

## INSTRUCTIONS FOR GENERAL DURABLE POWER OF ATTORNEY

### IMPORTANT! READ BEFORE USING THIS FORM

**ND Legal Self Help Center staff and court employees cannot help you fill out the form(s). If you are unsure how to proceed, consult a lawyer.**

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts. The forms and information available through the North Dakota Legal Self Help Center are not intended for legal advice but only as a general guide. **Use at your own risk.**

Any user of the forms or information is hereby advised that all forms and information are provided “as is.” The forms and information provided may be subject to errors or omissions. The ND Legal Self Help Center **IS NOT** responsible for any consequences that may result.

Carefully read this information and any instructions, laws, or court rules to which you are referred. As a self-represented individual, you must independently determine if the forms and information are legally sufficient for your specific circumstances and for North Dakota.

If you are unsure if this information suits your circumstances, or if you do not know how to answer the questions on these forms, consult a lawyer.

A glossary with definitions of legal terms is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help).

**This information is not a complete statement of the law. The information cannot replace the advice of competent legal counsel licensed in the state.**

Chapter 30.1-30 of the North Dakota Century Code contains laws enacted by the North Dakota State Legislature related to powers of attorney for adults. Chapter 30.1-30 is available online at [www.legis.nd.gov/cencode/t30-1c30.html](http://www.legis.nd.gov/cencode/t30-1c30.html) and in print in many North Dakota public and academic libraries

### Who May Use this Form?

The General Durable Power of Attorney form may be used by an individual 18 years of age or older to appoint someone to handle their financial or other decisions. This **does not** include health care decisions.

A Durable Power of Attorney remains in effect even when you are unable to make your own decisions.

## Definitions:

**Adult** – An individual who is eighteen years of age or older.

**Attorney in Fact** – The person who is given the power of attorney for financial and other decisions. The Attorney in Fact is not required to be an actual attorney.

**Durable Power of Attorney** – An instrument authorizing a person to act as the Attorney in Fact of the person granting the Power of Attorney. The authority granted is for financial or other decisions, but does not include health care decisions. A Durable Power of Attorney remains in effect when the person granting the power of attorney is unable to make their own decisions. (See also Power of Attorney)

**Power of Attorney** – An instrument authorizing a person to act as the Attorney in Fact of the person granting the Power of Attorney. The authority granted is for financial or other decisions, but does not include health care decisions. A Power of Attorney does not remain in effect when the person granting the power of attorney is unable to make their own decisions. (See also Durable Power of Attorney)

**Principal** – The adult individual who grants durable power of attorney to the Attorney in Fact.

## What is a Durable Power of Attorney?

A Power of Attorney is a document authorizing a person to act as the Attorney in Fact of the Principal. A Power of Attorney ends when the Principal becomes unable to make their own decisions.

A Durable Power of Attorney does not end if the Principal becomes unable to make their own decisions. A Durable Power of Attorney remains in effect even if the Principal becomes disabled or incapacitated.

A Durable Power of Attorney is for financial or other decisions. Health care decisions are not authorized in a Durable Power of Attorney. There is a different document for health care decisions called a Health Care Directive.

The Attorney in Fact must be a responsible adult, but does not need to be an actual attorney.

The Durable Power of Attorney may 1) take effect upon the signature of the Principal and remain effective if the Principal becomes disabled or incapacitated; or 2) take effect only when the Principal becomes disabled or incapacitated.

The Principal may revoke the Durable Power of Attorney at any time, as long as they are legally competent. The revocation must be in writing.

## Is a Durable Power of Attorney a Court Order?

**No, a Durable Power of Attorney is not a court order, is not a guardianship, and is not a conservatorship.**

Neither a Power of Attorney nor a Durable Power of Attorney require a court process to create. So, neither a Power of Attorney nor a Durable Power of Attorney are court orders.

Guardianships and conservatorships are court processes where the court decides if an adult individual's circumstances meet the requirements for appointment of a guardian, conservator, or both. When a court appoints guardian, conservator, or both, the court will specify in its order the decisions the guardian or conservator can make on behalf of the adult individual.

## Legal Research Resources

A Durable Power of Attorney can have serious legal and financial consequences. Following are resources to get you started on your legal research.

**Review North Dakota Century Code Chapter 30.1-30.** The link to North Dakota Century Code Chapter 30.1-30 is provided on page one of these instructions. Chapter 30.1-30 may be found in print in many North Dakota public and academic libraries.

**Consult a lawyer.** Only a lawyer who has agreed to represent you can take your circumstances, apply the law and give you advice about what you should do. Consult a lawyer for legal advice and carefully consider all of your options.

**Legal Services of North Dakota Educational Materials.** Legal Services of North Dakota provides educational materials on their website that are related to many different areas of the law. Go to [www.legalassist.org](http://www.legalassist.org) and click on the Educational Materials link.

## **COMPLETE THE GENERAL DURABLE POWER OF ATTORNEY FORM**

**If you determine 1) a Power of Attorney will suit your needs; and 2) you determine the General Durable Power of Attorney form is legally sufficient for North Dakota; and 3) you determine the form will suit your circumstances, follow the instructions below.**

- First Sentence:
  - Fill in the name of the person who is giving a Power of Attorney to another (attorney-in-fact). This person is called the Principal and will be the person signing the document.
  - Fill in the Principal's address.

- Fill in the name of the person the Principal is giving power of attorney. This person is called the Attorney-in-Fact.
- Fill in the Attorney-in-Fact's address.
- Paragraphs 1 and 2:
  - **Read these paragraphs carefully!** These paragraphs are the authority you, the Principal, are granting the Attorney-in Fact.
  - **If you do not understand, or if you are unsure about what these paragraphs mean for you, consult a lawyer before signing.**
  - ND Legal Self Help Center staff and court system employees **cannot** answer questions about what this form means for you.
- Paragraph 3:
  - Fill in the date the document is signed by you, the Principal.
- Paragraph 4:
  - Choose (✓) only one option.
    - **First option:** the General Durable Power of Attorney takes effect as soon as the document is signed and stays in effect even if there is a disability or incapacity of the Principal.
    - **Second option:** the General Durable Power of Attorney takes effect only if there is a disability or incapacity of the Principal.
- Paragraph 5:
  - You, the Principal, may revoke the General Durable Power of Attorney in writing.
- Signature and Notarization:
  - You, the Principal, must sign and date the General Durable Power of Attorney in the presence of a Notary Public or Clerk of Court.

## **REVOKING THE POWER OF ATTORNEY**

You, the Principal, may revoke the General Durable Power of Attorney at any time, if you are legally competent to do so.

Written notice of the revocation must be given to the Attorney-in-Fact and to anyone who has been given a copy of the General Durable Power of Attorney form.

If possible, you, the Principal, should collect and destroy the original Power of Attorney and all copies when the General Durable Power of Attorney is revoked.