

## **INSTRUCTIONS FOR COMPLETING FORM 4011B SPECIAL POWER OF ATTORNEY**

### **I. INTRODUCTION**

A power of attorney is an instrument that allows an individual, partnership, or corporation to authorize a specific individual to act as its agent or "attorney in fact" for certain matters. An "attorney in fact" is an agent who is appointed and authorized to act in place of another as distinguished from an "attorney at law". A power of attorney does not authorize an individual to practice law and should not be confused with legal representation by an attorney, who is licensed by the state to engage in the practice of law.

A power of attorney may be either general or special. A general power of attorney is broader in scope. For example, it may authorize the agent to handle all general business transactions. On the other hand, a special power of attorney limits the scope of authority to acting for a particular purpose or performing a particular act. Director's Form 4011A may be used for a general power of attorney, and Director's Form 4011B may be used for a special power of attorney.

### **II. APPLICABLE LAW AND RULES**

Rule 9010(c) of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.") states that a power of attorney must conform substantially to the Official Form, and that it must be acknowledged before an authorized person.

The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. § 459, § 953, Rule 9012, or a person authorized to administer oaths under the laws of the state where the oath is administered.

Fed. R. Bankr. P. 9010(c).

Bankruptcy judges, clerks, and deputy clerks of bankruptcy courts are authorized by statute to administer oaths and affirmations and to take acknowledgments, 28 U.S.C. §§ 459, 953. Moreover, Bankruptcy Rule 9012 provides that the following persons may administer oaths and affirmations and take acknowledgments: a bankruptcy judge, clerk and deputy clerks of the bankruptcy court, United States trustee, officer authorized to administer oaths in proceedings before the courts of the United States or under the laws of the state where the oath is to be taken, or a diplomatic or consular officer of the United States in any foreign country. Additionally, Bankruptcy Rule 9010(c) authorizes the use of a notary public, who is authorized by the state government to administer oaths, take acknowledgments, and attest to and certify with an official seal the authenticity of signatures.

### **III. DIRECTIONS**

The caption should be placed at the top of the page and should conform to Official Form 416B.

The name of the individual who is being authorized to act as attorney in fact on behalf of the creditor should be placed on the first line. The address of the "attorney in fact" should be placed after the (\*) asterisk. A second line is provided and should be used only if more than one individual is being authorized to act as "attorney in fact." The name and address of a second person should be placed on the second line.

The individual (or the individual acting on behalf of a partnership or corporation) that is granting a power of attorney should date and sign the document in the presence of a notary public or other person authorized to take acknowledgments. An individual should sign on the first line after the word "Signed," and print the individual's name on the second line after the word "By." An individual acting on behalf of a partnership or corporation should place the name of the partnership or corporation on the first line, sign the individual's own name on the second line, and state the individual's title on the third line. Additional lines are provided for the address of the person granting the power of attorney.