act on your behalf before you become incapacitated.

Q: What role should my spouse[†] have in my Special Durable Power of Attorney?

A: It would be practical to designate your spouse as your Attorney-In-Fact because that person has an interest in the protection of your retirement benefits.

Q: What is a "neutral party"?

A: For retirement purposes, a neutral party is a person who does not have an interest in your retirement benefit or estate. An eligible spouse would *not* be considered a neutral party.

Q: Because my spouse[†] is not a neutral party, am I prevented from naming him/her as my Attorney-In-Fact?

A: No, you may name your spouse as your Attorney-In-Fact.

Q: If I name a *non-neutral* party as my Attorney-In-Fact, is he/she limited in the retirement-related actions able to be taken on my behalf?

A: Yes, in regard to certain beneficiary designations and retirement option elections.

Q: If I name a *neutral* party as my Attorney-In-Fact, is he/she limited in the retirement-related actions able to be taken on my behalf?

A: No, a neutral Attorney-In-Fact is able to make any KCERA-related decision you could make, unless you specifically include provisions in your POA that limit the authority of your agent.

Q: Can I use a Special Power of Attorney for Healthcare for KCERA matters?

A: No, that type of POA applies to healthcare matters only.

Q: Can I use my KCERA Special Durable Power of Attorney to appoint an administrator of my estate prior to my death?

A: No.

Q: Why does *Section 6: Warning to Persons Executing This Document* of KCERA's Special Durable Power of Attorney seem to contradict some of the information contained in this Q&A document?

A: California Probate Code §4128 requires that all pre-printed POA forms that may extend authority to the Attorney-In-Fact beyond the time in which an individual becomes disabled or incapacitated must contain this warning. However, please note that the authority granted by KCERA's Special Durable Power of Attorney is limited to KCERA matters only.

Q. If I require assistance while preparing a power of attorney, who should I contact?

A: KCERA cannot provide legal advice, so please consult an attorney to address your specific legal questions.

DISCLAIMER

This document was drafted by KCERA staff to help members understand retirement-related issues involving powers of attorney. Every effort has been made to ensure the accuracy of the information offered. However, the above is for information only and should not be relied upon as legal advice. KCERA encourages you to discuss your personal needs with an attorney as you complete the Special Durable Power of Attorney form provided by KCERA. In the event of any discrepancy between the information contained in this document and state and federal law, the law will govern.

[†] *References to "spouse" also apply to domestic partnerships registered with the California Secretary of State.*



KCERA Special Durable Power of Attorney

This document appoints an Attorney-in-Fact to transact certain retirement matters relating to the Kern County Employees' Retirement Association ("KCERA"). It authorizes the person you designate as your "Attorney-in-Fact" the ability to handle your retirement affairs as authorized by this document. Such actions may include filing applications, making benefit elections, designating beneficiaries, designating a bank account for electronic transfer of retirement benefits, changing your address or name, and choosing tax withholdings.

You have the option to make this Power of Attorney effective immediately or only upon the event of your incapacity. If you elect to make this Power of Attorney effective immediately, this Durable Power of Attorney will continue after you become incapacitated or unable to handle your own affairs or until you revoke it. In order to revoke this Power of Attorney, you must be competent to do so and you must submit written notification to KCERA directing this document to be revoked or terminated. Do not complete this form if you want the Power of Attorney to terminate when you become incapacitated. You are referred to in this document as the "Principal."

1. Creation of Special Durable Power of Attorney for Retirement-Related Business

By completing this form, I revoke any or all Power of Attorney forms on file at the Kern County Employees' Retirement Association and I intend to create a Special Durable Power of Attorney by appointing the person named below to make retirement-related decisions for me as allowed by the California Probate Code. This power is expressly limited to decision(s) relating to benefits I receive or will receive as a KCERA member or the benefits I receive as a surviving spouse† or beneficiary of a KCERA member.

2. Designation of Attorney-in-Fact

I, _____, of _____
(Principal's Name) (Street Address)

_____, HEREBY APPOINT AS MY ATTORNEY-IN FACT:
(City, State, Zip Code)

_____, my _____
(Name of Attorney-in-Fact) (Relationship to Principal)

of _____
(Street Address, City, State, Zip Code)

(Primary Phone Number) (Alternate Phone Number) (Email Address)

† All references to "spouse" also apply to domestic partnerships registered with the California Secretary of State.

Note: If the person named above is unable or unwilling to act as your Attorney-in-Fact, you can designate an Alternate Attorney-in-Fact to perform the duties authorized by this form. Complete the section below only if you would like to name an Alternate Attorney-in-Fact.

