



# Power of Attorney for Property

## **Please NOTE:**

“Power of Attorney for Property” refers to the **legal delegation of decision-making authority to an agent concerning financial affairs and the management of property.**

“Power of Attorney for Property **document**” refers to the actual **form.**

## ■ **What is a Power of Attorney for Property?**

The Power of Attorney for Property document allows a person, called the principal, to delegate to another person, called the agent (often a family member or trusted friend), the power to make decisions regarding assets, finances, bank accounts, and other types of property, including real estate. The agent, who does not need to be an attorney, will speak for the principal and make decisions according to the principal’s wishes even when the principal is physically or mentally incapacitated.

## ■ **What are the advantages of having a Power of Attorney for Property?**

A Power of Attorney for Property is a way for you to decide in advance who will handle your financial affairs if you are not able to act on your own in the future. Executing this document will save your family from the burden of having to make financial decisions without knowing your wishes. It gives you (rather than the courts) more control over your life.

A Power of Attorney for Property is a flexible document. It helps assure that your agent’s authority will be honored by others at the time any delegated power is exercised. You can give either limited or broad financial decision-making authority to your agent, depending upon your needs. For example, you may want your agent to have the power to authorize real estate and stock transactions; to handle banking, tax or other types of business matters; to represent you in court; or to address other types of legal claims.

## ■ Who may execute a Power of Attorney for Property?

Any person with the legal capacity to make his or her own decisions who is age 18 or older and a resident of Illinois may execute a Power of Attorney for Property. The Power of Attorney for Property document must be signed by you and your signature must be both witnessed and notarized.

## ■ Who may be designated as an agent under a Power of Attorney for Property?

Any person age 18 or older may be designated as your agent. He or she should be someone you know well and can fully trust with handling your financial affairs. It is a good idea to pick someone who lives in a nearby area.

## ■ What is the responsibility of an agent under a Power of Attorney for Property?

An agent must use due care and act in accordance with the terms that you have specified in your Power of Attorney for Property document. He or she may be liable for any negligent exercise of the duties that you have specified.

## ■ Must an attorney prepare the document for you?

Although Illinois law does not require that an attorney prepare a Power of Attorney for Property document, you may want to consult with an attorney for additional guidance in protecting your interests using advance directives.

## ■ When should you designate an agent under a Power of Attorney for Property?

The best time for you to designate an agent under a Power of Attorney for Property is right now, long before you anticipate anything happening to you. This will ensure that your financial affairs will be handled if you are not able to act on your own in the future.

## ■ How long will your Power of Attorney for Property last?

As the principal, you can specify the time at which the Power of Attorney for Property will begin and terminate. However, unless you state an earlier termination date, the Power of Attorney for Property document will continue until your death. In addition, you can sign and date a written amendment to make changes to this document at any time, provided you still have the legal capacity to make such a decision. You must remember to have your signature both witnessed and notarized on any amendment.

## ■ Will your Power of Attorney for Property be recognized in another state?

The answer depends on the laws of each state. Most states will recognize your Power of Attorney for Property document, especially since your signature must be both witnessed and notarized under Illinois law.

A Power of Attorney for Property document that has been executed in compliance with the laws of another state will be recognized in Illinois.

## ■ Other things to consider —

Before executing your Power of Attorney for Property document, you should talk to the person whom you want to be your agent and review how you would like your financial affairs to be handled in the event that your agent must exercise his or her authority under the Power of Attorney for Property.

It is advisable for you to designate one or more successor agents to act on your behalf in case the primary agent is unavailable, unable or unwilling to act on your behalf if it becomes necessary. The primary consideration should be that the individuals appointed are people in whom you have a great deal of trust and can rely upon to act according to your interests and values. Your Power of Attorney for Property document should also state the powers, duties, limitations, immunities and other terms applicable to your agent.

After your Power of Attorney for Property document is signed, witnessed and notarized, you should give the original form to your agent and provide copies to your successor agents and attorney. You should advise your family of your selection of an agent to act on your behalf if it becomes necessary.

