

## POWER OF ATTORNEY FREQUENTLY ASKED QUESTIONS

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### GENERAL QUESTIONS

#### **Q: What is a power of attorney (POA)?**

A: A power of attorney is a legal instrument that allows someone else to act as your legal agent. The agent, called an Attorney-In-Fact, is authorized to perform important duties that you specify in your POA, such as financial, medical, and retirement decisions and transactions.

#### **Q: What does a power of attorney for retirement matters do?**

A: A power of attorney enables your Attorney-In-Fact to perform important duties relating to your retirement account, such as filing applications, making benefit elections, designating beneficiaries, designating a bank account for electronic transfer of retirement benefits, changing your address or contact information, choosing tax withholdings, accessing information (including online member account information, endorsing benefit payment warrants, etc. The agent's ability to act on your behalf may be a matter of convenience or could be necessary if you became incapacitated.

#### **Q: Are there different types of powers of attorney?**

A: Yes, there are several different kinds that can be used for different purposes:

- *General.* A general power of attorney allows your Attorney-In-Fact to do anything that you can do legally. You could use a general power of attorney if you are not incapacitated but still needed someone to help you with financial matters. A general power of attorney expires on the earliest of your incapacity, any expiration date listed in the document, or your death—unless you terminate it earlier.
- *Special.* A special (or limited) power of attorney lists a particular act(s) that your Attorney-In-Fact is authorized to perform and limits the agent to that act(s). It usually expires on the earliest of your incapacity, any expiration date listed in the document, or your death—unless you terminate it earlier.
- *Durable.* A durable power of attorney can be general or special, but it remains in effect after you become incapacitated. Without a durable power of attorney, if you become incapacitated, no one can perform actions on your behalf unless a court appoints a conservator or guardian. A durable power of attorney will remain in effect until your death, unless you terminate it while you are still competent to do so.
- *Springing.* A springing power of attorney allows your Attorney-In-Fact to act for you if you become incapacitated, but it does not become effective until you are incapacitated. SCERA's Special Durable Power of Attorney form allows you to elect whether you want the Power of Attorney to be "springing" (i.e., to become effective only upon your incapacity).



**Q: If my Attorney-in-Fact dies or becomes incapacitated, may I name another agent?**

A: Yes, you can name an alternate Attorney-In-Fact in your power of attorney. However, if you do not name an alternate agent or you wish to grant different powers to an alternate agent, you must complete a new POA, assuming you are competent to do so. You are not required to grant your new agent the same powers to transact business that you granted to your original agent, unless you choose to do so.

**Q: Does a power of attorney authorize my Attorney-In-Fact to conduct business after my death?**

A: No. The POA expires upon your death. You may wish to consult an attorney regarding an estate plan in order to authorize actions after your death.

**SCERA-SPECIFIC QUESTIONS**

**Q: Why is SCERA's form called a Special Power of Attorney?**

A: "Special" means the POA can be used by your agent only for SCERA matters, such as filing for retirement, making benefit elections, designating beneficiaries, designating a bank account for electronic transfer of retirement benefits, updating your address, making tax-withholding elections, etc.

**Q: Can I authorize my Attorney-In-Fact to act for me after I am incapacitated?**

A: Yes. Section 5 of the SCERA Special Power of Attorney allows you to decide whether you want a durable, time limited, or springing POA. You need to initial next to one of the choices in Section 5 in order to complete the SCERA Special Power of Attorney form. If you have questions regarding the appropriate type of POA for you, you are advised to consult an attorney.

**Q: Will SCERA accept a power of attorney that was not prepared using SCERA's form?**

A: Yes, but other POAs may be too general or fail to address certain retirement matters. The advantage in using SCERA's POA is that it specifically authorizes your Attorney-In-Fact to conduct your retirement business with SCERA. Also, because the SCERA form was prepared by SCERA staff, as long as it is not modified it will not be subject to the same level of review as a generic POA. This will speed up acceptance of your POA.

