



LACERA Special Durable

Power of Attorney



QUESTIONS & ANSWERS



The information in this brochure provides general knowledge on the subject of LACERA's Special Durable Power of Attorney. It is intended to provide information only and should not be relied upon for legal advice. We recommend you discuss your personal needs with an attorney as you complete the Special Durable Power of Attorney form provided with this brochure. LACERA (Los Angeles County Employees Retirement Association) does not provide legal advice.

LACERA is governed by the County Employees Retirement Law of 1937. If any statement in this guide conflicts with the law, the law prevails.

Official decisions will be made with reference to the statutes and regulations governing administration of LACERA.

For additional information:

call LACERA at 1-800-786-6464,
email us at welcome@lacera.com,
or visit LACERA's Public Service Counter at
300 N. Lake Ave., Suite 130, Pasadena, CA 91101

Please address all written correspondence to:

LACERA, PO Box 7060
Pasadena, CA 91109-7060





What Is a Power of Attorney?

A Power of Attorney is a legal instrument used to delegate legal authority to another. **By executing a Power of Attorney, you give legal authority to a representative you designate** (called an Attorney-In-Fact) to make property, financial, and other legal decisions on your behalf. A Power of Attorney will terminate upon your incapacity, unless it contains a durable clause.



What is LACERA'S Special Durable Power Of Attorney?

The LACERA Special Durable Power of Attorney is a legal document, executed by a member, which designates another person to act on the member's behalf with regard to retirement matters only. This can include such matters as address changes, making tax withholding elections, requesting information regarding benefit payments, and endorsing checks. The member has the right to revoke or terminate this Power of Attorney at any time, as long as he/she is competent. If the member does not revoke the document, it terminates when the member dies.

LACERA's Special Durable Power of Attorney has two distinguishing features:

- It allows a LACERA member or his/her beneficiary to designate an Attorney-In-Fact to handle retirement affairs such as filing applications, making tax withholding elections, and endorsing checks. **If the Attorney-In-Fact is not related** to the member or intended beneficiary, he/she also has the authority to make benefit elections and designate beneficiaries.
- It contains a ***durable clause*** which allows the Attorney-In-Fact to work on retirement matters on the member's behalf in the event the member becomes incapacitated. Having a Special Durable Power of Attorney on file at LACERA assures that LACERA will be able to handle your retirement benefits without interruption, and in accordance with your wishes, should you become unable to handle your own affairs. In cases where a member without a durable Power of Attorney becomes incompetent, LACERA must withhold the member's benefits until a court-appointed conservator is named.

It is important to have a current Special Durable Power of Attorney on file with LACERA, since the laws regarding powers of attorney change from time to time.

While we prefer LACERA members use our form because it contains the durable clause, we will also accept a general Power of Attorney without a durable clause.

LACERA'S Special Durable Power of Attorney cannot be used for health care matters, and is limited to matters relating to LACERA.



Choosing an Attorney-In-Fact

The person you designate to act as your Attorney-In-Fact may be anyone over the age of 18. LACERA allows Attorneys-In-Fact who are your **eligible spouse** or **domestic partner to make any retirement benefit election and designate any beneficiary(ies) on your behalf.**

LACERA will also accept the election of **any retirement benefit** or the **designation of any beneficiary** from a **neutral** (not related to you and not your beneficiary) Attorney-In-Fact, provided the **Attorney-In-Fact** does not benefit from the action(s).

However, **limitations apply to benefit elections permitted by non-neutral parties serving as your Attorney-In-Fact.** A **non-neutral party** is defined as someone related to you by blood, marriage, or domestic partnership, or a named beneficiary.

A non-neutral Attorney-In-Fact is limited to the following benefit elections:

- Election of the Unmodified Option or Unmodified+Plus Option on your behalf
- Designation of your minor child(ren) as beneficiary(ies)

To make other retirement benefit and/or beneficiary elections on your behalf, a non-neutral Attorney-In-Fact (such as a child, grandchild, or other blood relative) **must obtain conservatorship papers.** (See questions 14-16.)

Important Reminder: The authority granted by the LACERA Special Durable Power of Attorney *is limited to matters relating to LACERA.* Your Attorney-In-Fact will not have any authority over your other real or personal property.

Please consult a lawyer if you have questions regarding the designation of an Attorney-In-Fact.



