## Section A. General Information on Power of Attorney (POA)

#### Overview

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| In This Section | This section contains the following topics: |

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| Topic | Topic Name |
| 1 | Department of Veterans Affairs (VA) POA Versus General POA Under State Law |
| 2 | Appointing a POA |
| 3 | POA Representation of Incompetent Claimants |
| 4 | Extent of Authority and Duties of Representatives |
| 5 | Requests for Exclusive Contact |
| 6 | Revoking and Terminating Representation |
| 7 | Representation After the Claimant’s Death |

#### 1. VA POA Versus General POA Under State Law

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| Change Date | August 17, 2004 |

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| a. Effect of POA Under State Law on VA Claims Representation | The execution by a claimant of a power of attorney (POA) under State law has ***no*** effect for the purposes of prosecuting a Department of Veterans Affairs (VA) claim. In order to be recognized by VA, a claimant’s representative must be appointed according to the procedures in M21-1, Part I, Chapter 3.  ***Reference***: For more information on appointing an accredited representative of a service organization, agent, non-licensed individual, or attorney representative, see M21-1, Part I, 3.A.2. |

#### 2. Appointing a POA

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| Introduction | This topic contains information on appointing a POA representative, including   * requirements to represent claimants * definition of declaration of representation * unlimited versus limited representation, and * limited attorney representation. |

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| Change Date | December 14, 2015 |

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| a. Requirements to Represent Claimants | The table below describes the requirements for POA representatives to represent claimants. |

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| Type of Representation | Requirements |
| Accredited representative of a service organization, agent, or attorney | Must obtain recognition from VA’s Office of General Counsel in order to represent claimants. Refer any person or group wanting to represent claimants to the Office of General Counsel for accreditation.  ***References***: For more information on   * requirements for accredited representatives of a service organization, agents, and attorneys to obtain recognition, see [38 CFR 14.629](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.1.14_1629&rgn=div8), and * a list of accredited representatives of service organizations, agents, and attorneys maintained by the Office of General Counsel, see the [Office of the General Counsel’s accreditation search page](http://www.va.gov/ogc/apps/accreditation/)*.* |
| Non-licensed individual | May represent a claimant on a one-time, one claim basis per the provisions of [38 CFR 14.630](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.1.14_1630&rgn=div8). The individual may only represent one VA claimant unless a request is submitted to the VA’s Office of General Counsel. |

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| ***Note***: If a person purporting to be a representative does not fit into one of the categories above, write to the individual (and provide a copy of the correspondence to the claimant) explaining that   * he/she does not appear to fit into one of the categories of permitted representatives per [38 CFR 14.629](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.1.14_1629&rgn=div8) and [38 CFR 14.630](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.1.14_1630&rgn=div8), and * VA will ***not*** recognize the representation unless he/she shows VA that he/she *does* fit into one of the categories of permitted representatives. |

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| b. Definition: Declaration of Representation | A ***declaration of representation*** is the form a claimant uses to designate a person or organization as his or her representative for VA purposes. |

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| A/An … | May represent a claimant if VA receives … |
| accredited representative of a service organization | *VA Form 21-22, Appointment of Veterans Service Organization as Claimant’s Representative,* signed by the claimant and the representative that shows the service organization as representative.  ***Note***: Failure to specify the individual name and job title of the official representative in Box 3B on *VA Form 21-22* does ***not*** render the appointment of a Veterans Service Organization invalid. |
| accredited agent | *VA Form 21-22a, Appointment of Individual as Claimant’s Representative,* signed by the claimant. |
| non-licensed individual | a declaration of representation that complies with the provisions outlined in [38 CFR 14.630](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.1.14_1630&rgn=div8).  ***Note***: The representation is for a one-time, one-claim basis only. |
| accredited attorney | *VA Form 21-22a* signed by the claimant and the attorney. |

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| ***Important***: The term “*signed*” in the table above includes electronic signatures on *VA Forms 21-22 and 21-22a* received through VA electronic systems.  ***Note***: If the claimant’s attorney is not listed on the [Office of the General Counsel’s accreditation search page](http://www.va.gov/ogc/apps/accreditation/), the regional office’s (RO's) Agent and Attorney Fee Coordinator will advise   * the attorney that VA will not recognize him/her until accredited, and * the claimant that he/she may * seek other representation, or * proceed without representation until the attorney is accredited.   ***Reference***: For more information on how to acknowledge a POA representative, see   * M21-1, Part III, Subpart ii, 3.C.4.h, and * M21-1, Part III, Subpart ii, 3.C.4.i. |

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| c. Unlimited Versus Limited Representation | Assume that representation by an accredited representative of a service organization, agent, or attorney is unlimited, meaning the representative represents the claimant for all VA claims, unless *VA Form 21-22*, *VA Form 21-22a*, or the declaration of representation shows otherwise.  A declaration of representation by a non-accredited individual per the provisions of [38 CFR 14.630](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.1.14_1630&rgn=div8) is limited to one claim by its very nature. |

