

## **Guidelines for Agent Acting Under A General Durable Power of Attorney**

You have been appointed to serve as an agent, also known as an attorney-in-fact, under a General Durable Power of Attorney - hereafter referred to as a power of attorney. The principal has placed a great deal of trust in you by naming you as his/her agent. As the agent, your authority extends to the management of the financial and personal matters affecting the principal, as described in the power of attorney. In the State of Oklahoma a separate power of attorney, i.e., a Medical Durable Power of Attorney, is required to make health decisions for the principal.

While your authority as agent may be immediately exercisable, it is generally contemplated that you will only act on behalf of the principal when he/she is no longer able to manage his/her property, business and/or health care matters. Or, when the principal, while competent, expects that you will act on his/her behalf under varying circumstances. This should be specified in the power of attorney.

The purpose of this guideline is to provide you, as the agent, with some guidance when performing your responsibilities. This is not intended to be all-encompassing legal advice, rather it is intended to be general guidelines.

### **(1) First and foremost, familiarize yourself with the power of attorney and the obligations you are assuming, i.e., your authority and limitations.**

- (a) It is crucial that you understand the authority within the power of attorney that you have the right to exercise. It's as simple as reading the power of attorney and doing what it says/allows. If you do not understand it, or any part of it, consult an attorney.
- (b) Know any and all actions that you may be prohibited from taking or are limited in exercising by law or by the power of attorney itself. Unfortunately, not everything you need to know as an agent is included in every power of attorney. As with everything else in life, some are better than others.
- (c) Know that your actions should always be in the best interest of the principal, including managing money and property carefully.
- (d) Your assets and those of the principal must always remain separate.
- (e) Always act only in accordance with the authorizations in the power of attorney and always in the principal's best interest.
- (f) Do not act as agent to benefit yourself or others, except as specifically authorized in the power of attorney.

### **(2) Understanding your role as a fiduciary (a kind of trustee) and what that means.**

- (b) You stand in a position of trust, and your fiduciary duty requires the highest standard of care. You must place your loyalty and actions to the principal over your own, i.e., you must be trustworthy, honest and act in good faith.

- (c) In addition to an agent having a duty of absolute loyalty, you must avoid all self dealing and must avoid actual conflicts of interest, and even the appearance of a conflict of interest between the agent and the principal involving the principal's assets and accounts.
- (c) Your assets and that of the principal must always remain separate. Always remember it's not your money or property. Be alert to situations where your interest may appear to conflict with those of your principal and seek legal counsel.
- (d) Keep good records and maintain a paper trail. Act prudently and cautiously. You need to use good judgment and common sense. As a fiduciary, you must be more careful with the assets of your principal than you are with your own.
- (e) Simply having full knowledge and understanding your authority, including your limitations, allows for full confidence in your actions.
- (f) Remember you are in charge and your responsibility lies with the principal, and not with his/her family and friends, or anyone else.
- (g) As much as possible, involve the principal in decisions to the best of his/her ability. If he/she is unable to communicate with you, look at any past decisions, actions and statements of the principal to help you determine what he/she would have done or what would be in his/her best interest.
- (h) Always remember to put the principal's well-being above saving money for others who may inherit his/her money and property. Make sure the principal is safe, comfortable and his/her needs are met.

**(3) Recognizing the consequences of improper action, i.e., exceeding your authority.**

- (a) Without adequate knowledge of your authority and limitations, you may exceed them and your actions as agent may be invalid.
- (b) If you do not meet the standards mentioned in (2) above, you could be removed as the agent, sued and possibly have to repay money. It's even possible that criminal charges could be filed against you.

**(4) Recognize that you may need expert advice or legal counsel.**

- (a) Anytime you believe it necessary or recognize that you do not have sufficient expertise to handle the situation on behalf of your principal, you should consider consulting an expert. Examples would include an investment counselor, an attorney, or a CPA.
- (b) Remember that the attorney that prepared the power of attorney may have a conflict in representing the principal while at the same time giving legal advice to you. However, in some cases your principal may have encouraged you to employ his/her attorney, and may have waived any conflict by a provision in the power of attorney.

