



**Please Note:**

- Require the requestor to have/obtain ORIGINAL POA for viewing at time of notarization.
- Validate requestor via Acceptable ID's.

Notaries often deal with clients who claim to have the authority under a power of attorney to sign a document on behalf of someone else. But these situations can cause confusion because the client is not named in the document, but signs as an attorney in fact.

*Here are 5 things to keep in mind about attorneys in fact:*

**What is a Power of Attorney and an Attorney in Fact?**

A power of attorney is a document authorizing someone to perform duties on behalf of another individual. A person granted [power of attorney to sign documents](#) for someone else is typically referred to as attorney in fact or agent, and the individual represented is referred to as a principal. An attorney in fact has authority to sign the principal's name and have that signature notarized without the principal being present.

**How do I notarize the signature of someone acting as an attorney in fact?**

An attorney in fact typically signs a document with two names: the attorney in fact's own name and the name of the principal. For example, if John Doe is acting as attorney in fact for Mary Sue, he could sign like this:

*“John Doe, attorney in fact for Mary Sue, principal”*

OR,

*“Mary Sue, by John Doe, attorney in fact”*

In this case, John Doe is the person appearing before you and signing the document, but doing so on behalf of Mary Sue. Because John Doe is the only person who is physically present and signing, you would write John Doe's name as the signer in the appropriate parts of the certificate wording (for example, “... personally appeared before me **John Doe**, who acknowledged ...”).

You would only have to [verify the identity](#) of the attorney in fact, not the principal. In our example, John Doe would only need to show you his ID, but would not need to show you Mary Sue's driver's license as well.

When [recording your Notary journal entry](#), the attorney in fact signs his or her own name. You should also note in the entry that the signer was acting as an attorney in fact and the name of the principal the signer represented.

### **Do I need to ask for proof of the attorney in fact's authority?**

Idaho and Minnesota require Notaries to verify the authority of someone signing as a representative through either your personal knowledge or by requesting written proof from the signer. Montana strongly recommends this practice.

Two other states — Hawaii and Utah — require attorneys in fact to present to the Notary the original power of attorney document giving them authority to sign. Copies of the power of attorney document are not acceptable in Hawaii and Utah.

California, Kansas and North Carolina do not require Notaries to verify a signer's representative status.

In other states, if a person is signing as a representative of an absent principal, the Delaware Notary Association recommends asking the signer to formally state out loud in your presence that they have authority to sign on the principal's behalf.

### **What about jurats?**

Be aware that even if someone has power of attorney to sign on a principal's behalf, taking an oath or affirmation in the name of another person is generally not permitted. If an attorney in fact [requests a jurat](#), the attorney in fact must swear or affirm before you in his or her own name only — not the principal's.

For example, if John Doe is signing a document that requires a jurat on behalf of Mary Sue, John Doe could take an oath stating “I, John Doe, swear the contents of this document are true,” but could *not* say “Mary Sue swears the contents of this document are true,” or “I swear on behalf of Mary Sue the contents of this document are true.”

### **What certificate do I use if someone is signing as attorney in fact?**

If your state law prescribes a specific certificate for someone signing as attorney in fact, use that wording. If your state does not specify attorney-in-fact wording, then you may use the appropriate standard certificate for the acknowledgment. Always make sure you are using the appropriate wording required in your state or territory before proceeding.

## BEYOND THE BASICS

### *Powers Of Attorney: How Do You Handle Them?*



When someone signs a document on another individual's behalf, extra steps are needed in identifying the signer, completing the certificate and recording your journal entry. Below are some guidelines surrounding powers of attorney during a notarization.

#### **Power of Attorney — Defined**

A power of attorney is a document authorizing someone to perform duties on behalf of another individual. A person granted power of attorney is referred to as an "attorney in fact" or "agent." The individual represented is referred to as a "principal." An attorney in fact has authority to sign the principal's name and have that signature notarized without the principal being present.

#### **Notarizing an Attorney in Fact's Signature**

Acknowledging the signature of an attorney in fact on behalf of an absent principal is a bit more complex than an ordinary notarization. When signing a document, an attorney in fact typically signs two names: the attorney in fact's own name and the name of the principal. For example, if John Doe is acting as attorney in fact for Mary Sue, he could sign like this:

*"John Doe, attorney in fact  
for Mary Sue, principal"*

Or,

*"Mary Sue, by John Doe,  
attorney in fact"*

In this case, John Doe is the person signing the document, on behalf of Mary Sue. The key point to remember is that you are notarizing the signature of the attorney in fact. Because John Doe is the person physically present and signing, you enter John Doe's name in the appropriate parts of the certificate wording (for example, "... personally appeared before me John Doe, who acknowledged ...") and John Doe would need to provide you with satisfactory proof of his identity.

With the other elements of the notarization, you treat the attorney in fact as the signer. You positively identify John Doe, and when recording your journal entry, John Doe signs his own name. However, you also should note two things in the journal record: that the signer was acting as an attorney in fact; and the name of the principal represented.

Be aware that even if someone has power of attorney to sign on a principal's behalf, taking an oath or affirmation in the name of another person is generally not permitted. If an attorney

in fact requests a jurat, the attorney in fact must swear or affirm before you in his or her own name only — not the principal's.

#### **When Is Proof of Power of Attorney Needed?**

A question often asked is whether Notaries need to see proof that a signer has been given power of attorney before notarizing. The answer depends on state law. Idaho and Minnesota require Notaries to verify the authority of someone signing as a representative through either personal knowledge or written proof presented by the signer. Montana strongly recommends this practice.

Two other states — Hawaii and Utah — require attorneys in fact to present to Notaries the original power of attorney document. Copies of the power of attorney document are not acceptable in Hawaii and Utah.

California, Kansas and North Carolina do not require Notaries to verify a signer's representative status.

In other states, if a person is signing as a representative of an absent principal, the **DNA** recommends asking the signer to formally state out loud in your presence that they have authority to sign on the principal's behalf. Always be sure to follow your state's laws when asked to notarize the signature of a person signing with power of attorney for another individual.