

SO NOW YOU ARE AN AGENT UNDER FINANCIAL POWER OF ATTORNEY

If you have recently learned that you have been designed as an agent under a power of attorney, this brochure is intended as a general guide for you. First you must read the power of attorney document to learn what your duties, responsibilities and powers are regarding managing the principal's finances and property. If you have more detailed questions about your role as an agent, you should consult an experienced probate attorney. This brochure includes the newly adopted laws governing financial powers of attorney, which went into effect January 1, 2010.

Your role as an agent.

An agent, also referred to as an "attorney in fact," is a person designated by another to manage the other person's financial affairs. The person making the agent designation is called the "principal." When the agent accepts the authority granted under the power of attorney, a special legal relationship is created between the agent and principal, and that relationship imposes legal duties on the agent. The role of an agent is a voluntary role. You are not required to serve. However, if you choose to take any actions as an agent, you will have important duties and responsibilities to the principal.

When does a power of attorney take effect?

The terms of a power of attorney will determine when it takes effect. In general, a power of attorney may take effect in two different ways.

- **Springing Power:** The power of attorney will take effect only when an event described in the instrument takes place. Typically, the event would be when a licensed physician determines that the principal is incapacitated.
- **Standing Power:** Takes effect as soon as the principal signs it.

However, powers of attorney may contain language that blends these two concepts. For example, a principal may direct that a power of attorney is

"standing" if the principal's spouse is acting as agent; however, if the spouse cannot act, the successor agent's power may be "springing." For all powers of attorney signed after January 1, 2010, if they are silent on the effective date, the power of attorney is considered a "standing" power.

What is your authority?

Your authority comes from state law and from the power of attorney document that describes your duties and powers. It is very important that you read and understand the document so that you are aware of your responsibilities. It may contain specific provisions that take precedence over the general rules in this brochure.

Does a power of attorney take away a principal's rights?

A power of attorney does not take away the principal's rights to make decisions. As agent you have the power to act, along with the principal, according to the document. Only a court, through a guardianship and/or conservatorship proceeding, can take away the principal's rights to act on his or her own.

Can a principal change his or her mind?

A principal may change his or her mind and revoke a power of attorney at any time, unless a court rules otherwise. All the principal needs to do to revoke a power of attorney is send a letter to the agent notifying the agent that the appointment has been revoked. From the moment you, the agent, receive a revocation letter from the principal, you can no longer act under the power of attorney. However, if the principal named a successor agent in the document, the power of attorney remains in effect for the successor agent.

What is your responsibility to the principal?

Your role as an agent under power of attorney is serious business and should not be taken lightly. If you are unsure about your responsibilities, you should consult an experienced estate-planning attorney, possibly at the principal's expense. Your

responsibilities include the following:

- You must avoid conflicts that would impair your ability to act loyally for the principal's best interests.
- You must act in good faith, with care, competence, and diligence.
- You have an obligation to make decisions based upon the preferences of the principal and the authority granted in the document. You may not override the wishes of the principal. In general, you have authority to do whatever the principal may do except as expressly limited in the power of attorney.
- You must keep the principal's money and property separate from your own property to avoid "co-mingling." When you are transacting business on behalf of the principal, you must use the principal's finances as the principal would use them for the principal's own benefit. If accounts are retitled, you should title them in "[your name] as agent for [the principal]," rather than as a joint owner. This should also make it easier for you to track spending and prepare the required records discussed below.
- These records must include all receipts, documents, disbursements and significant actions taken by you as agent. As agent, you are required by law to provide an accounting to the principal and anyone else designated to receive an accounting.
- Record-keeping is required unless special instructions in the power of attorney state otherwise. You should try to avoid writing checks to "cash" or to yourself, but if you do, you should be sure to keep careful records of the items and/or services purchased with the principal's funds. The assets you are managing must be readily identifiable as belonging to the principal and should be kept separate from your property.
- You have a responsibility to preserve the principal's estate plan. This means that you should become familiar with the principal's

estate plan, if possible, and should consider it, especially when handling any joint accounts, life insurance, trusts, retirement accounts, or property specifically given to a named person in the principal's will.