**Q: Can I execute SCERA's Special Durable Power of Attorney outside of California?**

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

**Q: After my SCERA Special Durable Power of Attorney is executed, what should I do with it?**

A: You can keep your original POA in a safe location until it needs to be used by your Attorney-In-Fact, or you can provide a copy to SCERA now. SCERA stores documents in a secure server, so the document is readily accessible in your individual file whenever it is needed. The POA must be given to SCERA before your agent can act on your behalf according to the terms of the POA.



**Q: Can I have more than one SCERA Special Power of Attorney on file?**

A: No, submitting a new POA revokes all earlier ones on file with SCERA.

**Q: Can my SCERA Special Power of Attorney be changed after it is executed?**

A: No, but it can be replaced by a new POA. To do so, you must complete a new POA form reflecting the changes you want to make. Then, inform SCERA in writing that the old document is no longer valid. Lastly, provide a copy of the new POA to SCERA.

**Q: Can I terminate my SCERA Special Durable Power of Attorney if I decide I no longer want it?**

A: Yes, as long as you are still competent, you may submit a written statement to SCERA requesting that it be revoked or terminated immediately.

**Q: Can I still handle my own retirement affairs after submitting my Special Power of Attorney to SCERA?**

A: Yes, you can handle your retirement affairs until you become incapacitated. However, depending upon the effective date and the authorizations you select when completing SCERA's Special Durable Power of Attorney form, your Attorney-In-Fact also may be able to act on your behalf before you become incapacitated.

**Q: What role should my spouse† have in my Special Durable Power of Attorney?**

A: In many instances it is practical to designate your spouse as your Attorney-In-Fact because your spouse has an interest in the protection of your retirement benefits. See Section 4 regarding granting specific authority to your spouse.

**Q: What is a “neutral party”?**

A: For retirement purposes, a neutral party is a person who does not have an interest in your retirement benefit or estate. A neutral party is not related by blood or marriage to either the member or the designated beneficiary. An eligible spouse or registered domestic partner would *not* be considered a neutral party.

**Q: Because my spouse† is not a neutral party, am I prevented from naming him/her as my Attorney-In-Fact?**

A: No, you may name your spouse as your Attorney-In-Fact.

**Q: If I name a *non-neutral* party as my Attorney-In-Fact, is he/she limited in the retirement-related actions able to be taken on my behalf?**

A: Yes, a non-neutral party may be limited in regard to certain beneficiary designations and retirement option elections.

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**Q: If I name a *neutral* party as my Attorney-In-Fact, is he/she limited in the retirement-related actions able to be taken on my behalf?**

A: No, a neutral Attorney-In-Fact is able to make any SCERA-related decision you could make, unless you specifically include provisions in your POA that limit the authority of your agent.

**Q: Can I use a Special Power of Attorney for Healthcare for SCERA matters?**

A: No, that type of POA applies to healthcare matters only.

**Q: Can I use my SCERA Special Power of Attorney to appoint an administrator of my estate prior to my death?**

A: No. You should consult an attorney regarding an estate plan if you wish to grant authority to an administrator of your estate after your death.

**Q: Why does *Section 6: Warning to Persons Executing This Document* of SCERA's Special Power of Attorney seem to contradict some of the information contained in this FAQ document?**

A: California Probate Code §4128 requires that all pre-printed POA forms that may extend authority to the Attorney-In-Fact beyond the time in which an individual becomes disabled or incapacitated must contain this warning. Please note that the authority granted by SCERA's Special Power of Attorney is limited to SCERA matters only.

**Q. If I require assistance while preparing a power of attorney, who should I contact?**

A: SCERA cannot provide legal advice, so please consult an attorney to address your specific legal questions.

### DISCLAIMER

This document was drafted by SCERA staff to help members understand retirement-related issues involving powers of attorney. Every effort has been made to ensure the accuracy of the information offered. However, the above is for information only and should not be relied upon as legal advice. SCERA encourages you to discuss your personal needs with an attorney as you complete the Special Power of Attorney form provided by SCERA. In the event of any discrepancy between the information contained in this document and state or federal law, the law will govern.

† References to "spouse" also apply to domestic partnerships registered with the California Secretary of State.