

## SPECIAL DURABLE POWER OF ATTORNEY

### PURPOSE

This special durable power of attorney should only be used by members and beneficiaries for the purpose of appointing an attorney-in-fact to transact all retirement matters relating only to the Orange County Employees' Retirement System (hereafter referred to as OCERS). Do not complete this form if you want this power of attorney to terminate should you become incapacitated.

### WARNING STATEMENT AND NOTICE TO PERSON EXECUTING DURABLE POWER OF ATTORNEY

The authority granted by the OCERS Special Power of Attorney is limited to matters relating to your benefits and rights as a member of OCERS. The person designated as your Attorney-In-Fact in this OCERS Special Power of Attorney does not have any authority over your other real or personal property or health care decisions. If you wish your Attorney-In-Fact to have authority over such matters, you are advised to consult an attorney or complete a different power of attorney.

The language contained in this warning statement refers to more extensive authority than what is granted by this power of attorney form. This warning statement is required by Probate Code § 4128 and must be included in all preprinted durable power of attorney forms that extend authority beyond the date you become incapacitated. If you are concerned about this warning statement or the extent of the authority being granted by this form, you are advised to consult an attorney.

A durable power of attorney is an important legal document. By signing the durable power of attorney, you the principal, are authorizing another person to act for you. **Before you sign this durable power of attorney, you should know these important facts:**

- Your agent (attorney-in-fact) has no duty to act unless you and your agent agree otherwise in writing.
- This document gives your agent the power to manage, dispose of, sell, and convey your real and personal property, and to use your property as security if your agent borrows money on your behalf. This document does not give your agent the power to accept or receive any of your property, in trust or otherwise, as a gift, unless you specifically authorize the agent to accept or receive a gift.
- Your agent will have the right to receive reasonable payment for services provided under this durable power of attorney unless you provide otherwise in this power of attorney.
- The powers you give your agent will continue to exist for your entire lifetime, unless you state that the durable power of attorney will last for a shorter period of time or unless you otherwise terminate the durable power of attorney. The powers you give your agent in this durable power of attorney will continue to exist even if you can no longer make your own decisions respecting the management of your property.

- You can amend this durable power of attorney only by executing a new durable power of attorney or by executing an amendment through the same formalities as an original. You have the right to revoke or terminate this durable power of attorney at any time, so long as you are competent.
- This durable power of attorney must be dated and must be acknowledged before a notary public or signed by two witnesses. If it is signed by two witnesses, they must witness either (1) the signing of the power of attorney or (2) the principal's signing or acknowledgment of his or her signature. A durable power of attorney that may affect real property should be acknowledged before a notary public so that it may easily be recorded.
- You should read this durable power of attorney carefully. When effective, this durable power of attorney will give your agent the right to deal with property that you now have or might acquire in the future. The durable power of attorney is important to you. If you do not understand the durable power of attorney, or any provision of it, then you should obtain the assistance of an attorney or other qualified person.

**SECTION 1: CREATION OF SPECIAL DURABLE POWER OF ATTORNEY FOR OCERS RETIREMENT-RELATED BUSINESS ONLY**

By executing this document, I intend to create a special durable power of attorney by appointing the person named below to make retirement-related decisions for me as allowed by the California Probate Code. This power shall be specifically limited to decisions relating to my benefits and rights as a member of OCERS.

Name of Principal (Member):

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Mailing Address:

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Phone Number:

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Email Address:

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## SECTION 2: DESIGNATION OF ATTORNEY-IN-FACT

***OCERS requires the Attorney-In-Fact to submit a color copy of their government issued photo ID with signature exemplar before the Attorney-In-Fact can take any action.***

Name of Agent/Attorney-In-Fact:

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Relation to Principal:

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Mailing Address:

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Phone Number:

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Email Address:

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OCERS does not require the nomination of a successor Attorney-In-Fact. Under California Probate Code § 4203, a principal may appoint their successor Attorney(s)-In-Fact to act if the original Attorney-In-Fact is unable or unwilling to carry out their duties. A successor Attorney-In-Fact is subject to all the duties and restrictions set forth by you in this Special Durable Power of Attorney. You should complete this section **only** if you wish to name a successor Attorney-In-Fact.

**If the above-named Attorney-In-Fact is unable or unwilling to carry out the duties as my Attorney-In-Fact, I hereby nominate the following as successor Attorney-In-Fact:**

Name of Successor Agent/Attorney-In-Fact:

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Relation to Principal:

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Mailing Address:

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Phone Number:

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Email Address:

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### SECTION 3: GENERAL STATEMENT OF AUTHORITY GRANTED

I hereby grant to my attorney-in-fact full authority to transact all matters relating to my OCERS benefits and my rights as a member of OCERS subject to any limitations I specify below. On the following lines, you may give special instructions which limit or extend the powers granted to your Attorney-In-Fact:

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### SECTION 4: SPECIFIC AUTHORITY FOR SPOUSE OR DOMESTIC PARTNER *This section should only be completed if you are naming your spouse or registered domestic partner as your Attorney-In-Fact.*

YOU **MUST** INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING TO YOUR SPOUSE OR DOMESTIC PARTNER.