**(5) Third party interaction with the power of attorney.**

- (a) Sometimes local banks and businesses won't do what needs to be done with the power of attorney you have. They may refuse to accept the power of attorney and want the principal to sign their form. Of course, it is a problem if the principal has lost the

capacity to act for himself/herself. If, after consulting with a supervisor, it is still not accepted, be sure and consult an attorney. Also be sure and never give away the original power of attorney.

**(6) Manage the principal's money and property carefully.**

- (a) Don't borrow, loan or give away the assets of the principal to yourself or others. Even if the power of attorney or state law clearly allows gifts to you or others, it is necessary to be leery of conflicts of interest, or even the appearance of a conflict of interest.
- (b) Any gifts should be in line with what the principal would have wanted and could afford. For example, if the principal gave money annually to a charity, the power of attorney may allow you to continue to do that. However, it is crucial that you determine, as his/her agent, that he/she can continue to afford the charitable gift.
- (c) Unless state law or the power of attorney allow it, don't pay yourself for the time you spend acting as his/her agent. If you are allowed to pay yourself, you need to show that your fee is reasonable and in line with the fees in the community. Carefully keep track of how much time you spend and what you do on behalf of the principal.
- (d) Keep a detailed list of everything that you spend and receive on behalf of the principal. Keep notes and receipts regardless of how small the purchase. Avoid both using an ATM and paying cash for goods or services. A clear paper trail of purchases, expenses and payment is necessary.

**(7) The power of attorney may be changed or revoked.**

- (a) Keep in mind the principal can revoke your authority to act as his/her agent at any time he/she wants to provided if he/she still has the capacity to make decisions. If your authority is taken away, keep in mind you must stop making decisions on his/her behalf, and you should make it known to the people and/or businesses you were dealing with that your authority has been removed.
- (b) If your authority is revoked, or the principal dies, your responsibilities end. You should promptly notify his/her bank or other businesses with which you interacted as his/her agent. Even if you can easily pay some of his/her outstanding or remaining debts, you no longer have the authority to do so.
- (c) Although the power of attorney may provide for a successor agent, a successor agent has no authority if the agent remains able and willing to serve. It should be specifically defined in the power of attorney.
- (d) If a guardian or conservator is appointed on behalf of the principal, your authority as agent may end as well. The power of attorney or state law may govern in these situations.
- (e) If you are no longer able to act as agent, and there is no successor agent named in the power of attorney, the principal will need to find someone else to serve. If he/she is unable to do so, you should advise a trusted family member or an agency such as Adult Protective Services.

**(8) Financial exploitation and problems with family and friends.**

- (a) Many often try and take advantage of the principal. Family, neighbors, caregivers, business people, and friends can all pose a threat to the principal. They may take money, property, fail to repay loans, charge excessive amounts for services, or just not complete what the principal paid them to do. As his/her agent you should help protect the principal.
- (b) Knowing what to look for may help in protecting the principal. Keep an eye on the bank accounts, listen to the principal, notice sudden changes in the spending or savings of the principal and in his/her spending habits. Additionally he/she may make new or unusual "gifts" to family, others or "new best friends." Always keep an eye on caregivers, friends and relatives who suddenly begin to handle his/her money. Often times the principal will become fearful of a caregiver, family member or friend if they are being extorted.
- (c) Be on guard for consumer scams as well. Unfortunately the elderly are huge targets for financial exploitation. Scammers often seek unsuspecting people who have access to money. Learn to spot consumer scams against the principal - and against you as his/her agent.

Keep in mind there are always exceptions to the power of attorney. You will need a separate appointment from a governmental agency to receive benefits on behalf of the principal such as VA Benefits ("VA fiduciary") or Social Security ("representative payee"). Contact the specific government agency for more information.

Again, our purpose with this guideline is only to provide you, as the agent, with some guidance when performing your responsibilities. If you have a question about your authority or the propriety of any specific action, please consult an attorney before action is taken to avoid future problems.