# Statutory Short Form Power of Attorney for Property Law

(755 ILCS 45 / 3-4)

## **Section 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 limitation, 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 limitation, banks, trust

*(Continued on page 5.)*

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. This authorization shall also apply to any Totten Trust, Payable on Death Account, or comparable trust account arrangement where the terms of such trust are contained entirely on the financial institution's signature card, insofar as an agent shall be permitted to withdraw income or principal from such account, unless this authorization is expressly limited or withheld under paragraph 2 of the form prescribed under Section 3-3 [see page ii for the Illinois Statutory Short Form Power of Attorney for Property]. This authorization shall not apply to accounts titled in the name of any trust subject to the provisions of the Trusts and Trustees Act, for which specific reference to the trust and a specific grant of authority to the agent to withdraw income or principal from such trust is required pursuant to Section 2-9 of the Illinois Power of Attorney Act and subsection (n) of this Section.

**(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, distribution, 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 transactions.** 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 categories (a) through (n) or by specifying other limitations in the statutory property power form.

# Illinois Statutory Short Form Power of Attorney for Property

(Notice: The purpose of this Power of Attorney for Property is to give the person you designate (your “agent”) broad powers to handle your property, which may include powers to pledge, sell or otherwise dispose of any real or personal property without advance notice to you or approval by you. This form **does not** impose a duty on your agent to exercise granted powers; but when powers are exercised, your agent will have to use due care to act for your benefit and in accordance with this form and keep a record of receipts, disbursements and significant actions taken as agent. A court can take away the powers of your agent if it finds the agent is not acting properly. You may name successor agents under this form but not co-agents.)

Unless you expressly limit the duration of this power in the manner provided below, until you revoke this power or a court acting on your behalf terminates it, your agent may exercise the powers given here throughout your lifetime, even after you become disabled. The powers you give your agent are explained more fully in Section 3-4 of the Illinois “Statutory Short Form Power of Attorney for Property Law” of which this form is a part (see pages 4-7 of this form). That law expressly permits the use of any different form of power of attorney you may desire. If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.)

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**POWER OF ATTORNEY** made this \_\_\_\_\_ day of (month) \_\_\_\_\_ (year)\_\_\_\_\_.

1. I, (insert name of principal) \_\_\_\_\_

(insert address of principal) \_\_\_\_\_, hereby

appoint: (insert name of agent) \_\_\_\_\_

(insert address of agent) \_\_\_\_\_

as my attorney-in-fact (my “agent”) to act for me and in my name (in any way I could act in person) with respect to the following powers, as defined in Section 3-4 of the “Statutory Short Form Power of Attorney for Property Law” (including all amendments), but subject to any limitations on or additions to the specified powers inserted in paragraph 2 or 3 below:

(You must strike out any one or more of the following categories of powers you **do not** want your agent to have. Failure to strike the title of any category will cause the powers described in that category to be granted to the agent. To strike out a category, you must draw a line through the title of that category.)

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| (a) Real estate transactions.                                  | (i) Tax matters.                                |
| (b) Financial institution transactions.                        | (j) Claims and litigation.                      |
| (c) Stock and bond transactions.                               | (k) Commodity and option transactions.          |
| (d) Tangible personal property transactions.                   | (l) Business operations.                        |
| (e) Safe deposit box transactions.                             | (m) Borrowing transactions.                     |
| (f) Insurance and annuity transactions.                        | (n) Estate transactions.                        |
| (g) Retirement plan transactions.                              | (o) All other property powers and transactions. |
| (h) Social Security, employment and military service benefits. |   |

(Limitations on and additions to the agent's powers may be included in this power of attorney if they are specifically described below.)

2. The powers granted above shall not include the following powers or shall be modified or limited in the following particulars: (here you may include any specific limitations you deem appropriate, such as a prohibition or conditions on the sale of particular stock or real estate or special rules on borrowing by the agent)

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3. In addition to the powers granted above, I grant my agent the following powers: (here you may add any other delegable powers including, without limitation, power to make gifts, exercise powers of appointment, name or change beneficiaries or joint tenants or revoke or amend any trust specifically referred to below)

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(Your agent will have authority to employ other persons as necessary to enable the agent to properly exercise the powers granted in this form, but your agent will have to make all discretionary decisions. If you want to give your agent the right to delegate discretionary decision-making powers to others, you should keep the next sentence; otherwise it should be struck out.)

4. My agent shall have the right by written instrument to delegate any or all of the foregoing powers involving discretionary decision-making to any person or persons whom my agent may select, but such delegation may be amended or revoked by any agent (including any successor) named by me who is acting under this power of attorney at the time of reference.

(Your agent will be entitled to reimbursement for all reasonable expenses incurred in acting under this power of attorney. Strike out the next sentence if you do not want your agent to also be entitled to reasonable compensation for services as agent.)

