

Instructions for Your Power of Attorney

1. Powers of Attorney – the basics

A Power of Attorney allows someone (the Principal) to have someone else (the Attorney-in-Fact) act for them if they are unable to act for themselves. The Power of Attorney specifies whether the Attorney-in-Fact may act on behalf of the Principal immediately upon signing the document, or upon the happening of some future event (such as after the Principal is considered incompetent to handle his/her own affairs or is incapacitated).

Any competent person 18 years of age and older can serve as an Attorney-in-Fact. Because a Power of Attorney is such a potentially powerful document, Attorneys-in-Fact should be chosen for reliability and trustworthiness. It is a big responsibility to serve as an Attorney-in-Fact.

2. Powers and Duties of an Attorney-in-Fact

Powers of Attorney can be used for most everything, but an Attorney-in-Fact can only do those acts that the Power of Attorney specifies. Review the Power of Attorney document to determine what acts are included, or consult the attorney who drafted the Power of Attorney.

There are a few things that an Attorney-in-Fact is forbidden to do even if the Power of Attorney says otherwise. An Attorney-in-Fact may not: 1) sign a document stating that the Principal has knowledge of certain facts, i.e., if the Principal was a witness to a car accident, the Attorney-in-Fact may not give a statement for the Principal about that accident; 2) vote in a public election for the Principal; 3) create or revoke a will or codicil to a will; 4) perform personal services for the Principal under a contract (such as paint a picture or write a book); 5) take over the responsibilities appointed by a court, such as acting as a guardian or conservator for someone else.

An Attorney-in-Fact is looked upon as a "fiduciary", which is a relationship of trust. If the Attorney-in-Fact violates this trust, the law may punish the Attorney-in-Fact both civilly (by ordering the payments of restitution and punishment money) and criminally (probation or jail). However, if the Power of Attorney legally authorizes a particular act, the Attorney-in-Fact cannot be held personally liable for doing that act.

3. Using the Power of Attorney

Keep the original Power of Attorney and take a copy of the document to the third party with whom the Principal does business. Explain to the third party that you are acting under the authority of the Power of Attorney and are authorized to do this particular act.

When you sign documents as the Attorney-in-Fact, make it clear that you are acting for the Principal, not contracting for any debt or transaction personally. The exact wording is not important, just make sure you indicate that you are signing for your Principal, not for yourself.

A good practice is to sign the principal's name first – this eliminates any confusion that you are acting in your own interests or assuming any personal liability for what you are signing. Then, sign your own name after the Principal's name, and include the word "by." This indicates that the Principal is engaging in the transaction through you. For example, you would write, "Sally Smith, by Samuel Smith." End the signature by indicating that you are acting under Power of Attorney. For example, after your name, you can write in the words "agent," "attorney in fact," "power of attorney" or simply, "POA." Your final signature should read similar to "Sally Smith, by Samuel Smith, power of attorney."