

Checklist for a New Attorney-in-Fact

- Do you really want to assume this responsibility? When you agree to serve under a power of attorney, you take on the duty to act in the highest good faith for the benefit of the “principal” (the word we use to refer to the person who gives you this power). Acting in the “highest good faith” means that you must act with care and diligence on behalf of the principal, and never take advantage of the principal or abuse the significant power you have been given.
- Read the power of attorney document thoroughly, and don’t hesitate to ask questions about it. You can only do those things that are authorized in the document.
- Confirm exactly when you are expected to assume your duties and responsibilities. Even if the power of attorney is immediately effective, the principal may not expect you to take any actions until he or she instructs you to, or until he or she is no longer able to function effectively.
- Remember that the principal does not suddenly give up the power to act on his or her own behalf, and he or she normally keeps the power to revoke the document at any time.
- Keep the original of the power of attorney document in a safe place and make several copies for you to use from day to day.
- Maintain careful records of all transactions you handle on behalf of the principal, because you have a duty to account to him or her for your actions at all times upon his or her request, and a court may require you to account for your actions at some point in the future. This means you must be able to document all of the principal’s income received, expenses incurred, assets sold or purchased, and how you have handled each item of income, expense and asset.
- Unless the power of attorney document forbids it, you are entitled to be compensated for the reasonable value of the services you performed as the attorney-in-fact for your principal. If the document sets your fee, you are bound to abide by the fee set out in the document. You are not required to charge a fee for your services; if you do charge a fee, the amount you charge must be included in your income tax return for the year in which you receive it. So long as the document permits it, you may receive reimbursement for the necessary out-of-pocket expenses you incur in carrying out your duties. If any dispute arises concerning your fees or expenses, a court has the power to decide what is fair compensation for the services you have rendered, and you could be forced to return funds the court decides to disallow.

When you are called upon to manage all of the principal's assets when he or she becomes incapacitated:

- Consider obtaining professional advice about your duties and responsibilities, because your level of responsibility is significant.
- You will need to prepare a listing of all of the principal's assets and take steps to protect those assets and manage the property for the principal's benefit.
- You will likely be paying bills on behalf of the principal, so you will need to notify any banks, brokerage firms, credit unions and other financial institutions holding assets of the principal that you have been appointed, and provide a copy of the power of attorney for their files.
- It is a good idea to review the principal's most recent personal income tax returns and consider meeting with the principal's accountant to be sure that all of the principal's tax obligations are being met appropriately.
- If the principal ran a business or an interest in any closely-held business entity, you may be required to take steps to maintain and protect that business and participate in the management of the closely-held entity.
- You may engage the services of an attorney, accountant or other professional advisor or assistant in carrying out your duties, and the fees for such consultations will in most instances be paid from the funds of the principal.
- If the principal had a safe deposit box, you should inventory the contents of the box, maintain an exact record of its contents, and continue to safeguard the items in the box as appropriate.
- You should make certain that the assets of the principal are insured and safeguarded, especially if he or she must leave home for a stay in the hospital or a nursing home; and you should explore whether the principal maintained liability insurance and if so, you should continue to do so.
- If the principal is the victim of an accident or some other incident which would normally require the filing of a lawsuit on his or her behalf, you should consult with an attorney to determine what obligation you may have to file on behalf of your principal. By the same token, if the principal is sued for any reason, you should consult an attorney concerning the manner in which to respond to the lawsuit.
- If the power of attorney authorizes gift-giving or charitable donations, you may make gifts strictly as specified in the document, and if you have any

questions about gift-giving under the power of attorney you should consult an attorney before making gift transfers in any amounts.

You should explore whether and to what extent the principal may qualify for any insurance or governmental benefits, and take steps to make all appropriate claims for such benefits on the principal's behalf. These benefits include, but are not limited to, Social Security, Medicare, Veterans' and Medicaid benefits.

Things you should never do:

Never put money or property belonging to the principal into your own bank account or any other investment or account that belongs to you; this is called "commingling" and is not permissible.

Never put your name onto an account or asset belonging to the principal "with right of survivorship" or as a co-owner, payee or beneficiary upon the death of the principal.

Never do anything that does not clearly benefit your principal.

Your authority to act on behalf of your principal ends:

When the principal revokes the power of attorney (assuming the principal is mentally competent to do so); or

When the document states that your authority is over; or

If the document is silent as to termination, then your authority ends upon the death of the principal.

Your authority will also end if a court terminates your power, or if a court appoints a conservator to act on behalf of the principal, and the conservator then revokes your authority.

You are free to resign at any time, but if you do resign you must notify the principal and, especially if the principal is disabled, you must notify the successor attorney-in-fact named in the document (if any). If the principal is disabled and there is no successor agent named in the document, you should continue to serve until appropriate arrangements are made to safeguard the interests of the principal.