

Hurricane Katrina was one of the worst natural disasters to ever hit the United States. Over a thousand people died. In Mississippi alone, approximately 70,000 businesses were damaged or wiped out. According to the Association of Small Business Development Centers, historically 43 percent of businesses don't return to operation after a disaster. After one year, 60 percent have failed. If nothing else Hurricane Katrina has highlighted the need for disaster plans for ourselves and our businesses. This article addresses one issue that faces many small businesses: continuation of business operations when the owner is unavailable, whether due to a natural disaster, accident, or illness.

One tool an owner can use to ensure continued operation is a Power of Attorney. A Power of Attorney is any *written* instrument that is signed by a person (principal) who has the capacity to contract and that grants legal authority to one or more persons (agent) to make property, financial, and other legal decisions for the principal. The agent "stands in the shoes of the principal." Third parties treat the agent as if she/he is the principal in any transactions the agent is permitted to conduct.

A Power of Attorney can be drafted in general terms, so that the agent can conduct almost any business on behalf of the principal, or it may grant limited authority to the agent. A Power of Attorney can grant any, or all, of the following powers:

- Buy / sell real and personal property
- Manage property (real and personal)
- Conduct banking transactions
- Invest / not invest money
- Make legal claims and conduct litigation
- Handle tax and retirement matters
- Make gifts

There are three types of Powers of Attorneys recognized under California law:

A Nondurable Power of Attorney may be used while the principal is temporarily unavailable (e.g., traveling), or for a specific transaction (e.g., one business). If the principal becomes incapacitated (not mentally competent or physically able to make decisions), it is automatically revoked.

A Durable Power of Attorney enables the agent to act for the principal after the principal becomes incapacitated. It takes effect upon signing and is effective until revoked.

A Springing Power of Attorney is a Power of Attorney that becomes effective at a future time or on the occurrence of a specified event. Often but not always, that event is the principal's disability, injury or illness. A Springing Nondurable Power of Attorney may also be created.

When contemplating Powers of Attorney, keep in mind the following rule "*Powers of Attorney are only as good as the agents who are appointed.*" Depending on its terms, signing a Power of Attorney could be like "signing a blank check." Though the agent is supposed to act in the best interests of the principal, there is generally no government or court oversight of the agent's actions. .

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