

LEGAL EASE



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So you are the agent under a power of attorney

In Pennsylvania, when someone (the “principal”) executes a financial durable Power of Attorney, they designate an Agent (and hopefully an alternate Agent or Agents) to be able to act for the principal when he or she is unable to act. The powers given to an Agent are listed in the actual Power of Attorney document. These powers can be broad and an Agent can be authorized, if the principal states so in the document, to perform acts related to financial transactions without consulting the principal and to substantially change how the principal’s property is distributed during the principal’s life or after death. For this reason, the principal should think carefully about the choice of Agent or Agents.

Agents should also be thinking carefully about their actions. Although the document might give the Agent financial powers, it is important to remember that the Agent is *always* to act in the principal’s best interest and only within the scope of authority granted in the document. The Agent should consult the principal when possible. If that is not possible, the Agent should act in accordance with the principal’s reasonable expectations.

Sometimes the Agent, in trying to follow the principal’s instructions, thinks he or she can do whatever the principal is requesting. For instance, the principal wishes to make a change to the Will. Executing a new Will for someone else is not within the Agent’s scope of authority. Only the *principal* can write or change a Will. In order to execute a new Will, the principal must have “testamentary capacity” as determined by an attorney. Again, the Agent can step into the principal’s shoes as if he or she were the principal but only to do the actions permitted by the document.

On the other hand, the Agent may be reluctant to perform any actions for fear that he or she is overstepping the boundaries set by the document. Some caution is warranted since the Agent should be acting in the principal’s best interest. However, sometimes the principal, especially if he or she is experiencing dementia symptoms, really needs the Agent to step up and help with the finances. As long as the Agent acts prudently and in the principal’s best interests, he or she should be protected by law. However, reckless use of these powers can result in intervention of a Court and assessment of damages. Fiduciary duties are not to be taken lightly. Failure to act when it is warranted can also be an issue. It is also wise for the Agent to keep the principal’s funds separate from the Agent’s funds (unless it is a spouse who is the principal).

Sometimes the financial Power of Attorney is what is known as a “springing” Power of Attorney. In this case, the Agent cannot act unless the conditions in the document are met. This can be a problem when the Agent must act quickly or needs to act when the incapacity is not mental but physical.

Finally, a Healthcare Power of Attorney is generally an expression of the principal’s wishes if he or she is unable to make healthcare decisions for themselves. This is not a financial Power of Attorney but nevertheless, caution should be exercised in its use to be sure that you are following the direction of the principal. In all Power of Attorney matters, be sure that you are understanding your role and the limits to the powers granted.