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| d. Limited Attorney Representation | Review an attorney’s declaration of representation to determine if the representation is limited or unlimited. If it is limited to a specific claim or claims, any unlimited representation that was in effect at the time the limited representation was received by VA continues in effect for all other claims. If the representation is unlimited, see M21-1, Part I, 3.A.2.c.  ***Reference***: For more information on updating VA electronic systems when a limited declaration of representation is received, see M21-1, Part III, Subpart ii, 3.C.4.b. |

#### 3. POA Representation of Incompetent Claimants

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| Introduction | This topic contains information on representation of incompetent claimants, including   * fiduciary appointment for an incompetent Veteran * representation for claimants in the process of being declared incompetent, and * appointing POA representation to establish competency. |

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| Change Date | August 17, 2004 |

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| a. Fiduciary Appointment for an Incompetent Veteran | If the claimant is unable to handle his/her own VA benefit payments, VA appoints a fiduciary to handle the payment of VA funds. |

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| b. Representation for Claimants in the Process of Being Declared Incompetent | Until a fiduciary is appointed for a claimant in the process of being declared incompetent, accept the appointment of a POA representative from any of the following people in the following order   * claimant * spouse * mother or father, or * next of kin.   Once VA appoints a fiduciary, the fiduciary may appoint a new POA representative. The prior POA is ***not*** automatically revoked. |

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| c. Appointing POA Representation to Establish Competency | An incompetent claimant may appoint a POA representative for the purpose of attempting to establish his/her competency. |

#### 4. Extent of Authority and Duties of Representatives

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| Introduction | This topic contains information on the extent of a representative’s authority, including   * general duties of a representative * assistants to attorney representatives * representative’s access to federal tax information (FTI), and * questions or disputes about representatives. |

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| Change Date | December 14, 2015 |

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| a. General Duties of a Representative | A representative is authorized to prepare, present, and prosecute a claimant’s claim and has the authority to   * review the claimant’s records * present evidence on behalf of the claimant * submit an intent to file, non-original claim, a notice of disagreement (NOD), or a substantive appeal on behalf of the claimant, and * withdraw an appeal.   ***Important***:A POA may not sign ***original*** applications for Veterans benefits or other forms ***requiring claimant certification***, such as eligibility verification reports. Other forms a POA may not sign include, but are not limited to, the following:   * VA Form 21-4140, *Employment Questionnaire* * VA Form 21-8940, *Veteran’s Application for Increased Compensation Based on Unemployability* * VA Form 21-4142, *Authorization to Disclose Information to the Department of Veterans Affairs (VA)* * VA Form 21-4192, *Request for Employment Information in Connection With Claim for Disability Benefits* * VA Form 21-0538, *Status of Dependents Questionnaire* * VA Form 21-8951, *Notice of Waiver of VA Compensation to Receive Military pay*, and * VA Form 21-651, *Election of Compensation in Lieu of Retired Pay or Waiver of Retired Pay to Secure Compensation from Department of Veterans Affairs*.   ***Exception***: Prior to March 24, 2015, a POA representative could sign and submit an informal claim because under the prior regulation, [38 CFR 3.155](http://www.ecfr.gov/cgi-bin/text-idx?SID=8c74e49d4f4b0a394a3b3b393fbe49d8&mc=true&node=se38.1.3_1155&rgn=div8), an informal claim could be accepted without the claimant’s signature. Informal claims, which were often filed on *VA Form 21-4138, Statement in Support of Claim,* included, but were not limited to, claims for increase or to reopen.  ***References***: For more information on   * POA authority to review a claims folder, see M21-1, Part I, 3.B.2, * signatures on an intent to file, see [38 CFR 3.155](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.1.3_1155&rgn=div8), * signatures on an NOD or substantive appeal, see [38 CFR 20.301](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.2.20_1301&rgn=div8), and * withdrawing an appeal, see [38 CFR 20.204](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.2.20_1204&rgn=div8). |

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| b. Assistants to Attorney Representatives | If a claimant has an attorney representative, law students, legal interns, and paralegals may participate in the prosecution of a VA claim and be present at any hearing if   * they are operating under the direct supervision of an attorney representative, and * the attorney representative, or any associate of the attorney representative, is present at any hearing.   ***Reference***: For more information on the role of assistants to attorney representatives, see [38 CFR 14.629(c)(3)](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.1.14_1629&rgn=div8). |

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| c. Representative’s Access to IRS Records | Special procedures govern a representative’s access to federal tax information (FTI) in the possession of VA, received from Internal Revenue Service and Social Security Administration. Refer to these special procedures governing the FTI match for information about a representative’s right of access to these materials.  ***Reference***: For more information on disclosure of FTI to a POA, see M21-1, Part X, 9.B.3.c. |

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| d. Questions or Disputes About Representatives | Refer any legal questions or disputes about the extent of a person’s authority to serve as a representative to the Regional Counsel.  ***Reference***: For more information about referring questions and disputes to the Regional Counsel, see   * [38 CFR 14.629](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.1.14_1629&rgn=div8), and * [38 CFR 14.631(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.1.14_1631&rgn=div8). |

#### 5. Requests for Exclusive Contact

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| Introduction | This topic contains information on requests for exclusive contact, including   * definition of *exclusive contact*, and * handling requests for exclusive contact. |

