

Handling someone else's money

Guidance for attorneys-in-fact acting under a power of attorney

Like many people, you may never have been named an attorney-in-fact under a power of attorney. It's a great honor when someone entrusts you with the authorization to act on their behalf. It is also a great responsibility. This guide will help you understand what you can and cannot do in your role as an attorney-in-fact.

WHAT IS A POWER OF ATTORNEY?

A power of attorney ("POA") is a legal document that delegates authority from a principal to an attorney-in-fact ("AIF") that gives the AIF the right to act on behalf of the principal.

- The principal is the person who grants the authority.
- The AIF is the person to whom the authority is granted and can therefore act on behalf of the principal.

YOU ARE NOW A FIDUCIARY!

When someone names you as their attorney-in-fact, you become a fiduciary with fiduciary duties. This means you must manage their money and assets for their benefit, not yours. As a fiduciary, you are obligated to perform the following duties:

- Act only in the principal's best interest.
- Manage the principal's money and assets carefully.
- Keep the principal's money and assets separate from yours.
- Keep good records.

If you do not perform these duties honestly and in good faith, you may suffer serious repercussions. It is even possible that by not acting honestly and in good faith, you could face criminal charges. This is why it is extremely important to remember: this is not your money!

FIDUCIARY DUTIES EXPLORED

Let's look more closely at your duties now that you are an attorney-in-fact.

Duty 1: Act only in the principal's best interest

In its essence, this means that you must make decisions that are best for the principal. You must ignore your own interests and needs, or the interests and needs of other people. To help you, consider the following guidelines:

- Read the POA and do only what it says.
- Involve the principal in the decisions, as much as possible.
- If the principal cannot make decisions for herself, act as she would have wanted to act for herself.
- Avoid conflicts of interest – or even the appearance of a conflict of interest.
- Avoid borrowing, loaning or giving the principal's money or assets to yourself or others, even if the POA allows it.
- If you do borrow, loan or give the principal's money or assets to yourself or others, make sure it is only done in furtherance of the principal's interests or for her benefit.
- Avoid changing the principal's plans for giving away her money or assets when she passes.

Duty 2: Manage the principal's money and assets carefully

As a fiduciary, you must be even more careful with the principal's money than you might be with your own. Use good judgment and common sense. Remember, the principal may need her money for a very long time. It is your responsibility to do everything in your power to ensure it will last as long as she needs it. To help you, consider the following guidelines:

- Know what the principal owes and owns.
 - Protect the principal's money and assets.
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- Invest carefully.
- Avoid borrowing, loaning or giving the principal's money or assets to yourself or others, even if the POA allows it.
- If you do borrow, loan or give the principal's money or assets to yourself or others, make sure it is only done in furtherance of the principal's interests or for her benefit.

Duty 3: Keep the principal's money and assets separate from yours

Never mix the principal's money or assets with your own. Never. To help you, consider the following guidelines:

- Never deposit the principal's money or assets into your own or someone else's financial account.
- Avoid joint accounts.
- Do not transfer any title held by the principal into your own or someone else's name.

- When signing a check or document for the principal, never sign just your own name; rather, sign "Your Name, as AIF for Principal".
- Pay the principal's expenses from her funds, not your own.

Duty 4: Keep good records

It is a good idea to keep true and complete records of all of the acts you take on behalf of the principal. If your actions are ever questioned, you can produce these records to show that you have acted for the principal's benefit and in her best interest. To help you, consider the following guidelines:

- Keep a detailed list of everything that you receive or spend for the principal.
- Document decisions you make, such as for investments or transfers, and the reasons for these decisions.
- Keep receipts and notes, even for small expenses.
- Avoid paying in cash.

If you have questions about your specific duties under a POA,
please be sure to consult with a legal professional.

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