

**Utah Statutory Form Power of Attorney Training**  
**Utah Code Sections 75-9-101 et seq.**  
**Training for Older Adults**  
**Instructors Guide, Objectives and Course Content**

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**Pre-instructional Considerations**

The goal of this training is to provide older adults with the knowledge and skills needed to complete the Utah Statutory Form Power of Attorney (POA).

At the end of this training, it is expected that older adults will be adequately prepared to complete the Utah Statutory Form Power of Attorney or act as an agent in such a manner that will help reduce the improper use of the form.

**Audience**

The audience for this learning event includes:

Primary audience: Older adults

Secondary audience: Allied professionals who work with older adults

**Recommended Selection Criteria for Trainers**

This curriculum is designed to be taught by one or two attorneys. Attorneys should be knowledgeable about elder law and powers of attorney. Attorneys should be familiar with Utah Code Sections 75-9-101 et seq.

**Module Name:** Utah Statutory Form Power of Attorney Training

**Module Time:** One hour

**Handouts:** Utah Statutory Form Power of Attorney Utah Code Section 75-9-101 et seq

**Objectives for Module:**

- Explain the rationale and results of the power of attorney questionnaire and how results can assist older adults in completing the POA form;
- Define Power of Attorney and roles;
- Learn how to choose an agent and putting safeguards in place to limit misuse;
- Discuss how to act when named as an agent or deciding whether to act as an agent and ways to meet their duties;
- Describe when the Power of Attorney terminates;
- Describe Agent’s potential liabilities if duties not performed correctly;
- Learn how to choose the types of authority that can be granted in Power of Attorney and how they can be limited;
- Learn how to name a guardian and conservator; and
- Learn how to complete the form

**Objectives and Course Content Outline and Notes:**

Objectives	Course Content Outline and Notes
Explain the rationale and results of the power of attorney questionnaires and how the results can assist older adults to complete the POA form	- Describe rationale for questionnaires - Describe questionnaire process - Describe general result of questionnaires - Discuss high priority training items identified in the questionnaires
Define Power of Attorney and roles	- Define POA and roles

	<ul style="list-style-type: none"> <li>- Distinguish the provisions of Utah Code Section 75-9-101 et seq from Utah Advance Health Care Directive</li> </ul>
<p>Learn how to choose an agent and putting safeguards in place to limit misuse</p>	<ul style="list-style-type: none"> <li>-Discuss things to consider when choosing an agent</li> <li>-Discuss how to ensure principal's needs are met</li> <li>-Naming the agent on the POA form</li> <li>-Discuss other agent involvement <ul style="list-style-type: none"> <li>-- Multiple agents and safeguards that can be put in place</li> <li>-- Successor agents</li> <li>-- Items that are automatic in POA form unless addressed in the Special Instructions Section</li> <li>-- Compensation for agent and safeguards if agent compensated</li> </ul> </li> <li>-Describe when agent's authority starts and ends <ul style="list-style-type: none"> <li>--How to limit when POA becomes effective in order to reduce risk of abuse by agent</li> </ul> </li> <li>-Participants complete Designation of Agent Section <ul style="list-style-type: none"> <li>--May need to add limitations in Special Instructions Section</li> <li>--Questions, feedback and confirmation of understand of how to complete</li> </ul> </li> </ul>
<p>Discuss how older adults should act when they are named as an agent or deciding whether to act as an agent and ways to meet their duties</p>	<ul style="list-style-type: none"> <li>-Describe agent duties and discuss ways to best comply with duties</li> <li>-Discuss agents working with other parties <ul style="list-style-type: none"> <li>--Co-agents</li> <li>-- Successor agent</li> <li>-- Special fiduciaries</li> </ul> </li> <li>-Discuss when POA terminates</li> <li>-Describe when agent may be liable</li> </ul>
<p>Learn to choose the Types of Authority that can be given and ways to limit that authority</p>	<ul style="list-style-type: none"> <li>-Explain that Form is durable unless otherwise stated</li> <li>-Discuss the ramifications of the 13 types of General Authority listed in POA and how they can be limited</li> <li>-Participants to complete Grant of General Authority Section</li> </ul>