- You should refrain from actions or transactions that would be contrary to the principal's intent for how his or her assets will pass at death, as long as the estate plan remains consistent with the principal's best interests. For example, minimization of tax liability or eligibility for a benefit or assistance available under a statute or regulation might warrant such an action or transaction, but you should consult with an experienced estate-planning attorney regarding those considerations.
- You may not revoke or amend a trust, which is revocable or amendable by the principal, unless the power of attorney gives an agent authority to do so.
 1. Make a gift of the principal's property to anyone.
 2. Create or change survivorship rights to the principal's property (including joint tenancy ownership rights).
 3. Create or change beneficiary designations (including pay on death beneficiary designations).

Can the principal or a court hold me liable for my actions as agent?

As an agent, you are managing the assets and finances of the principal, and are under review at any time. As stated earlier, maintaining supporting documentation and records of all transactions is important in the event the individuals list below petition the court to review your conduct as an agent:

1. The principal and you as agent
2. A guardian or conservator
3. Someone authorized to make healthcare decisions for the principal
4. The principal's spouse, parent or descendant

5. An heir of the principal
6. A beneficiary of the principal or of a trust created by the principal
7. A governmental agency with regulatory authority to protect the welfare of the principal
8. The principal's caregiver or another person with demonstrated interest in the welfare of the Principal
9. A person asked to accept the power of attorney

Can the principal or a court hold me liable for my actions as agent?

An agent is a "fiduciary," which means the agent must act with the highest degree of good faith on behalf of the principal, and the agent can be held liable in court for breach of fiduciary duty. As agent, you must follow the lawful instructions given by the principal. If the principal's wishes are not specific, you should do what is in the best interests of the principal. As agent, you must act in accordance with the principal's best interests, not your interests.

When you are an agent under a Financial Power of Attorney, the law holds you to the "prudent person rule," which means that you must exercise "due care" and manage the principal's funds not as if they were your funds, but with the care needed for managing the funds of another. As agent, you should avoid speculative investments, even if you would be willing to take more risk with your personal funds. If an agent fails to act in accordance with these standards, or in the principal's best interests, the agent can be held liable for his or her actions.

Can an agent be reimbursed for expenses and compensated for work?

Unless the Power of Attorney prohibits it, you may be reimbursed for out-of-pocket expenses incurred and may receive reasonable compensation for their services. "Reasonable"

in this context means what is necessary and appropriate, depending on the nature and circumstances of the work or expense involved. You should, keep a log detailing the work performed, time spent and date.

Can you resign as an agent?

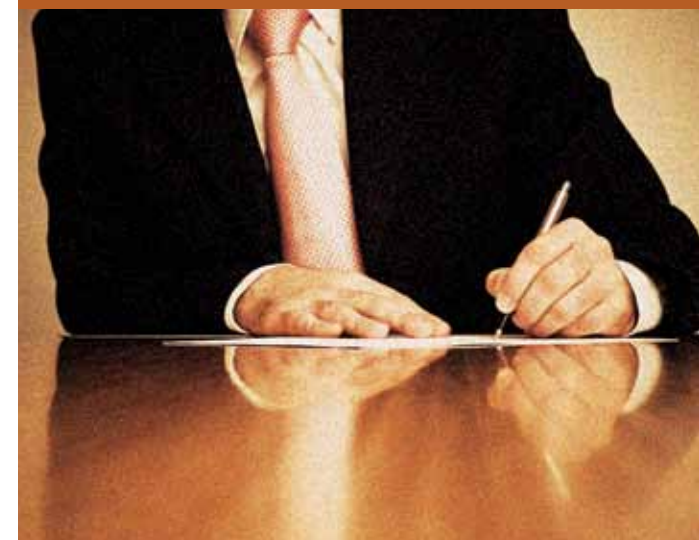
If the power of attorney does not provide a method for your resignation, you may resign by giving notice to the principal, and if the principal is incapacitated, by giving notice to the guardian or conservator if one has been appointed and to a co-agent or successor agent, if there is one.

If the principal is incapacitated and there is no guardian, conservator, co-agent or successor agent, you may resign by giving notice to the principal's caregiver, another person you reasonably believe has sufficient interest in the welfare of the principal, or to a governmental agency having authority to protect the principal.

What is a successor agent?

A successor agent is the person named to serve as a backup agent if the first person named as agent cannot serve due to death, incapacity, resignation or refusal to act. If a named individual is unable or unwilling to serve as agent, the next person in line under the document becomes the agent.

No one can take over as an agent under a power of attorney unless the principal names a successor agent (or agents) in the document, or if the document authorizes the agent to appoint a successor agent. If this cannot be done, and the principal has become incapacitated, it may be necessary to petition the court for appointment of a guardian and/or conservator.



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