

# UNDERSTANDING A POWER OF ATTORNEY



Answers to the most frequently asked questions about what a Power of Attorney is, and how it may be useful to you.

## WHAT IS A POWER OF ATTORNEY?

A Power of Attorney (POA) is a written legal authorization granting broad power for another person to act in one's place. Because of this we recommend that you consult an attorney before signing a power of attorney.



**HMEPS STAFF IS NOT AUTHORIZED  
TO RECOMMEND AN ATTORNEY OR  
OFFER LEGAL ADVICE.**

## WHERE CAN I FIND A POWER OF ATTORNEY FORM?

Section 752 of the Texas Estates Code contains a durable power of attorney form.

HMEPS can provide you with a sample form. When requesting a form, please notify HMEPS if the power of attorney will be signed with a mark ("x") so that the appropriate sample form can be sent.

It is not required that you use our sample form. If you have a preexisting POA, you can submit it and HMEPS will review the document to determine if it qualifies as a statutory durable power of attorney.

## CAN I GIVE SOMEONE THE POWER OF ATTORNEY TO MANAGE MY PENSION AFFAIRS?

HMEPS will recognize an agent or attorney-in-fact ("agent") under a power of attorney only if HMEPS determines that the power of attorney is a valid Statutory Durable Power of Attorney as set forth in Chapter 752, Texas Estates Code. A durable power of attorney contains a "durability clause," which is a provision that permits your designated agent to act on your behalf in the event you are



unable to handle your affairs due to disability or incapacity.

The individual appointed under a statutory form durable power of attorney, by accepting or acting under the appointment, assumes the fiduciary and other legal responsibility of an agent. An agent is a person who takes on an active role in managing business or financial matters on behalf of another person. Therefore, you should inform your designated agent of the high standards of accountability and fair dealings associated with the fiduciary relationship and the severe penalties associated with any breach of duty arising from acts of self-dealing or which exceed the scope of the agent's authority.

### CAN I CHANGE MY DESIGNATED AGENT?

If you want to change the agent who has your power of attorney, you must complete a new power of attorney that contains the changes you desire and that properly revokes the old power of attorney. Alternatively, you can submit a written notarized notice of revocation of the existing power of attorney and then submit a new power of attorney for review.

### CAN I STILL SIGN MY OWN DOCUMENTS?

Having a POA in place does not relinquish your right to sign documents on your own behalf. The POA grants another the right to act if you become unable to do so.

### WHAT HAPPENS WHEN I DIE?

A POA is only effective while you are living, and expires upon your death. As of your date of death your agent will no longer be able to sign documents or take action on your behalf under the POA.

### CAN I REVOKE MY POWER OF ATTORNEY?

If you want to completely revoke (cancel) your power of attorney, you must submit a notarized document that properly revokes the power of attorney. Keep in mind that revocation does not terminate the agency as to the agent or other person who, without actual knowledge of the termination of the power by revocation, continues to act in good faith or reliance under the power.

Therefore, you must inform those who are acting under the power of attorney that the power has been revoked. If HMEPS recognizes a power of attorney that is later revoked, HMEPS is not liable for any payments made or actions taken at the request of the agent until the date HMEPS receives written notice that the power of attorney has been revoked and has reasonable opportunity to act.



**IF YOU HAVE FURTHER QUESTIONS REGARDING A POWER OF ATTORNEY, PLEASE CONSULT AN ATTORNEY.**

*If you have questions that are not addressed in the HMEPS Benefits Handbook or on our website, please contact HMEPS directly. Nothing contained herein may be construed to convey any right or privilege not otherwise provided by the pension law. In the event of any conflict, the pension law takes precedence.*

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### HOUSTON MUNICIPAL EMPLOYEES PENSION SYSTEM

Address: 1201 Louisiana, Ste. 900  
Houston, Texas 77002

Phone: 713-595-0100  
800-858-1450

Fax: 713-650-1961

Website: [www.hmeps.org](http://www.hmeps.org)