	<ul style="list-style-type: none"> <li>--Questions, feedback, and confirmation of understanding of how to complete</li> <li>-Discuss the 8 types of Specific Authority listed and ramifications if granted and how they can be limited</li> <li>-Participants to Complete Grant of Specific Authority Section (if wanted, as section is optional) <ul style="list-style-type: none"> <li>--Questions, feedback, and confirmation of understanding of how to complete</li> </ul> </li> </ul>
Learn how to name a guardian and conservator	<ul style="list-style-type: none"> <li>-Discuss rationale for naming a guardian</li> <li>-Discuss coordination with Utah Advance Health Care Directive if guardian named</li> <li>-Participants to complete Nomination of Conservator or Guardian Section (if wanted, as section if optional) <ul style="list-style-type: none"> <li>--Questions, feedback, and confirmation of how to complete</li> </ul> </li> </ul>
Learn how to complete the form	<ul style="list-style-type: none"> <li>-Discuss proper execution of form, including need for notarization</li> <li>--Questions, feedback, and confirmation that participants are confident that they understand and can complete the form</li> </ul>

# Utah Statutory Form Power of Attorney

## Training

## **POWER OF ATTORNEY QUESTIONNAIRES**

### ***Rationale for Questionnaires***

The misuse of powers of attorney is pervasive. In one study, 75% of financial exploitation cases involved the misuse of powers of attorney.

In order to prevent financial exploitation of elderly individuals by reducing the misuse of powers of attorney, Utah Legal Services (ULS) was charged, under to a cooperative agreement with the Office for Victims of Crime, U.S. Department of Justice, with developing training materials on the Utah Statutory Form Power of Attorney (POA) form.

### ***Questionnaires process***

To better understand the problem, Utah Legal Services commissioned the Utah Criminal Justice Center (UCJC) to develop questionnaires that would clarify users' level of understanding of the POA form. One questionnaire focused on the experiences of attorneys (Attorney Questionnaire (AQ)) and the other on the experiences of the General Public (Older Adult Questionnaire (OAQ)).

From September 2018 to January 2019 the questionnaires were used to survey individuals who had used the POA within the past two years. The results helped identify areas where both attorneys and the general public desired training. These results should help focus your efforts when preparing the form or deciding whether to become an agent.

### ***General Results of Questionnaires***

While most participants generally understood the language and purpose of the form, comprehension was not universal. Confusion and misunderstanding were particularly evident in connection with items concerning specific powers and uses of the form.

Most respondents to the Older Adult Questionnaire did not consult a lawyer when preparing the POA.

## **Key Results of the Attorney Questionnaire**

### **Understanding the POA by clients**

Only 52.9% of participants agreed that clients would be able to understand the language used in the POA.

### **Abuse of Power of Attorney**

- 61.1% of participants had encountered abuse of a power of attorney by an agent.
- 54.3% of participants said that they had deterred potential abuse of a power of attorney by an agent.

## **Key Results of the Older Adult Questionnaire**

### **Attorney assistance with the Form did make a difference**

Most participants (85.7%) agreed that their lawyer made the form easy to understand.

### **There is confusion about what the POA is for**

22.9% of participants thought that the agent was someone who could make healthcare decisions for you.

### **There is confusion about the designation of roles in the POA**

13% of participants were unsure of how they were named on the POA.

### **There is confusion about when the POA becomes effective**

31.9% of participants agreed with the statement *that the POA only becomes effective after the principal has become incapacitated or unable to make decisions for themselves*. This is incorrect, as the POA becomes effective immediately on execution, unless stated otherwise in the Special Instructions.

### **There is confusion about the agent's duties**

23.9% of participants incorrectly thought that an agent is required to make a full accounting to a third party every year.

### **There is confusion about terms used but not defined in the POA**

Participants were unclear about the meaning of terms such as "intervivos trust," "guardian," and "conservator."

