

ESTATE PLANNING

Duties As Agent Under a Power of Attorney for Finances and Property

GENERAL DUTIES AND RESPONSIBILITIES

A power of attorney is a document which authorizes you to act on behalf of someone else (the principal). When you agree to act under a power of attorney you are the agent of the principal and become known as what the law calls a fiduciary. A fiduciary must act in the highest good faith for the principal's benefit. Good faith means not taking advantage of someone else, even if otherwise allowed by the technicalities of the law.

You must follow the instructions set out in the power of attorney and must use ordinary care and diligence in everything you do on the principal's behalf. You should read the entire power of attorney and note the powers which the principal has given you. You can do only the things the principal has empowered you to do.

You should keep the original copy of the power of attorney in a safe place. Most powers of attorney provide that a copy has the same authority as the original, so keep the original and make copies to give out on request.

If you are responsible for all of the principal's assets you should:

Make or get a complete inventory or list of the principal's assets so you know what you are responsible for.

Make sure that all assets are kept safe.

Keep property such as real estate and motor vehicles properly insured.

Consult with a lawyer for specific advice about what is necessary to carry out your duties.

SIGNING DOCUMENTS

If you are going to access the principal's bank accounts or pay bills for the principal, you should take a copy of the power of attorney to the principal's bank and have your signature added to the signature card for the principal's accounts.

The following are two acceptable ways to sign checks and other documents on the principal's behalf:

John Smith

By: (Your signature), Agent (or POA)

OR

(Your signature), Agent for John Smith

RECORD KEEPING

You must keep careful records of what you do with the principal's property. In addition to keeping all bank and brokerage account statements, you should maintain records of the following:

Income (the money you receive for the principal). You should deposit these funds in an account of the principal. Never put the principal's money and your money in the same account;

Expenses (the money you pay for the principal's needs). You should pay these expenses from the principal's accounts or funds. Do not use your own funds for these expenses and never pay your own expenses from the principal's accounts.

Purchases and sales of assets.

CONTACT US

Attorneys: K. Allan Voss * Ryan J. Zinkel * Eldon L. Bohrofen Paralegals: Lisa M. Meyer * Nancy Brito
Rohde Dales LLP 607 N. 8th St., Suite 700 Sheboygan, WI 53081 920 458-5501 mail@rohdedales.com

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AUTHORITY TO ACT AS AGENT

The power of attorney should state when your power to act begins and ends. Some powers of attorney provide for immediate authority, which allows you to begin acting as soon as the principal signs the power of attorney. Other powers of attorney are "springing," which means you only have the power to act if certain events occur, usually a determination that the principal is incapacitated.

If the principal is not incapacitated, he or she may continue to act even if you are acting as agent. The fact that the principal has given you authority to act does not limit in any way the principal's ability to act for herself or himself. He or she can take any action, including undoing something that you have done as agent.

Your authority to act under the power of attorney ends upon:

Death of the principal. **Do not transact any business on behalf of the principal after his or her death.**

Revocation. The power of attorney may be revoked by the principal, by a court-appointed guardian or conservator, or by a court determination that you no longer have the power to act.

Resignation. If you resign, you should notify the principal and, if there is one, the successor agent. If there is no successor agent, and if the principal is unable to appoint a new agent, you should continue to act as agent until arrangements can be made to protect the principal's assets.

Your authority to act may also terminate in other situations set forth in the power of attorney.

THINGS YOU SHOULD NOT DO

Do not do anything that does not benefit the principal unless the power of attorney specifically authorizes it. In the case of things that may benefit both the principal and some other person, you should be careful that you are acting primarily for the principal's benefit.

Never use any of the principal's property for your own benefit unless the power of attorney specifically authorizes you to do so.

Never mix your money and property with that of the principal.

DONATIONS AND GIFTS

You cannot make donations or gifts unless the power of attorney specifically says that you can. Donations and gifts are not considered to be for the principal's benefit. If the document authorizes gifting, you may only make gifts as specified in the document. Even with a gifting provision, you must make sure that the principal's needs come first.

FEES AND REIMBURSEMENT

Some powers of attorney do not allow the agent to receive a fee. If the power of attorney is silent on the issue, you may receive reasonable fees for serving as agent. The power of attorney may specifically allow for fees and provide for how they are to be determined. If you do receive a fee, you are responsible for reporting it as income on your income tax return.

If the power of attorney allows it, you may also use the principal's money to reimburse yourself for reasonable and necessary out-of-pocket expenses incurred while acting as agent for the principal's benefit. In general, it is better to pay expenses directly from the principal's funds and avoid the need for reimbursement.

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