



# NÖ Landesverein für Sachwalterschaft und Bewohnervertretung

## DURABLE POWER OF ATTORNEY FOR LEGAL REPRESENTATION

Due to the change in guardianship law effective as from 1 July 2007, guardianships are to be restricted to those cases in which the appointment of a guardian is unavoidable. This is to be accomplished by legislation offering alternatives to guardianship, i.e. agent's authority granted to next of kin (Vertretungsbefugnis nächster Angehöriger) or durable powers of attorney for legal representation (Vorsorgevollmacht).

### Representation by a holder of a durable power of attorney

Everybody may grant a durable power of attorney for legal representation to a person who he/she has special confidence in; such power of attorney will only become effective when the grantor loses legal capacity.

### What is a durable power of attorney for legal representation?

By law, this power of attorney is defined as an instrument that becomes effective if and when the grantor loses

- legal capacity,
- insight and judgement, or
- the ability to express him/herself.

### What types of these powers of attorney exist?

PoA signed manu propria

The grantor signs the durable power of attorney for legal representation by his/her own hand.

PoA signed by others

- The durable power of attorney for legal representation is signed manu propria by the grantor; then, he/she has to confirm in front of three unbiased witnesses who have full legal capacity and are conversant in the language that the content of the PoA fully conforms with his/her intentions.
- The durable power of attorney for legal representation is not signed manu propria by the grantor; in this case, it must be confirmed by a notary public.

### How can a durable power of attorney for legal representation be drawn up?

It has to be drawn up before an attorney-at-law, notary public or court if it is to cover the following matters:

- consent to serious medical treatment with lasting effect,
- decision on permanent relocation and
- financial matters which are not part of day-to-day business.

### How and to what extent does the grantor have to be informed?

In the cases listed above, the grantor has to be informed about the legal consequences of a durable power of attorney for legal representation and the option of revoking it any time.

The attorney-at-law, notary or court has to document that the grantor of the PoA was instructed accordingly by stating name and address and signing the PoA by his/her own hand.

## Registration of the durable PoA for legal representation

Durable powers of attorney for legal representation may be entered into the Central Austrian Register of Representation (Österreichisches Zentrales Vertretungsverzeichnis, ÖZVV). Registration may be done by an attorney-at-law or notary who have to inform the grantor once registration has been carried out.

The grantor and the holder of the PoA should each keep a copy.

### How does the durable PoA for legal representation become effective?

Entry of the effectiveness of the durable power of attorney for legal representation in the ÖZVV is contingent on a medical certificate stating that the grantor no longer has

- legal capacity,
- insight and judgement, or
- the ability to express him/herself.

Registration of the entry into effect of a durable PoA for legal representation may only be done by a notary. Once effectiveness has been registered, the notary must issue a certificate confirming registration to the holder (PoA registration certificate).

### For how long is the PoA valid?

The grantor may revoke the PoA for legal representation any time. Revocation is also defined as the grantor of the PoA signifying, after loss of legal capacity or insight and judgement, that he/she no longer wishes to be represented by the holder of the power of attorney.

If you want to know more about us, please give us a call (phone +43 2742/77175) or visit our website [www.noelv.at](http://www.noelv.at).

For information about the *durable power of attorney for legal representation (Vorsorgevollmacht)* as a further alternative to guardianship as well as about *guardianship (Sachwalterschaft)* please refer to our folders. A template of the durable power of attorney for legal representation is available for downloading from our website.

Please do not hesitate to contact us if you want us to send our brochures on guardianship and residential advocacy (*Bewohnervertretung*).

### About us

The "NÖ Landesverein für Sachwalterschaft" was founded by the Land of Lower Austria and social welfare organizations working in the region in 1984. The task of the non-profit advocacy organization is to provide the courts with suitable full-time and volunteer guardians. The Federal Ministry of Justice supports the non-profit and non-partisan organization so that it can assume the tasks stipulated in guardianship law on behalf of mentally ill and disabled persons.

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"I'll take care of this myself in due time."

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