## ***High priority training items identified in the questionnaires***

### **What Attorneys participants wanted training to address**

- Attorneys indicated they would like training that would help agents understand their role, as abuse can occur not only from intentionally misappropriating funds, but also from misunderstanding fiduciary responsibility.
- Significant percentages of attorney questionnaire participants expressed concerns that their clients did not understand the form or find it easy to use.

### **What Older Adult participants wanted training to address**

80%: Duties of the agent

70%: Risks to the principal

90%: Types of authority



30%: Language on the form

## DEFINITIONS

### ***What is a Power of Attorney?***

A power of attorney is a legal document in which one person gives another person the right to make certain decisions on their behalf. The person granting the authority is called the *principal*. The person who is given the authority is called the *agent*.

### ***What is the Utah Statutory Form Power of Attorney?***

The power of attorney form (POA) authorizes another person (your agent) to make decisions about your *property*, including things like bank accounts, stocks, and insurance.

This form is NOT for medical decisions. It does not authorize your agent to make health care decisions for you. In Utah, the document that allows you to name someone to make medical decisions for you is called the Utah Advance Health Care Directive. If you want to make an Advance Health Care Directive, that form and its instructions may be found on the Utah Commission on Aging website (<https://ucoa.utah.edu/directives/>).

Before you complete the POA form, be sure you understand what powers you are giving to your agent. If you are named as an agent for someone, you need to understand what your duties and obligations are.

## CHOOSING AN AGENT

It is extremely important that you choose the right person to be your agent.

A power of attorney is a powerful tool. Like any tool, it can be used in a positive way. For example, you may want to name an agent so you can prepare for the time when you may not be able to act on your own behalf due to incapacity or absence.

There is also the potential for this tool to be misused. Unfortunately, it's very common for agents to misuse their power of attorney. Safeguards in preparing the POA should be added, when possible, that will limit the potential for misuse and abuse by any agent.

### ***Things to consider when choosing your agent***

Choose your agent wisely and make sure you understand exactly what powers you are giving them. You want to pick someone who:

- You *trust*
- Understands their duties and will take those duties seriously
- Understands your wishes and values
- Is loyal to you
- Will not overstep their bounds
- Does *not* have financial troubles
- Does *not* have drug or other substance abuse problems

Remember:

*No one can force you to appoint an agent.*

Always get permission from the person you want to name as agent before you fill out the form. Make sure that they are willing to accept this obligation and responsibility.

### ***Naming the agent on the POA form***

Naming an agent is called the Designation of Agent. It is on page 1 and page 2 of the form and looks like this:

#### DESIGNATION OF AGENT

I \_\_\_\_\_ name the following

(Name of Principal)  
person as my agent:  
Name of Agent: \_\_\_\_\_  
Agent's Address: \_\_\_\_\_  
Agent's Telephone Number: \_\_\_\_\_

#### DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:  
Name of Successor Agent: \_\_\_\_\_  
Successor Agent's Address: \_\_\_\_\_  
Successor Agent's Telephone Number: \_\_\_\_\_  
If my successor agent is unable or unwilling to act for me, I name as my second successor agent:  
Name of Second Successor Agent: \_\_\_\_\_  
Second Successor Agent's Address: \_\_\_\_\_  
Second Successor Agent's Telephone Number: \_\_\_\_\_

### ***Other Agent Involvement***

#### **Choosing multiple agents**

Notice that the form provides space for naming only one agent (not including the successor agent). If you want to name more than one, you must do so in the Special Instructions Section of the form.

If you name more than one agent, they are called co-agents. The co-agents are *not* required to act together. One co-agent could do something the other agent is not aware of.

This can be problematic. The agents may disagree and may not want to take the same course of action. If you want them to be required to act together, you must say so in the Special Instructions Section.

Using more than one agent can be a way to add safeguards for the principal. One safeguard is to require an agent who acts only to provide an annual accounting. Annual accountings are not required unless expressly stated in the Special Instructions Section. Another safeguard would be to have a third person to act as agent only for larger transactions such as a sale of a home.

