

## THOMSON REUTERS PRACTICAL LAW

# Customs Power of Attorney

by Practical Law Commercial Transactions

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*A sample limited power of attorney authorizing a customs broker to conduct specific customs business on the principal's behalf. This Standard Document has integrated notes with important explanations and drafting tips.*

## READ THIS BEFORE USING DOCUMENT

A power of attorney is a written legal instrument that one party (known as the grantor or principal) uses to delegate legal authority to another party (known as the agent or attorney-in-fact). Once the principal properly executes and delivers the power of attorney, the agent has the legal authority to take all the actions specified in the power of attorney on the principal's behalf. The scope, enforceability, and effect of powers of attorney are determined by:

- State law, including the law and principles of agency.
- Federal statutes and regulations, for certain powers of attorney such as a customs power of attorney.

This Standard Document is a sample limited power of attorney that an importer (the principal) can file with [US Customs and Border Protection](#) (CBP) to authorize a customs broker (the agent) to conduct customs business on its behalf, including activities related to:

- The entry and admissibility of merchandise.
- Classifying and valuing imported merchandise.
- Paying [tariffs](#), taxes, or other charges CBP collects on imported merchandise, such as antidumping and countervailing duties (see [Practice Note, Antidumping and Countervailing Duty Investigations](#)).
- Preparing and filing documents with CBP in furtherance of any other customs business activity.

For more information on customs brokers, see [Practice Note, Logistics: Transportation Service Providers Overview: Customs Brokers](#).

A power of attorney establishes an agency relationship between the principal and the agent. As a result of this relationship:

- The agent owes the principal certain fiduciary duties, including the duty to act:
  - in good faith and with undivided loyalty toward the principal; and
  - according to the principal's instructions, or if there are no instructions, in the principal's best interests.
- The principal can be held liable for customs violations that the agent commits while performing within the scope of his authority.

(See [United States v. Pan Pac. Textile Grp. Inc.](#), 29 Ct. Int'l Trade 1013, 1021-22 (2005).)

## Bracketed Items

Bracketed items in ALL CAPS should be completed with the facts of the transaction. Bracketed items in sentence case are either optional provisions or include alternative language choices to be selected, added, or deleted at the drafter's discretion.

### Customs Limited Power of Attorney

[PRINCIPAL'S NAME], [a corporation incorporated under the laws of [STATE OF INCORPORATION], with its principal place of business at/an individual, residing at] [PRINCIPAL'S ADDRESS], hereby appoints [AGENT'S NAME], [AGENT'S TITLE,] of [AGENT'S ADDRESS], as a true and lawful agent and attorney of the principal named above to act for and in the name of the above-named principal at [all US Customs and Border Protection ports and [NAME OF APPROPRIATE US CUSTOMS AND BORDER PROTECTION CENTER OF EXCELLENCE AND EXPERTISE]]/[NAMES OF DESIGNATED US CUSTOMS AND BORDER PROTECTION PORTS AND NAME OF APPROPRIATE US CUSTOMS AND BORDER PROTECTION CENTER OF EXCELLENCE AND EXPERTISE]] in any way the above-named principal could act in person, with respect to the following powers:

[To make, endorse, sign, declare, or swear to any entry, withdrawal, declaration, certificate, bill of lading, carnet, or other document required by law or regulation in connection with the importation, transportation, or exportation of any merchandise shipped or consigned by or to said grantor; to perform any act or condition which may be required by law or regulation in connection with such merchandise; to receive any merchandise deliverable to said grantor;]

[To make endorsements on bills of lading conferring authority to transfer title, make entry or collect drawback, and to make, sign, declare, or swear to any statement, supplemental statement, schedule, supplemental schedule, certificate of delivery, certificate of manufacture, certificate of manufacture and delivery, abstract of manufacturing records, declaration of proprietor on drawback entry, declaration of exporter on drawback entry, or any other affidavit or document which may be required by law or regulation for drawback purposes, regardless of whether such bill of lading, sworn statement, schedule, certificate, abstract, declaration, or other affidavit or document is intended for filing in any customs district;]

[To sign, seal, and deliver for and as the act of said grantor any bond required by law or regulation in connection with the entry or withdrawal of imported merchandise or merchandise exported with or without benefit of drawback, or in connection with the entry, clearance, lading, unlading, or navigation of any vessel or other means of conveyance owned or operated by said grantor, and any and all bonds which may be voluntarily given and accepted under applicable laws and regulations, consignee's and owner's declarations provided for in section 485, Tariff Act of 1930, as amended or affidavits in connection with the entry of merchandise;]

[To sign and swear to any document and to perform any act that may be necessary or required by law or regulation in connection with the entering, clearing, lading, unlading, or operation of any vessel or other means of conveyance owned or operated by said grantor;]

[To authorize other customs brokers to act as grantor's agent; to receive, endorse, and collect checks issued for customs duty refunds in grantor's name drawn on the Treasurer of the United States; if the grantor is a nonresident of the United States, to accept service of process on behalf of the grantor;]

[[And generally/Generally] to transact any and all customs business, including making, signing, and filing of protests under section 514 of the Tariff Act of 1930, in which said grantor is or may be concerned or interested and which may properly be transacted or performed by an agent and attorney.]

[The powers granted herein shall be modified or limited in the following particulars: [DESCRIPTION OF MODIFICATIONS OR LIMITATIONS OF AGENT'S POWERS].]

## CUSTOMS LIMITED POWER OF ATTORNEY

To give an agent power of attorney to transact customs business on its behalf, a principal can use:

- Customs Form 5291 - Power of Attorney.
- A general power of attorney with unlimited authority.
- A limited power of attorney.

(19 C.F.R. § 141.32.)