I, _____, of _____
(Principal's Name) (Street Address)

_____, HEREBY APPOINT AS MY ALTERNATE
(City, State, Zip Code) ATTORNEY-IN-FACT:

_____, my _____
(Name of Alternate Attorney-in-Fact) (Relationship to Principal)

of _____
(Street Address, City, State, Zip Code)

(Primary Phone Number) (Alternate Phone Number) (Email Address)

3. Selecting Effective Date for Power of Attorney

You must choose whether you want this Power of Attorney to take effect immediately or to take effect if or when you become incapacitated. If you want the Power of Attorney to take effect immediately, you must initial the line in front of statement **(a)** below. If you want the Power of Attorney to take effect only if you become incapacitated, you must initial the line in front of statement **(b)** below. Please initial on one line only.

_____ **(a)** I hereby immediately grant my Attorney-in-Fact full authority to transact all matters initialed in Section(s) 4 and/or 5 below. My subsequent disability or incapacity shall not affect this Power of Attorney, but it will terminate upon my death.

_____ **(b)** If I become incapacitated and/or no longer competent to make decisions related to the matters about any matter initialed in Section(s) 4 and/or 5 below, I hereby grant my Attorney-in-Fact full authority to transact such matters on my behalf, as indicated in one or more of these sections. My subsequent disability or incapacity shall not affect this Power of Attorney, but it will terminate upon my death.

Note: If statement (b) above is selected, please designate one or two persons who, by written declaration, under penalty of perjury, have the power to determine conclusively that you have become incapacitated or are no longer competent to make decisions related to the matters initialed in Section(s) 4 and 5 below. You may list your Attorney-in-Fact as your designee.

1. _____ (Name of Designee) _____ (Relationship to Principal)

_____ (Street Address, City, State, Zip Code)

_____ (Primary Phone Number) _____ (Alternate Phone Number) _____ (Email Address)

2. _____ (Name of Designee) _____ (Relationship to Principal)

_____ (Street Address, City, State, Zip Code)

_____ (Primary Phone Number) _____ (Alternate Phone Number) _____ (Email Address)

Note: The Attorney-in-Fact must immediately notify KCERA in writing of your disability, incapacity or death.

4. Specific Powers Granted

An Attorney-in-Fact, other than a spouse[†], who has an interest in the Principal’s retirement benefit or estate is not a *neutral party* and therefore may only select the “Unmodified Option” when making benefit elections and may only designate the member’s unmarried minor child(ren) or the member’s eligible surviving spouse[†] as beneficiaries eligible for a retirement allowance that continues after your death.

As the Principal, you may grant your Attorney-in-Fact authority to transact matters related to KCERA. **To grant specific powers to your Attorney-in-Fact, you must initial the line in front of each power you are granting.** To withhold a power, do *not* initial the line in front of it. **By initialing the specific powers below, you ratify and confirm the action(s) your Attorney-in-Fact may perform on your behalf:**

- | | |
|---|---|
| _____ File an application | _____ Access retirement benefit information |
| _____ Make benefit elections
(Not available to retired members) | _____ Change an address |
| _____ Designate beneficiary(ies) eligible for retiree death benefit | _____ Change a name |
| _____ Designate bank account for electronic transfer of retirement benefits | _____ Change tax-withholding status |
| | _____ Designate beneficiary(ies) eligible for retirement allowance continuing after my death
(Not available to retired members) |

_____ I give the following instructions that limit or extend the powers of my Attorney-in-Fact:

Note: The Principal must *also* complete Section 5 below **only** if all of the following apply to you: 1) you are a KCERA member; 2) you are **NOT** retired; and (3) you want to name your spouse[†] as your Attorney-in-Fact.

5. Specific Authority for Spouse[†] to Elect Retirement Allowance Options and Designate a Beneficiary

An authorized eligible surviving spouse[†] may elect any payment option or designate any beneficiary.

You must initial the line in front of each power you are granting below. To withhold a power, do not initial the line in front of it.

_____ My Attorney-in-Fact is authorized to select any payment option available under the retirement plan, even though it may reduce the monthly allowance that would otherwise be paid to me during my lifetime.

_____ My Attorney-in-Fact is authorized to designate himself or herself as my beneficiary eligible for a retirement allowance that continues after my death.

_____ I give the following instructions that limit or extend the powers of my Attorney-in-Fact:

IMPORTANT REMINDERS

This KCERA Special Durable Power of Attorney is limited to KCERA matters. The person selected as your Attorney-in-Fact does not have any authority over your real or personal property unless you have executed a separate Special Durable Power of Attorney concerning any other real or personal property. The language contained in the following "WARNING" section is required by California Probate Code section 4128 to be included in all pre-printed power of attorney forms that may extend authority beyond the time you become disabled or incapacitated. If you want your Attorney-in-Fact's authority to be extended over real and/or personal property matters, or if you are concerned with the warning statement or the extent of the authority granted by this form, it is recommended that you obtain the assistance of an attorney or other qualified person.

