

Law Offices of Anne M. Zaun, LLC

Dayton Professional Center in South Brunswick
395 Ridge Road, Suite 1, Dayton, New Jersey 08810
Phone: 732-329-0119 Fax: 732-329-0087

Rights and Duties of an Agent/Attorney in Fact

Terminology

You have been nominated to serve as Agent or Attorney in Fact under a Durable Power of Attorney. The person who nominated you is called the Principal. If you have been nominated as an alternate, this means that you may be asked to serve if the primary nominee is unable or unwilling to serve.

Questions

1. Do I have to agree to accept this appointment?

No, you do not. If you do not agree to serve, please let the Principal know as soon as possible so other arrangements can be made.

2. Can I quit at any time?

You may be able to quit. You should always notify the Principal as soon as possible of your intentions. There might be situations in which you would be held responsible if you abandoned your Principal in the middle of some activity.

3. Can the principal remove me?

Yes. The principal should let you know as soon as possible that your services are no longer needed. Once you have been informed in the proper manner that you are no longer to serve, your authority stops.

4. What are my powers?

You need to read the language of the Durable Power of Attorney. Sometimes Agents are given very broad powers. Sometimes they are given very limited powers. **You have no powers beyond those described in the document.**

5. When can I act?

That depends both on the actual language of the Durable Power of Attorney and on the Principal's capacity to manage his or her affairs. Some documents authorize you to act immediately upon direction of the principal. Others allow you to act only after some event has happened, such as the principal's incapacity. Read the document carefully.

6. When can I make decisions on my own for the principal?

Normally, the Principal makes decisions and you, as an agent, are authorized to act to carry them out. Only when the principal is so mentally incapacitated that he or she is unable to make informed decisions should you make decisions on your own for the Principal. Even then you have a duty to make them in the best interests of the Principal.

7. Would there be any consequences if I make a decision just because I think it is a good idea?

There could be. If the Principal is not mentally incapacitated and refuses to agree with some decision you made, you could be personally responsible for any costs required to reverse your decision.

8. Can I do anything I wish with the Principal's property?

No. You are required to make all decisions and perform all actions for the benefit of the principal and not yourself. If you personally profit from anything you do, you could face civil and criminal proceedings. The Principal remains the owner of all of his or her property. Taking anything for yourself, without the clear consent of the Principal, may be a crime.

9. If I agree to serve, am I responsible for the Principal's debts?

No. Acting as an Agent does not make you responsible for any of the Principal's debts.

10. Do I have to report on my activities to anyone?

You always have a duty to report to your Principal. Whether you have more specific reporting duties depends on the language of the Durable Power of Attorney. Please read it carefully to see if you are supposed to give regular written reports to someone else. Even if you are not required to report, it makes good sense to give regular reports to at least some of the Principal's heirs and beneficiaries. This should protect you if someone later makes a false claim that you took financial advantage of the principal.

11. Should I keep careful records?

Of course, you should. There is increased awareness of the problem of financial exploitation of the elderly. There are new laws that make it easier to prosecute these crimes. You do not want to have to defend yourself against baseless charges. Careful records are your best proof of innocence.

12. Can I ever be forced to explain what I have done to a court?

Normally, you do not have to report to a court. However, if someone complains to a civil court or a criminal court that you have abused your powers, you may be forced to explain what you have done and not done.

13. When does my authority stop?

Your authority stops if you quit or if the Principal removes you. There are other events that can end your authority, also. Your powers as an Agent end upon the Principal's death. Then the personal representative appointed by the court takes over. Also, if a court decides that you have not done your job well enough and that the Principal's needs someone else to manage his or her affairs, that court may appoint a conservator or guardian to take over management duties.