#### **Choosing a successor agent**

You can name a successor agent who will take over, if your agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A successor agent has the same authority as the original agent, *unless the POA specifically says otherwise*. The successor agent may not act until all previous agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

### **Special Instructions Section**

The Special Instructions of the POA form is on page three. Certain things will not happen unless they are addressed in the Special Instructions Section. This includes:

- When you want the POA to become effective.
  - It becomes effective immediately, unless otherwise stated in this section.
- Whether you want the agent to be compensated.
  - Your agent is entitled to reasonable compensation, unless otherwise stated in this section.
- Whether and how to name co-agents.
  - If you want more than one agent, you must state so in this section.
- Whether co-agents are required to act together.
  - They are not required to act together, unless otherwise stated in this section.
- Whether the agent's authority will be revoked if the agent becomes divorced from the principal.
  - This will happen, unless otherwise stated in this section.

### **Compensation for your agent**

Your agent is entitled to reasonable compensation, unless you specifically state otherwise. This means that your agent can be paid with your money for services they provided. If you do not want your agent to be paid, you have to say so in the Special Instructions Section.

Utah law states that an agent is entitled to reimbursement of expenses and compensation that is “reasonable under the circumstances.” In order to prevent any future misunderstandings, it would be a good idea to expressly state what amount you think the agent should be paid.

### ***When the Agent’s Authority Starts and Ends***

The power of attorney becomes effective as soon as it is executed, unless you specifically state otherwise. That means it will become effective when you sign it and your signature is notarized. If you want it to be effective at another time, you must state in the Special Instructions Section on page 3 of the POA form when you want it to be effective.

### **Limit when POA becomes effective to reduce risk of abuse of agent**

A way to avoid potential abuse by an agent is to limit when the POA becomes effective. If it meets your needs and wishes, making the POA effective only for a limited time, for a certain event, or upon incapacity, minimizes potential abuse. If you are currently handling all your own financial transactions, and only want someone to act for you when you cannot act for yourself, then stating that the POA is effective only upon your disability, is a good way to prevent abuse.

## **IF YOU ARE NAMED AS AN AGENT FOR SOMEONE ELSE**

There are many legal responsibilities and consequences attached to being an agent under a power of attorney. You have been named to manage property for someone else. You are a fiduciary. This carries with it legal responsibilities. These legal responsibilities continue until you resign or the power of attorney is terminated or revoked.

Page 5 of the POA form lists the agent’s responsibilities in detail, so you should read that section carefully.

Under this power of attorney there are four express duties that are named.

## **Duty One**

Do what you know the principal reasonably expects you to do with the principal's property. If you do not know the principal's expectations, act in the principal's best interest.

Things that may be able to helpful in meeting this duty:

If possible, involve the principal in the decision. Ask the principal what they want. If they cannot communicate, try to find out what they would have wanted. Look at any past decisions, actions, and statements.

## **Duty Two**

Act in good faith.

This means being completely honest. Have you been honest in acting as an agent?

## **Duty Three**

Do nothing beyond the authority granted in the power of attorney.

Read the power of attorney and understand the authority you have been given. Your authority is strictly limited to what the document states.

Understand when the power of attorney becomes effective. The POA form becomes effective upon the principal signing it, unless otherwise stated in the Special Conditions.

## **Duty Four**

Whenever you act for the principal, disclose your identity as an agent by writing or printing the name of the principal and signing your own name as "agent" in the following manner: (Principal's Name) by (Your Signature) as Agent

For example, if you are signing a check as agent for Mary Doe and his name is John Doe, you would sign it: Mary Doe by John Doe (your signature) as Agent.

This is to show that you are acting in your capacity only as the agent for the principal. You are not acting on your own. It notifies organizations or individuals you are working with that you are the agent for that person.

### **Other Duties**

Unless the Special Instructions in this power of attorney state otherwise, you must also:

- (1) Act loyally for the principal's benefit.
- (2) Avoid conflicts that would impair your ability to act in the principal's best interest. A conflict of interest may happen, if you make a decision about the principal's property that may benefit someone else at the principal's expense.
- (3) Act with care, competence, and diligence.