5. My agent shall be entitled to reasonable compensation for services rendered as agent under this power of attorney.

(This power of attorney may be amended or revoked by you at any time and in any manner. Absent amendment or revocation, the authority granted in this power of attorney will become effective at the time this power is signed and will continue until your death unless a limitation on the beginning date or duration is made by initialing and completing either (or both) of the following:)

6. ( ) This power of attorney shall become effective on (insert a future date or event during your lifetime, such as court determination of your disability, when you want this power to first take effect) \_\_\_\_\_ .

7. ( ) This power of attorney shall terminate on (insert a future date or event, such as court determination of your disability, when you want this power to terminate prior to your death)

(If you wish to name successor agents, insert the name(s) and address(es) of such successor(s) in the following paragraph.)

8. If any agent named by me shall die, become incompetent, resign or refuse to accept the office of agent, I name the following (each to act alone and successively, in the order named) as successor(s) to such agent:

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For purposes of this paragraph 8, a person shall be considered to be incompetent if and while the person is a minor or an adjudicated incompetent or disabled person or the person is unable to give prompt and intelligent consideration to business matters, as certified by a licensed physician.

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(If you wish to name your agent as guardian of your estate, in the event a court decides that one should be appointed, you may, but are not required to, do so by retaining the following paragraph. The court will appoint your agent if the court finds that such appointment will serve your best interests and welfare. Strike out paragraph 9 if you do not want your agent to act as guardian.)

9. If a guardian of my estate (my property) is to be appointed, I nominate the agent acting under this power of attorney as such guardian, to serve without bond or security.

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10. I am fully informed as to all the contents of this form and understand the full import of this grant of powers to my agent.

Signed (Principal) \_\_\_\_\_

(You may, but are not required to, request your agent and successor agents to provide specimen signatures below. If you include specimen signatures in this power of attorney, you must complete the certification opposite the signatures of the agent and successors.)

Specimen signatures of agent  
(and successors)

(Agent) \_\_\_\_\_

(Successor  
Agent) \_\_\_\_\_

(Successor  
Agent) \_\_\_\_\_

I certify that the signatures of my agent  
(and successors) are correct.

(Principal) \_\_\_\_\_

(Principal) \_\_\_\_\_

(Principal) \_\_\_\_\_

(This power of attorney will not be effective unless it is notarized and signed by at least one additional witness, using the form below. **Note: The requirement of the signature of an additional witness applies only to instruments executed on or after June 9, 2000, the effective date of Public Act 91-790.**)

The undersigned witness certifies that \_\_\_\_\_ , known to me to be the same person whose name is subscribed as principal to the foregoing power of attorney, appeared before me and the notary public and acknowledged signing and delivering the instrument as the free and voluntary act of the principal, for the uses and purposes therein set forth. I believe him or her to be of sound mind and memory.

Dated: \_\_\_\_\_ (SEAL)

Witness: \_\_\_\_\_

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) SS.

The undersigned, a notary public in and for the above county and state, certifies that

\_\_\_\_\_, known to me to be the same person whose name is subscribed as principal to the foregoing power of attorney, appeared before me and the additional witness in person and acknowledged signing and delivering the instrument as the free and voluntary act of the principal, for the uses and purposes therein set forth (, and certified to the correctness of the signature(s) of the agent(s)).

Dated: \_\_\_\_\_ (SEAL)

(Notary Public) \_\_\_\_\_

My commission expires \_\_\_\_\_ .

(The name and address of the person preparing this form should be inserted if the agent will have power to convey any interest in real estate.)

This document was prepared by:

(Name) \_\_\_\_\_

(Address) \_\_\_\_\_

The Illinois Department on Aging provides complimentary copies of the following forms:

- **Living Will,**
- **Power of Attorney for Health Care and**
- **Power of Attorney for Property.**

For copies, contact the Senior HelpLine:

**1-800-252-8966**

**1-888-206-1327 (TTY)**

**E-mail: [ilsenior@aging.state.il.us](mailto:ilsenior@aging.state.il.us)**

State of Illinois

**Illinois Department on Aging**

421 East Capitol Avenue, #100, Springfield, Illinois 62701-1789

Senior HelpLine: 1-800-252-8966, 1-888-206-1327 (TTY)

[www.state.il.us/aging](http://www.state.il.us/aging)

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