An importer can obtain Customs Form 5291 by contacting CBP ([CBP: Ordering Forms from the National Distribution Center \(NDC\)](#)). CBP's regulations contain a sample customs general power of attorney that gives the agent full power and authority to perform every lawful act the agent deems necessary for the principal, without limitation of any kind ([19 C.F.R. § 141.32](#)).

## Description of the Agent's Enumerated Powers

Unlike a general power of attorney, which would authorize the agent to perform every lawful act the agent considers necessary, this limited power of attorney authorizes the agent to do only specifically listed acts.

When describing the scope of an agent's authorized powers, the principal can include some or all of the powers described in Customs Form 5291 (the bracketed language). When the agent performs acts authorized under the power of attorney, it has the same legal effects and consequences as if the principal had acted personally. Therefore, before delegating authority to an agent, the principal should carefully consider the scope of the agent's duties and the specific kind of customs business it wants the agent to perform on its behalf. This consideration can be influenced by a variety of factors, including:

- The principal's business needs, such as its desire or ability to perform certain customs business itself.
- Whether the principal has already authorized another agent to perform a similar act on its behalf.
- Whether the agent is qualified and willing to perform all customs business or only certain activities.

If the principal is a nonresident, it must include the language authorizing the agent to accept service of process on the principal's behalf.

## Designated CBP Ports and Center of Excellence and Expertise and Filing the Power of Attorney

When completing a power of attorney, the principal must either:

- Explicitly authorize the agent to act at all CBP ports and the appropriate CBP Center of Excellence and Expertise (CEE) to which the principal is assigned.
- Specifically name the appropriate CEE and each port of entry where the agent is authorized to act, if not all ports.

([19 C.F.R. § 141.44](#).)

The principal might specify a port of entry instead of authorizing the agent to act in all ports if the principal:

- Does business in multiple ports, uses multiple agents, and does not want to create uncertainty about which agents are authorized to act at which ports.
- Can generally perform customs business itself in certain ports of entry, but is unavailable, unable, or unwilling to do so at other ports of entry.

The principal can file the power of attorney either at the port of entry or electronically and must include enough copies for distribution to the appropriate CEE and each port where the agent is authorized to act ([19 C.F.R. § 141.44](#)). The agent should keep the original copy of the power of attorney with its books and records and be prepared to present this document to CBP officials if requested to do so ([19 C.F.R. § 141.46](#)).

For more information on CBP's CEEs, see [CBP: Centers of Excellence and Expertise](#).

## Additional Requirements for Nonresident Principals

When using a customs power of attorney, resident and nonresident principals can face different requirements. CBP's regulations define a resident as either:

- An individual who resides within, or a partnership one or more of whose partners reside within, the customs territory of the US or the US Virgin Islands.
- A corporation incorporated in any jurisdiction within the customs territory of the US or in the US Virgin Islands.

([19 C.F.R. § 141.31](#).)

A nonresident is any individual, partnership, or corporation that does not meet the definition of "resident."

A power of attorney is not required if personnel working for the port director or for the CEE director know that the person signing customs documents on a resident corporation's behalf is the corporation's:

- President.
- Vice President.
- Treasurer.
- Secretary.

(19 C.F.R. § 141.38.)

However, nonresident individuals, partnerships, and corporations do not benefit from this rule. Additionally, a power of attorney from a nonresident principal is not valid unless the agent is both:

- A resident.
- Authorized to accept service of process for the nonresident principal.

(19 C.F.R. § 141.36.)

Therefore, when listing the agent's powers under the power of attorney, a nonresident principal must also state that the agent is authorized to accept service on its behalf.

A nonresident corporation's power of attorney may also need to be supported by additional documentation. Unless the nonresident corporation has qualified to conduct business under state law in the state in which the CBP district where the agent is empowered to act is located, the power of attorney must be supported by documentation establishing the authority of the person signing the power of attorney to do so on the corporation's behalf (19 C.F.R. § 141.37).

Such documentation may include, for example:

- The relevant provision of the corporation's charter or [certificate of incorporation](#);
- A [resolution](#); or
- Minutes from a relevant [board of directors](#) meeting.

The above-named principal ratifies and confirms all that such agent and attorney shall lawfully do or cause to be done by virtue of this limited power of attorney until and including [POWER OF ATTORNEY'S TERMINATION DATE] or until notice of revocation of this limited power of attorney is given in writing before that date.

## DURATION OF THE LIMITED POWER OF ATTORNEY

Generally, a customs power of attorney may be granted for an unlimited period. However, when a partnership issues a power of attorney, it cannot last for more than two years from the date of execution (19 C.F.R. § 141.34).

### Revoking the Power of Attorney

The principal can revoke a customs power of attorney at any time by sending written notice to CBP, either at the port of entry or electronically (19 C.F.R. § 141.35). Once the principal revokes the power of attorney, the agent is no longer authorized to act on the principal's behalf. The principal might choose to revoke the power of attorney because, among other things:

- The agent has indicated that it wants to renounce the relationship.
- The agent has become disqualified to perform its duties.
- The principal no longer needs the agent's services.
- The agent has breached its fiduciary duties or otherwise failed to perform as authorized.

- The principal is no longer conducting customs business.

In addition to sending a written notice to CBP, the principal should also inform the agent in writing that it is revoking the power of attorney.

Dated: [DATE OF LIMITED POWER OF ATTORNEY]

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[PRINCIPAL'S NAME]

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[WITNESS'S NAME]

## EXECUTING THE LIMITED POWER OF ATTORNEY

The power of attorney must be executed by a person who is duly authorized to do so, such as:

- A member of a partnership.
- An officer of a corporation.
- The owner of a sole proprietorship.

### PRODUCTS

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