

So Now You Are An Agent Under Financial Power of Attorney

An agent or attorney-in-fact is someone who has the authority under a power of attorney document to make decisions for or act on behalf of the person who signed the power of attorney document (the “principal”). When you act as someone’s agent under financial power of attorney, you have specific legal duties and responsibilities under the laws of Colorado. For additional information about other types of powers of attorney, please see the brochure *What is a Power of Attorney?*

What is a Financial Power of Attorney?

A financial power of attorney may also be known as a General Durable Power of Attorney or a GDPOA. Under a financial power of attorney, the principal gives their nominated agent the authority to act on the principal’s behalf with respect to the principal’s finances, property and assets. A financial power of attorney is usually intended to assist the principal to manage his finances when he is living but unable to do so himself.

When does my authority as a nominated Agent begin?

The language of the power of attorney document will tell you when your authority as an agent begins. Power of attorney documents are either springing or standing.

- A springing power of attorney gives an agent the authority to act after a specific event occurs. One example of a springing event could be that two doctors certify in writing that the principal no longer has the ability to make his own medical or financial decisions. In this example, the agent could not act on behalf of the principal until that certification is provided.
- A standing power of attorney takes effect immediately when the principal signs the document. When the principal signs a standing power of attorney, the principal continues to have the authority to make his own decisions until he needs assistance from his agent. An agent is required to consult with the principal about decisions and consider his wishes whenever possible. A principal is also entitled to information about his assets and finances after the agent has started acting on his behalf.

What authority do I have as an Agent?

An agent’s authority to make decisions or act on behalf of the principal depends on the terms of the power of attorney document and the laws of Colorado. In addition, certain powers of an agent in Colorado have to be specifically mentioned in a power of attorney document in order for the agent to have that authority. These are often referred to as

“hot powers.” Hot powers include the authority of an agent to make gifts, change beneficiary designations, amend or terminate a trust, or act on behalf of the principal in a business partnership.

It is important to read the power of attorney document to make sure you understand your authority. You cannot use ignorance of the law as a defense if you act inappropriately as someone’s agent. An agent who misuses or abuses their authority under a power of attorney document may face criminal prosecution and/or civil liability. If you have any questions about your authority or responsibilities as an agent, you should seek legal advice from an attorney.

What are the responsibilities and duties of an Agent under Financial Power of Attorney?

Generally, an agent under financial power of attorney has the following responsibilities and duties:

- Act in accordance with the principal’s reasonable expectations, to the extent actually known; otherwise, always act in the principal’s best interest.
- Duty of Loyalty to the Principal. As an agent, you must put the principal’s interest ahead of your own. You cannot engage in actions that would impair your ability to act loyally to the principal. If you make a decision that benefits yourself over the interests of the principal, or even has the appearance of a benefit to yourself, you may have breached this duty.
- Duty to Act Prudently. In your role as agent, you are responsible for the management of the principal’s funds and assets. As his or her agent, you cannot manage the principal’s funds as you might ordinarily manage your own. You should not take risks with the investment of the principal’s assets even if you would ordinarily allow those risks with your own.
- Duty to Keep Your Personal Property Separate. When you are acting as agent of the principal’s assets, you must not commingle your personal assets with the principal’s assets.
- Duty to Account and Keep Records. You must account and keep records of all transactions for the principal’s assets and financial accounts.

If you breach any of the above duties, you may be at risk of criminal prosecution and/or civil liability. If you have any questions about your duties and responsibilities as an agent, you should seek advice from an attorney.

Can I be paid for serving as someone’s Agent?

An agent can be reimbursed for out-of-pocket expenses incurred on behalf of the principal and for reasonable compensation for time spent assisting the principal, unless the pow-

er of attorney document prohibits it. Your actions as an agent can be scrutinized at any time, so it is recommended that you keep receipts for every expense you reimbursed yourself for. If you wish to be compensated for your time from the principal's assets, you must keep a detailed time log of the work you performed. A Court can review an agent's compensation for reasonableness, which may examine the rate charged, the time spent performing the work, the skill required to perform the work, and the circumstances of the work when it was performed.

What if I'm nominated as someone's Agent but I don't want to serve as their Agent?

If you are nominated as someone's agent, you are not required to serve in that role. If you do not wish to accept your nomination, notify the principal of your decision to decline the appointment in writing.

When does my authority as Agent end?

Your authority to act on behalf of the principal ends when one of the following events occur:

- The principal dies;
- The principal delivers a revocation of your agency to you to notify you that you are no longer their agent;
- The principal delivers a revocation of their power of attorney document to you to notify you that your authority as agent under that document has ended; or
- You resign as agent.

If you continue to act or make decisions with respect to the principal's finances and assets after receiving notice of your revocation or the principal's death, you may be subject to criminal prosecution and/or civil liability.

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