

NDPERS DURABLE POWER OF ATTORNEY INFORMATION SHEET

This information sheet has been prepared to provide clarification about the North Dakota Public Employees Retirement System (NDPERS) Durable Power of Attorney.

Definitions

Attorney in Fact -- An individual designated by another individual to do specified acts on behalf of that person. For purposes of this document, it is the individual designated by the power of attorney to act on behalf of the individual receiving benefits under the plan.

Durable Clause -- The clause in the power of attorney document that allows the power conferred by the document to continue after the individual's disability or incapacity.

Incapacity -- The situation in which an individual is impaired by reason of mental illness, mental deficiency, or physical illness to the extent the individual lacks the capacity to make or communicate responsible decisions regarding the individual's retirement benefits.

NDPER's Durable Power of Attorney has two distinguishing features:

- It allows a NDPERS member or his/her beneficiary to designate an attorney-in-fact to handle retirement system affairs such as filing applications, making benefit selections, designating beneficiaries, and endorsing warrants; and
- It contains a durable clause which allows the attorney-in-fact to work on retirement system matters on the member's behalf in the event the member becomes incapacitated or disabled or is unavailable.

A power of attorney that does not have a durable clause terminates upon a member's incapacity, and as a result of that termination, it may be necessary for NDPERS to withhold the member's NDPERS benefits until the courts appoint a conservator.

It is important to have a current power of attorney on file with NDPERS since the law regarding powers of attorney change from time to time. While it is preferred that members use NDPERS' Durable Power of Attorney, because it contains a durable clause, NDPERS will also accept a general power of attorney without a durable clause. A general power of attorney or NDPERS' Durable Power of Attorney may be used for address changes, withholding tax elections, setting up direct deposit, or requesting information regarding benefit payments. However, NDPERS will only accept beneficiary designations or retirement option elections from representatives authorized to act under a Durable Power of Attorney.

The authority granted by NDPERS' Durable Power of Attorney is limited to matters relating to NDPERS and the Highway Patrol Retirement System. The person designated as your attorney-in-fact will not have any authority over your other real or personal property by virtue of the Durable Power of Attorney.

Please consult an attorney if you have any questions concerning the designation of an attorney-in-fact.

Questions and Answers
Concerning NDPERS' Durable Power of Attorney

1. Why is it advisable to have a durable power of attorney on file with NDPERS?

Having a durable power of attorney on file at NDPERS assures that NDPERS 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.

2. Does NDPERS charge a fee for this service?

No.

3. If I sign NDPERS' Durable Power of Attorney form, can I continue to handle my own affairs until such time that I become incapacitated?

Yes; however, NDPERS will also accept actions by your attorney-in-fact. If you do not want the attorney-in-fact to act on your behalf until you are incapacitated or disabled, you may want to complete the Durable Power of Attorney and keep it in personal file until it is needed.

4. Can I use NDPERS' Durable Power of Attorney to appoint an administrator of my estate prior to my death?

No. NDPERS' Durable Power of Attorney form only deals with retirement system administered by the Public Employees Retirement System and the Highway Patrol Retirement System.

5. Does NDPERS' Durable Power of Attorney automatically authorize my attorney-in-fact to conduct business after my death?

No, the power of attorney is terminated upon the death of the member.

6. Should I retain a copy of the Durable Power of Attorney?

Yes, it is a good idea to keep a photocopy of the original for your personal file.

7. Can I terminate my Durable Power of Attorney should I desire to do so?

Yes, as long as you are still competent and you submit a written request to NDPERS asking that the document be revoked or terminated.

Changing NDPERS' Durable Power of Attorney

If you change your mind about your power of attorney, take all of the following steps:

- (1) Complete a new durable power of attorney form with the changes you desire.
- (2) Notify, in writing, everyone that has a copy of the old durable power of attorney that it is no longer valid and ask that copies of the old form be returned to you so that you may destroy them.
- (3) Give copies of the new durable power of attorney to the people who may need them to carry out your wishes.

If you still have questions about your durable power of attorney after reading this material, you should talk to your lawyer.

**Checklist for Completing
NDPERS' Durable Power of Attorney**

This checklist is provided to help you make certain that you have completed all information required on NDPERS' Durable Power of Attorney prior to submitting it to NDPERS. (It is not necessary to return this checklist to NDPERS.)

- 1. I am of sound mind and acting of my own free will.

- 2. The individual I have selected as my attorney-in-fact to make retirement system-related decisions for me is at least 18 years old.

- 3. I realize that in the event I become incompetent, or upon my request, my attorney-in-fact has the power and authority to transact all matters relating to the Public Employees Retirement System or the Highway Patrol System.

- 4. I have spoken with the individual I have selected as my attorney-in-fact and this individual has agreed to participate.

- 5. I have signed and dated the durable power of attorney.

- 6. I have had the durable power of attorney notarized.

- 7. I have given a notarized copy of the completed durable power of attorney to those people, including my attorney-in-fact and family members, who may need it in case an emergency arises which requires a decision.

DURABLE POWER OF ATTORNEY

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

By this document I intend to create a durable power of attorney by appointing the person designated below to make retirement system-related decisions on my behalf and as allowed by the North Dakota Century Code. This power is expressly limited to decisions relating to my benefits under the Public Employee Retirement System and the Highway Patrol Retirement System.

2. Designation of Attorney-in-fact

I, _____, of _____,
(Name of Member or Beneficiary) (Street Address)

City of _____, County of _____,

State of _____ do hereby appoint:

_____, of _____,
(Name of Attorney-in-Fact) (Street Address)

City of _____, County of _____,

State of _____, as my attorney-in-fact.

3. General Statement of Authority Granted

I hereby grant to my attorney-in-fact full power and authority to transact all matters relating to the North Dakota Public Employees Retirement System (NDPERS) and the Highway Patrol Retirement System (HPRS). This authority includes, but is not limited to, filing applications, making benefit elections, designating beneficiaries, changing an address, setting up direct deposit, and endorsing warrants.

I further grant my attorney-in-fact full power and authority to do and perform every act necessary and proper to be done in the exercise of any of the foregoing powers as fully as I might do or could do if

personally present. I hereby ratify and confirm all that my attorney lawfully does or causes to be done by virtue of this power of attorney.

The authority granted by this Durable Power of Attorney is limited to retirement system matters, and does not extend to any of my real or other personal property.

4. Duration

My attorney-in-fact is instructed to notify NDPERS in writing of my disability, incapacity, or my death immediately upon its occurrence. **My subsequent disability, incapacity, or lapse of time shall not affect this power of attorney.**

This power of attorney is effective for the period _____ to _____ . (Insert specific dates or the words “upon the event of disability or incapacity” and “indefinite”).

Warning to Person Executing This Document

This is an important legal document. It creates a durable power of attorney. Before executing this document, you should know these important facts:

- ▶ These powers will exist for an indefinite period of time unless you limit their duration in this document. These powers will continue notwithstanding your subsequent disability or incapacity.
- ▶ You have the right to revoke or terminate this power of attorney.
- ▶ If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