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| Change Date | June 19, 2015 |

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| a. Definition: Exclusive Contact | The term ***exclusive contact*** refers to sending communications with the claimant directly to a representative and generally ***not*** communicating directly with the claimant.  ***Important***: VA does ***not*** honor requests for exclusive contact to restrict the communication between VA and the claimant. |

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| b. Handling Requests for Exclusive Contact | In any case where an attorney requests exclusive contact in writing, send the attorney a letter incorporating the following notice  *We are unable to comply with your request that we correspond exclusively with you and not with the VA claimant you represent.*  *While VA has attempted in the past to accommodate exclusive contact requests, the agency has found that our attempts to comply with these requests adversely impacted the timely completion of essential ministerial functions, such as responding to phone inquiries from claimants and the issuance of standard benefit information letters.  Rather, as required by regulatory and statutory provisions, we have determined that corresponding directly with the VA claimant with a copy of each and every communication to the representative is the best means for keeping all interested persons up-to-date about VA’s actions regarding a particular claimant.  This course of action is consistent with the non-adversarial nature of the VA benefits adjudication system and with VA statutes and regulations.*  *To this end, section 5104(a) of title 38, United States Code, and its implementing regulation, 38 C.F.R. § 3.103, provide that VA must send notice of any decision to the claimant with a copy to the claimant's representative. VA statutes and regulations do not require a process whereby VA maintains "exclusive contact" with a representative in lieu of the VA claimant. At the same time, despite any request for exclusive contact with a representative, VA has always sent automatically generated correspondence to VA claimants and has responded to claimants who seek information directly from VA.  As a result of our careful review of relevant VA statutes, regulations and procedures, we have determined that prohibiting claimants from receiving information, any information, about their claims, or limiting it in some fashion, is not a process that is beneficial to Veterans, their dependents or survivors. We can assure you, however, that as long as you represent a VA claimant, you will be sent copies of any and all notices, decisions or other written communications at the same time as the claimant is sent such notice, decision or communication.*  ***Note***: In the case of a verbal request for exclusive contact or inquiry about exclusive contact, use the above notice to structure a response. Remember to document any contacts on a *VA Form 27-0820*, *Report of General Information*. |

#### 6. Revoking and Terminating Representation

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| Introduction | This topic contains information on revoking and terminating representation, including   * when claimants may revoke or terminate representation * when representatives may revoke or terminate representation * when representation is automatically revoked, and * handling revoked or terminated representation. |

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| Change Date | January 28, 2016 |

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| a. When Claimants May Revoke or Terminate Representation | A claimant, claimant’s guardian, or VA fiduciary may revoke or terminate his/her relationship with a representative at any time by informing VA.  ***Note***: In some instances, attorney fees may still be payable.  ***References***: For more information on   * attorney fees when the attorney no longer represents the claimant, see M21-1, Part I, 3.C.3, and * the guidelines for changing representation after certification and transfer of an appeal, see M21-1, Part I, 5.F.5.e. |

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| b. When Representatives May Revoke or Terminate Representation | A representative may revoke or terminate the representation by notifying the claimant and VA in writing, if doing so would ***not*** adversely impact the claimant’s interests.  ***Note***: If the Board of Veterans’ Appeals (BVA) has jurisdiction over the claims folder, the representative must obtain permission from BVA to revoke or terminate his/her representation.  ***References***: For more information on   * withdrawing representation, see [38 CFR 14.631](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.1.14_1631&rgn=div8), and * withdrawing representation before the BVA, see [38 CFR 20.608](http://www.ecfr.gov/cgi-bin/text-idx?SID=a2936f679c2233cf97c58669da82d22d&node=se38.2.20_1608&rgn=div8). |

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| c. When Representation Is Automatically Revoked | Representation is automatically revoked if   * a new unlimited declaration of representation is received, or * the claimant dies.   ***Important***: If a limited declaration is received, any prior unlimited declaration of representation remains in effect for all other claims or issues ***not*** named in the limited declaration of representation.  ***Note***: When in doubt of the scope or authenticity of the declaration, request clarification from the claimant. Add any such clarification to the claims folder.  ***Reference***: For more information on representation after death, see M21-1, Part I, 3.A.7. |

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| d. Handling Revoked or Terminated Representation | VA must notify the representative of the withdrawal of representation by sending them a copy of the annotated declaration of representation. This applies to declaration of represenations in both paper claims folders and eFolders.  ***Important***: Claims processors must follow the instructions in M21-1, Part III, Subpart ii, 3.C.4.e for POA representation changes to be properly reflected in VA systems. |

#### 7. Representation After the Claimant’s Death

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| Change Date | September 23, 2014 |

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| a. General Policy on Representation After the Claimant’s Death | Representation based on a POA signed by the claimant during his/her lifetime ends with the death of the claimant.  In order for the same representative to represent a survivor, the survivor must execute a separate POA.  ***Reference***: For more information on the policy expressed in this block, see [*Smith (Irma) v. Brown*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bms), 10 Vet.App. 330 (1997). |