Suggestions on how to accomplish this:

- Use good judgment and common sense. As a fiduciary, you must be even more careful with the principals' money than you might be with your own.
- List the principals' money, property, and debts. To make careful decisions, you need to know what they own and owe.
- Invest carefully. You may want to talk to a professional.
- Protect assets by keeping money and property safe. You may need to put valuable items in safe deposit boxes, change locks on property, make sure home or other property is insured.
- Make sure bank accounts earn interest and have low fees.
- Review bank and other financial statements promptly.
- Keep any real estate in good condition.
- Pay bills and taxes on time.
- Cancel any insurance policies that they do not need.
- Collect debts.

(4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal. You may be asked by the principal, or ordered by the court, to produce records. So keep good records now.

Suggestions on how to accomplish this:

- Keep a detailed list of everything that you receive or spend.
- Records should include amount of checks written or deposited, dates, reasons.
- Keep receipts.
- Avoid paying in cash.
- Unless stated otherwise in the Special Conditions Section, you are allowed to be paid for acting as agent. If you will be paid, be sure you charge a reasonable fee. Keep contemporaneous records of what work you did, how much time it took, when you did it, and why you did it.

(5) Cooperate with any person who has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest.

This could include an agent named under a medical power of attorney (the form called the Utah Advance Health Care Directive). There could also be a legal guardian who has been appointed by the courts.

6) Attempt to preserve the principal's estate plan if you know the plan and if preserving the plan is consistent with the principal's best interest.

You will need to review and understand all documents relating to the estate plan. This would include things like any will or trust that the principal may have prepared.

## ***Working With Other Parties***

Be aware of other parties that may have legal rights to act on behalf of the principal. You may need to cooperate and work with them.

## **Working With Co-agents**

A principal may designate two or more people to act as co-agents. Unless the power of attorney otherwise provides, each co-agent may exercise his



authority independently. So it is important to coordinate with any co-agent and share information about your decisions.

### **Relationship to a successor Agent**

Your principal may have named a successor agent to act if you are not able to act. A successor agent has no authority if you are still willing and able to act.

### **Special fiduciaries under Government Benefits**

Be aware if someone has already been appointed to receive the principal's money from government agencies. For social security benefits, this person is called the representative payee. For Veterans Benefits this person is called the VA fiduciary.

### ***When the POA terminates***

On page 5 of the POA form, there is an explanation of when the Power of Attorney terminates. The power of attorney ends when

1. The principal dies;
2. The principal revokes the power of attorney or the agent's authority;
3. A termination event occurs as stated in the power of attorney;
4. The purpose of the power of attorney is fully accomplished; or
5. In a case where the agent is married to the principal, the power of attorney is terminated when a legal action is filed with a court to end the marriage, or for legal separation. Or you can state in the Special Instructions that this action will not terminate the agent's authority.

### ***Liability as Agent***

As an agent, you are now acting as a fiduciary for the principal. It is your duty to make decisions that are best for the principal and you must act

only within the authority given to you by the principal. If you do not do so, you are breaching your duty as a fiduciary.

As an agent, you should not participate in or conceal a breach of fiduciary duty committed by another agent.

As an agent, if you have actual knowledge of a breach or imminent breach of fiduciary duty by the other agent, you must notify the principal and if the principal is incapacitated, take any reasonable appropriate action to safeguard the principal's best interest.

### ***Authority of an Agent***

A power of attorney created by this form is *durable*. This means that the power of attorney is not terminated by the principal's incapacity. (In this case, incapacity means inability to manage property or business affairs). As the principal, if you want the power of attorney to terminate if you become incapacitated, you must say so in the Special Instructions Section.