Q&A: Power of Attorney

1 Q: What is the difference between a general Power of Attorney and a durable Power of Attorney?

A: A general Power of Attorney terminates upon the member becoming mentally incapacitated. A durable Power of Attorney remains in effect even if the member becomes mentally incapacitated. Both instruments terminate upon the member's death.

2 Q: Why is LACERA's Power of Attorney called a Special Durable Power of Attorney?

A: Special refers to the fact it can only be used for LACERA retirement matters.

3 Q: Does LACERA accept Power of Attorney **designations that are not on the LACERA form?**

A: Yes. However, the main advantage in executing the LACERA Special Durable Power of Attorney is that it contains the durable clause and specifically shows your intent to have your Attorney-In-Fact conduct your retirement business with us.

4 Q: Does LACERA charge a fee for this service?

A: No.

5 Q: Can I still handle my own retirement affairs with a Power of Attorney on file?

A: Yes. With any type of Power of Attorney form on file, you may still take care of your own retirement affairs. If you become too ill to handle your own affairs, your designee will be able to handle them for you *if* you have executed a **durable** Power of Attorney.

6 Q: When should I send my Power of Attorney to LACERA?

A: You can send in your Power of Attorney form once it is completed or your Attorney-In-Fact may send it to us when the need first arises to transact business on your behalf. You do not have to file your Power of Attorney with LACERA before it is necessary to use it.

Tip: LACERA recommends you keep your completed Power of Attorney form where it is accessible to your Attorney-In-Fact. This can ease distress for you and your family if there comes a time when you are not able to handle your own retirement affairs. We advise keeping a photocopy of the original form for your records.

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

A: No.

8 Q: Would it be practical to have my spouse or domestic partner (my named beneficiary) execute the LACERA Special Durable Power of Attorney form?

A: Yes.

9 Q: Can I terminate my LACERA Special Durable Power of Attorney?

A: Yes, as long as you are still competent and you submit written notification to LACERA directing the document to be revoked or terminated.

10 Q: Can I execute the Special Durable Power of Attorney outside of California?

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

11 Q: Can I use my California Power of Attorney for Health Care for LACERA retirement matters?

A: No. That document applies to health care matters only.

12 Q: Why does Section 6: *Notice to Person Executing This Document* on the LACERA Special Durable Power of Attorney form seem to contradict some of the information contained in this brochure?

A: California Probate Code §4128 requires that warning to be included on all pre-printed Power of Attorney forms that may extend authority to the Attorney-In-Fact beyond the time in which an individual becomes disabled or incapacitated. ***Do not be confused. The information in this brochure is accurate as it applies to LACERA's Special Durable Power of Attorney; LACERA's Special Durable Power of Attorney only deals with your retirement benefits and does not cover your real or personal property.***

13 Q: How can I change my Power of Attorney?

A: If you want to change your Power of Attorney:

- Complete a new Power of Attorney form reflecting the changes you wish to make.
- Inform everyone who has a copy of your previous Power of Attorney that it is no longer valid. Ask them to return copies of the outdated form to you so you can destroy them.
- Give copies of your updated Power of Attorney to the people who may need them to carry out your wishes.



14 Q: If I designate **my spouse or domestic partner as my Attorney-in-Fact** and I become incapacitated, what actions is he or she permitted to take on my behalf?

A: If your spouse or domestic partner is your Attorney-in-Fact, he or she is permitted to:

- Elect any retirement option on your behalf, including the Unmodified Option or Unmodified+Plus Option
- Designate any beneficiary(ies) on your behalf, including your minor child(ren)
- Make address changes
- Make tax withholding elections
- Access information regarding your benefit payments
- Endorse checks

15 Q: If I designate a **non-neutral person as my Attorney-in-Fact** and I become incapacitated, what actions is he or she permitted to take on my behalf?

A: If your Attorney-in-Fact is your child, grandchild, or other blood relative, or is related to you through marriage, or is a named beneficiary, he or she is permitted to:

- Elect either the Unmodified Option or Unmodified+Option on your behalf
- Designate your minor child(ren) as your beneficiary(ies)
- Make address changes
- Make tax withholding elections
- Access information regarding your benefit payments
- Endorse checks

16 Q: If I designate a **neutral person as my Attorney-in-Fact** and I become incapacitated, what actions is he or she permitted to take on my behalf?