\_\_\_\_\_ My Attorney-In-Fact is authorized to select any payment option available under the retirement plan, even though it may reduce the monthly allowance which would otherwise be paid to me during my lifetime.

\_\_\_\_\_ My Attorney-In-Fact is authorized to designate themselves as my beneficiary.

On the following lines, you may give special instructions which limit or extend the powers granted to your spouse or domestic partner as Attorney-In-Fact:

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### SECTION 5: DURATION OF THIS SPECIAL DURABLE POWER OF ATTORNEY

By **checking and initialing** below (**you must check AND initial ONLY ONE**), I have conveyed under the specific circumstances this power of attorney shall become effective. Once effective, this power of attorney shall continue until revoked by me. My Attorney-In-Fact shall notify OCERS in writing of my disability, incapacity, or death immediately upon its occurrence.

\_\_\_\_\_ This special durable power of attorney shall be effective immediately and remain in effect until I \_\_\_\_\_ specifically revoke it or sign another power of attorney. My subsequent incapacity or disability shall not affect this power of attorney. However, it shall terminate upon my death. (Initial)

\_\_\_\_\_ This special durable power of attorney is to commence on \_\_\_\_\_ (mm/dd/yyyy) and terminate on \_\_\_\_\_ (mm/dd/yyyy). (Initial)

\_\_\_\_\_ This special power of attorney shall commence only upon written determination that I am incapacitated and unable to handle my own affairs. Such determination shall be made by two (2) licensed physicians in the state where I am domiciled and must be written on each physician's letterhead. (Initial)

**SECTION 6: SIGNATURE AND DATE OF PRINCIPAL** *This section to be completed and signed only by the member.*

Printed Name of Principal:

\_\_\_\_\_

City Where Executed: \_\_\_\_\_ State Where Executed: \_\_\_\_\_

Signature: \_\_\_\_\_ Date Executed: \_\_\_\_\_ (mm/dd/yyyy)

**SECTION 7: NOTICE TO PERSON ACCEPTING APPOINTMENT AS ATTORNEY-IN-FACT** *(Please read it.)*

By acting or agreeing to act as the attorney-in-fact under this power of attorney you assume the fiduciary and other legal responsibilities of an attorney-in-fact. These responsibilities include:

1. The legal duty to act solely in the interest of the principal and to avoid conflicts of interest.
2. The legal duty to keep the principal's property separate and distinct from any other property owned or controlled by you.

You may not transfer the principal's property to yourself without full and adequate consideration or accept a gift of the principal's property unless this power of attorney specifically authorizes you to take either action. If you do so without the requisite authority, you may be prosecuted for fraud and/or embezzlement. If the principal is 65 years of age or older at the time of improper property transfer, you may also be prosecuted for elder abuse under Penal Code Section 368 and/or in civil court.

I certify that I have read the foregoing notice, and I acknowledge and understand the duties that I assume by acting or agreeing to act as the attorney-in-fact under the terms of this power of attorney.

Printed Name of Attorney-In-Fact:

\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ (mm/dd/yyyy)

To be considered valid, you must sign all documents in the following format: *The full name of the principal "by" the name of the attorney-in-fact, with "POA" or "Attorney-in-Fact" added at the end. Any documents received without the proper signature format will be rejected.*

*OCERS requires the Attorney-In-Fact to submit a color copy of their government issued photo ID with signature exemplar before the Attorney-In-Fact can take any action.*

**SECTION 8A: STATEMENT OF WITNESSES** *This section must be completed by two (2) witnesses. A witness cannot be a beneficiary or be related to the principal by blood, marriage, or adoption. OCERS staff cannot sign as a witness.*

I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of convincing evidence) to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney in fact by this document. I am 18 years of age and of sound mind. I am not related to the principal by blood, marriage or adoption, and to the best of my knowledge, am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

Printed Name of Witness 1:

\_\_\_\_\_  
Mailing Address:

\_\_\_\_\_

Phone Number:

\_\_\_\_\_

Email Address:

\_\_\_\_\_

Signature of Witness 1: \_\_\_\_\_ Date: \_\_\_\_\_  
(mm/dd/yyyy)

Printed Name of Witness 2:

\_\_\_\_\_

Mailing Address:

\_\_\_\_\_

Phone Number:

\_\_\_\_\_

Email Address:

\_\_\_\_\_

Signature of Witness 2: \_\_\_\_\_ Date: \_\_\_\_\_  
(mm/dd/yyyy)

**SECTION 8B: ACKNOWLEDGEMENT OF NOTARY PUBLIC**

*This section does not need to be completed if you have completed section 9A. Notaries may complete the following or attach the appropriate acknowledgment form as required in the state where acknowledged. If notarization is occurring in another state, you must draw diagonal line through the certificate and attach that notary acknowledgement as page 8.*

## ACKNOWLEDGMENT

Civil Code §1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**The information below is intended to deter alteration of this OCERS Spousal Waiver or fraudulent reattachment of this form to an unintended document.**

Title of Document: OCERS Special Power of Attorney. Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Member Name: \_\_\_\_\_

Name of Signer: \_\_\_\_\_