### **General Authority**

General authority under a power of attorney is comprehensive and gives your agent all the powers and rights that you have yourself. On page 2 of the POA form you can give your agent general authority over 13 kinds of property. The form looks like this:

#### GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in Title 75, Chapter 9, Uniform Power of Attorney Act:

So INITIAL each subject you want to include in your agent's general authority. If you want to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- Real Property
- Tangible Personal Property
- Stocks and Bonds
- Commodities and Options
- Banks and Other Financial Institutions
- Operation of Entity or Business
- Insurance and Annuities
- Estates, Trusts, and Other Beneficial Interests
- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service
- Retirement Plans
- Taxes
- All Preceding Subjects

Think carefully about exactly what authority you want to give your agent. Review each of the 13 areas separately. You can greatly limit the general authority by initialing ONLY those areas where you feel comfortable allowing your agent to act for you. If you do not initial an item, no authority for that area will be granted.

Each area may be limited by expressly stating those limits in the Special Instructions Section of the POA form.

You can also tailor the POA to meet only your exact needs and state those limitations in the Special Conditions Section.

### **Specific Authority**

On pages 2 and 3 of the POA form you can give your agent authority to act on your behalf in eight specific situations. The form looks like this:

## GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- Create, amend, revoke, or terminate an inter vivos trust
- Make a gift, subject to the limitations of Section 75-9-217, and any special instructions in this power of attorney
- Create or change rights of survivorship
- Create or change a beneficiary designation
- Authorize another person to exercise the authority granted under this power of attorney
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- Exercise fiduciary powers that the principal has authority to delegate
- Disclaim or refuse an interest in property, including a power of appointment

Think very carefully about whether you want to give your agent these powers. You do not have to give any of these powers. If you do not want to give any of these powers, do NOT initial any of the items.

Each of the 8 areas should be reviewed and discussed separately. You can greatly limit the specific authority by initialing ONLY those areas where you feel comfortable allowing their agent to act for them. If you do not initial an item, no authority for that area will be granted.

Each area may be limited by expressly stating those limits in the Special Instructions Section of the POA form.

The questionnaires' results indicated that individuals do not understand the potential ramification of granting authority in the 8 specific choices given. So a detailed discussion is necessary to ensure that you understand what these powers allow.

### ***Naming a Conservator or Guardian***

A conservatorship or guardianship allows someone to act for someone else. These cannot be created without an order by a judge, which happens only when someone can no longer take care of themselves.

The difference between a conservator and a guardian is that a conservator only has the power to manage property and finances. A conservator may not make personal decisions for someone, like where that person will live. A guardian has control of personal decisions.

On page 4 of the POA form you can name a guardian or conservator. It looks like this:

#### NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a conservator of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for conservator of my estate: \_\_\_\_\_

Nominee's Address: \_\_\_\_\_

Nominee's Telephone Number: \_\_\_\_\_

Name of Nominee for guardian of my person: \_\_\_\_\_

Nominee's Address: \_\_\_\_\_

Nominee's Telephone Number: \_\_\_\_\_

This section is optional and you do not need to name a guardian or conservator. The Utah Advance Health Care Directive also allows you to name a guardian. If you have completed that form, you want to make sure that you name the *same person as guardian in both forms*. If you become incapacitated, a judge will look at these documents to see who you wanted as your guardian.

#### Why nominate someone now?

This section is optional and you do not need to name a guardian or conservator. If you become incapacitated in the future and a guardian needs to be appointed for you, then stating your wishes now of who you want, will help ensure that the person you named as your guardian will more likely be appointed, as opposed to someone that you would not want at all.

## Coordinate with other Advance Directives documents

The Utah Advance Health Care Directive also allows an individual to name a guardian. If you have completed that form, make sure that they match, and the *same person is named as a guardian in both forms*. It will only create confusion for third parties, including the court, if you become incapacitated, and have named two different people to act as guardian.

## Executing the POA Form

After you have completed all sections of the POA form, you then sign your name in front of a notary public. This is on the page 4 of the form and it looks like this:

### SIGNATURE AND ACKNOWLEDGMENT

_____	_____
Your Signature	Date
_____	
Your Name Printed	
_____	
_____	
Your Address	
_____	
Your Telephone Number	
State of _____	
County of _____	
This document was acknowledged before me on _____,	
(Date)	
by _____,	
(Name of Principal)	
_____ (Seal, if any)	
Signature of Notary	
My commission expires: _____	
_____	
_____	