A: If your Attorney-in-Fact is not related to you and not your beneficiary, he or she is permitted to:

- Elect any retirement benefit option on your behalf, provided he or she does not benefit from it
- Designate any beneficiary your behalf, provided he or she does not benefit from it
- Make address changes
- Make tax withholding elections
- Access information regarding your benefit payments
- Endorse checks

LACERA Special Durable

 **Power**
of **Attorney**

LACERA

Los Angeles County Employees Retirement Association

300 N. Lake Ave.
Pasadena, CA 91101
626-564-6132/1-800-786-6464
www.lacera.com

LEG 401 6/08

4. Specific Authority for Spouse, cont'd

This provision may ONLY be used if you are naming your spouse or domestic partner as your Attorney-in-Fact.*

► You must initial the line in front of each power you are granting.

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

_____ My Attorney-In-Fact is authorized to designate himself or herself as my beneficiary.

On the following lines, you may give special instructions which limit or extend the powers granted your Attorney-In-Fact.

*To elect any option or designate any beneficiary on behalf of a member, an Attorney-In-Fact must be either an eligible spouse or domestic partner who has been given specific authority to do so or a "neutral" party. (An Attorney-In-Fact is neutral if he or she is not related by blood or marriage to either the member or the designated beneficiary.) If the Attorney-In-Fact is not neutral, LACERA will only accept the following: an election of the "Unmodified Option" made on the member's behalf and/or the designation of the member's minor child(en) as

beneficiary(ies). If a non-neutral Attorney-In-Fact wishes to take any other action, he or she must obtain conservatorship of the member.

If the Attorney-In-Fact is neutral, LACERA will accept the election of any payment option or the designation of any beneficiary, so long as it does not benefit the Attorney-In-Fact.

5. Duration of Special Durable Power of Attorney

Note: This language creates a Special Durable Power of Attorney. My Attorney-In-Fact is hereby instructed to notify LACERA in writing of my disability or incapacity or of my death immediately

upon its occurrence. *My subsequent disability or incapacity shall not affect this power of attorney. However, it will terminate upon my death.*

► Please initial to indicate you want this to be a Special Durable Power of Attorney.

_____ This Special Durable Power of Attorney will remain in effect for my lifetime or until I specifically cancel it.

Do not initial and do not complete this form if you want this power of attorney to terminate when you become incapacitated.

► IMPORTANT REMINDERS: *The authority granted by LACERA's Special Durable Power of Attorney form is limited to matters relating to LACERA. The person designated on this form as your Attorney-In-Fact does not have any authority over your other real or personal property.* You may note that the language contained in the following "WARNING" section refers to more extensive authority. This "WARNING" is required by Probate Code section 4128 to be included in all preprinted power of attorney

forms that may extend authority beyond the time you become disabled or incapacitated. *If you wish that your Attorney-In-Fact's authority be extended over real and/or personal property matters, it is recommended that you seek legal counsel in completing a different power of attorney.* Also, if you are concerned with the warning statement or the extent of the authority being granted by this form, we again urge you to consult with a private lawyer.

6. Notice To Person Executing This Document

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 powers 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.
 - 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 public 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 acknowledgment of his or her signature. This durable power of attorney that may affect real property should be acknowledged before a notary public so that it may be easily 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.

7. Date and Signature of Principal

Executed this _____ day of _____, 20 _____,

at _____,
City State

Signature: _____

Print name: _____ Employee No.: _____

8. 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 principal'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 also be prosecuted for elder abuse under Penal Code Section 368. In addition to criminal prosecution, you may also be sued in civil court.

8. Notice to Person Accepting the Appointment as Attorney-in-Fact, cont'd

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

Date and Signature of Accepting Attorney-in-Fact:

Date: _____ Signature of agent: _____

Print name of agent: _____

9a. Signatures of Witnesses

1. I, _____, have witnessed the principal's signature, or the principal's acknowledgment 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.*

Signature

Print your name here

Street Address

City, State, Zip Code

2. I, _____, have witnessed the principal's signature, or the principal's acknowledgment 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.*

Signature

Print your name here

Street Address

City, State, Zip Code

-OR-

9b. Acknowledgment of Notary Public (California Version)

County of _____

On _____, before me, _____

personally appeared _____,

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: _____

This acknowledgment form is valid for California notaries only!
If notarized outside the State of California, the notary of the applicable state must complete and attach that state's acknowledgment form.