

GUIDELINES:

For an Agent Acting Under a Power of Attorney

You have been named as agent under this durable power of attorney. Your authority as agent extends to the management of the financial, personal and health care matters affecting the principal, as described in this power of attorney. The principal has placed great trust in you by naming you as agent.

While your authority as agent is immediately exercisable, it is generally contemplated that you will only act when your principal is no longer able to manage his or her property, business and/or health care matters, or when the principal, while competent, expects that you will act on his or her behalf under varying circumstances.

The purpose of these guidelines is to provide you as agent with some general instructions which should be followed in the performance of your responsibilities. These instructions are not intended to be all encompassing legal advice. In specific situations, if you have a question about your authority or the propriety of actions you may be considering, consult a legal advisor before acting, in order to avoid future problems.

1) Know your authority as agent and familiarize yourself with your document.

- a) Read it carefully and make sure you understand it. If you do not understand it, or any part of it, consult with an attorney.
- b) Be familiar with what the power of attorney expressly or impliedly authorizes you to do.
- c) Be aware of the limitations of these authorizations.
- d) Be aware of those actions that as agent, you may be prohibited by law from taking, such as:
 - (1) matters too personal to delegate
 - (2) prohibition on making a will for the principal
 - (3) voting in public elections,
 - (4) (changing the principal's marital status

2) Know the consequences of acting beyond your authority.

- a) Your actions as agent may be invalid.
- b) You may be exposed to civil or criminal penalties.

3) Know that you are a fiduciary (a kind of trustee) and what that means.

- a) You must be utterly loyal to your principal:
 - i) Always try to do what you believe your principal would have done.
 - ii) In taking actions on your principal's behalf, when you do not have direct guidance, but you know what your principal would have done, then that is what you should do, even if you would prefer to do something else.
 - iii) If you believe you are following your principal's wishes, do not be dissuaded by others. You are in charge and your responsibility is to your principal and not to his or her friends or family.
 - (1) Act only in accordance with:
 - (a) Authorizations in the instrument, and
 - (b) Your principal's best interest.
 - (2) Do not act as agent to benefit yourself or others, except as specifically authorized in the power of attorney.
 - (3) Do not co-mingle your principal's funds and property with your own.
 - (4) Be alert to situations where your interests' conflict with those of your principal and
 - (5) Avoid those situations if possible, but if not, then:

- (a) Seek legal counsel, and
- (b) Do not resolve such issues by acting for your own benefit rather than the benefit of your principal.
- iv) Seek legal counsel when, as agent, you are uncertain of your responsibilities.
- v) As agent, always act prudently and cautiously.

4) Get expert advice if you need it.

If you believe that you do not have sufficient expertise to make an important decision for your principal, you should consider employing an expert to advise you, unless your power of attorney prohibits you from doing so. For example, a CPA might be employed for tax or accounting advice or services, a lawyer for legal advice or services, an investment counselor for investment advice or services, etc.

5) Don't give away your principal's property

Unless your power of attorney specifically authorizes such action, you should never (1) make gifts of the principal property to anyone, especially yourself (2) transfer the title to any of the principal's cash, bank accounts or property into the joint names of yourself (or anyone else) and your principal, with or without rights or survivorship (3) change the beneficiary designations on the principal's life insurance or employee benefit plans or other rights and benefits from whomever is currently named as beneficiary to yourself or anyone else. Generally, it will not be necessary for you to take title to the principal's property, as agent, in order to manage it under the power of attorney.

6) Avoid disrupting your principal's estate plan

As Agent, it may be necessary for you to sell some of your principal's assets or property to raise cash. If you have been authorized by your principal to make gifts, then you must select the assets to be given away. There may be other bona fide reasons to sell certain of the principal's assets and buy other assets. Before taking any of these actions, you should familiarize yourself with your principal's estate plan, particularly how the principal intended to dispose of assets at death, so that you can avoid, if possible, actions that will disrupt that plan and/or deprive the principal's beneficiaries of assets that the principal intended for them to receive.

7) Avoid business transactions with your Principal

You should avoid acting as agent in business transactions between yourself and your principal, such as buying property from your principal, selling property to your principal, borrowing from or lending to your principal because as the agent for your principal, you have a conflict of interest that can subject you to various penalties and sanctions if you enter into such transactions. However, if you had an ongoing business relationship with your principal when you were designated agent, you should consult with counsel, as the principal may have waived the potential conflict as to those ongoing business relationships.

8) Consult with your principal, if possible

If your power of attorney authorizes you to act before your principal has become incapacitated, never take any action without the advance, express approval of the principal.

9) Be prepared to justify your actions as Agent

Remember that you are managing the affairs of the principal, and other persons may have an interest in the principal and his or her custody and estate. They have the right to question your actions and you should be prepared to demonstrate that your actions were (a) authorized by the power of attorney (b) in the principal's best interest and (c) reasonable and prudent under the prevailing circumstances.

10) Monitor a weakening principal

Whether your power of attorney permits you to act before or after incapacity has occurred, and your principal appears to be gradually losing capacity, you should increase your monitoring of your principal's condition and you should show

your power of attorney to your principal's physicians and ask them to advise you of his or her condition so that you will know when to begin to act independently of the principal.

11) Keep good records

Maintain a separate account of your principal's funds and carefully keep records of all receipts and expenditures. It is likely that as agent, you will have to provide an accounting at the termination of your service as agent. Maintaining contemporaneous records is the only way you can be certain that you will be able to provide the appropriate record of your conduct as agent.

12) Signing documents as agent and use of the agent's affidavit

When you sign a document as agent on behalf of your principal, you should not sign the principal's name. Instead, you should sign your name as agent for your principal, and you should make reference to your power of attorney and the date it was signed by your principal. For example: John Doe as Agent for JOHN Q. PUBLIC under power of attorney dated January 1, 2011.

13) Be prepared to prove incapacity, if necessary, in order to act

If your power of attorney authorizes you to act only upon your principal's incapacity, and you believe that such incapacity has occurred, be prepared to prove to third persons, with documentary evidence such as written medical opinion that incapacity has occurred