6. Warning to Person Executing this Document

California Probate Code section 4128 requires “a printed form of a durable power of attorney that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall contain, in not less than 10-point boldface type or a reasonable equivalent thereof, the following warning statements:

NOTICE TO PERSON EXECUTING DURABLE POWER OF ATTORNEY

A durable power of attorney is an important legal document. By signing the durable power of attorney, you are authorizing another person to act for you, the Principal. Before you sign this durable power of attorney, you should know these important facts:

Your agent (Attorney-in-Fact) has no duty to act unless you and your agent agree otherwise in writing.

This document gives your agent the power(s) to manage, dispose of, sell, and convey your real and personal property, and to use your property as security if your agent borrows money on your behalf. This document does not give your agent the power to accept or receive any of your property, in trust or otherwise, as a gift, unless you specifically authorize the agent to accept or receive a gift.

Your agent will have the right to receive reasonable payment for services provided under this durable power of attorney unless you provide otherwise in this power of attorney. (However, such payment cannot be deducted from the monthly retirement allowance paid to you by KCERA.)

The powers you give your agent will continue to exist for your entire lifetime, unless you state that the durable power of attorney will last for a shorter period of time or unless you otherwise terminate the durable power of attorney. The powers you give your agent in this durable power of attorney will continue to exist even if you can no longer make your own decisions respecting the management of your property.

You can amend or change this durable power of attorney only by executing a new durable power of attorney or by executing an amendment through the same formalities as an original. You have the right to revoke or terminate this durable power of attorney at any time, so long as you are competent.

This durable power of attorney must be dated and must be acknowledged before a notary or signed by two witnesses. If it is signed by two witnesses, they must witness either (1) the signing of the power of attorney or (2) the Principal’s signing or acknowledgement of his or her signature. A durable power of attorney that may affect real property should be acknowledged before a notary public so that it may easily be recorded.

You should read this durable power of attorney very carefully. When effective, this durable power of attorney will give your agent the right to deal with property that you now have or might acquire in the future. The durable power of attorney is important to you. If you do not understand the durable power of attorney, or any provision of it, then you should obtain the assistance of an attorney or other qualified person.

NOTICE TO PERSON ACCEPTING THE APPOINTMENT AS ATTORNEY-IN-FACT

By acting or agreeing to act as the agent (Attorney-in-Fact) under this power of attorney, you assume the fiduciary and other legal responsibilities of an agent. These responsibilities include:

1. The legal duty to act solely in the interest of the Principal and to avoid conflicts of interest.
2. The legal duty to keep the Principal's property separate and distinct from any other property owned or controlled by you.

You may not transfer the Principle's property to yourself without full and adequate consideration or accept a gift of the Principal's property unless this power of attorney specifically authorizes you to transfer property to yourself or accept a gift of the Principal's property. If you transfer the Principal's property to yourself without specific authorization in the power of attorney, you may be prosecuted for fraud and/or embezzlement. If the Principal is 65 years of age or older at the time that the property is transferred to you without authority, you may be prosecuted for elder abuse under California Penal Code Section 368 or relevant law in other jurisdictions. In addition to criminal prosecution, you may also be sued in civil court.

7a. Date and Signature of Agent (Attorney-in-Fact)

I have read the foregoing notice and understand the legal and fiduciary duties I assume by acting/agreeing to act as the agent (Attorney-in-Fact) under the terms of this power of attorney.

Executed this ____ day of _____, 20__.

At _____, _____
(City) (State)

(Signature of Agent) (Printed Name)

7b. Date and Signature of Principal

Executed this ____ day of _____, 20__.

At _____, _____
(City) (State)

(Signature of Principal) (Printed Name)

(Social Security Number)

Please complete either Section 8a (Signature of Witnesses) OR Section 8b (Acknowledgment of Notary Public). You are only required to complete one of the sections below.

8a. Signature of Witnesses

I, _____, have witnessed the Principal's signature, or the Principal's acknowledgement of the signature designating power of attorney. I am an adult, at least 18 years old and not the Attorney-in-Fact. My signature certifies that the Principal is known to me and is the same person who signed and dated this affidavit on _____.
(Date)

I, _____, have witnessed the Principal's signature, or the Principal's acknowledgement of the signature designating power of attorney. I am an adult, at least 18 years old and not the Attorney-in-Fact. My signature certifies that the Principal is known to me and is the same person who signed and dated this affidavit on _____.
(Date)

1. _____
(Witness #1 Signature) (Witness #1 Name)

(Street Address, City, State, Zip Code)

(Phone Number) (Email Address)

2. _____
(Witness #2 Signature) (Witness #2 Name)

(Street Address, City, State, Zip Code)

(Phone Number) (Email Address)

8b. Acknowledgement of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____)

County of _____)

On _____, before me _____
(Date) (Insert Name and Title of the Officer)

personally appeared (Names): _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and Official Seal:

Seal:

(Signature of Notary Public)