YOUR RESPONSIBILITIES AS AGENT UNDER A POWER OF ATTORNEY

An informational guide for agents acting under a power of attorney

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Disclaimer:

This booklet is not legal advice. It is intended to provide general information only and should not be relied upon as legal advice. If you have specific questions about your responsibilities and legal obligations as an agent acting under a power of attorney, then you should seek the advice of a qualified attorney.

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Introduction

A power of attorney (POA) is a common estate planning tool that is part of many estate plans. Although common, these documents are widely misunderstood.

Many times, the person delegating authority under a POA, called the principal, has sought the legal advice of an attorney and at least has a fair idea of the purpose and power of these documents. The agent appointed under the power of attorney (sometimes called an attorney-in-fact), may never have the opportunity to have their obligations explained to them. Moreover, some people may download templates of these documents off the internet and never receive the benefit of experienced legal counsel. And even worse, I've seen incorrectly drafted powers of attorney that people obtained through an AI software, such as ChatGPT, that do not meet the requirements of Pennsylvania law.

The widespread misunderstanding about powers of attorney, as well as reflections from my early career as an associate attorney, have motivated me to create this resource. I began my career as an attorney at a law firm in Cleveland, Ohio working primarily on trust and estate disputes. Many cases I worked on involved financial abuse of the elderly, oftentimes at the hands of an agent under a financial power of attorney.

Each case was unique, but there was a common theme: the agent was accused of misusing their authority under a power of attorney to benefit themselves. Sometimes the facts were clear and the claims were legitimate. The agent engaged in clear wrongdoing, using the principal's assets for their own financial gain, and sometimes committing outright fraud. In other cases, the facts were murky. I could conceivably believe either side to the story. Did the agent just misunderstand what they could and could not do with a power of attorney? Were they simply bad at managing money, or did not know they should be keeping records of financial transactions they undertook? Were the allegations fueled more by suspicions arising from sibling animosity than actual, intentional wrongdoing? In either case, the agent's actions lead to a lawsuit that was expensive and emotionally charged, draining assets of the estate and destroying relationships.

I now find myself on the other end of the process as an estate planning attorney, preparing powers of attorney for my clients and advising them on the legal consequences of signing these documents. My goal is to try to prevent those kinds of disputes by educating my clients about the authority they are giving to their agent and the potential consequences of granting this authority.

In writing this book, I intend to provide simple, informational guidance about the obligations and responsibilities of an agent acting under a power of attorney so that everyone in the arrangement – both principal and agent – have a clear understanding of what can and cannot be done with these documents.

This book does not cover the legal requirements related to properly drafting and executing a power of attorney or other issues that could affect the document's validity, such as mental capacity of the principal at the time the document is signed.

Note that this book is not legal advice and is not intended to be a substitute for legal advice. If you have questions about your rights or responsibilities relating to a power of attorney, you should consult a qualified attorney at law.

-Lacey Ferrara, Esq.

Attorney & Owner of Ferrara Law, PLLC

A Note About Financial Elder Abuse

Financial exploitation is a type of elder abuse. Financial exploitation can include taking someone's social security benefits, stealing money or credit cards, or misusing authority under a power of attorney. While it can be committed by strangers, it can also by committed by family members, caretakers, and others in trusted positions.

If you suspect financial elder abuse, call the statewide, toll-free hotline at 1-800-490-8505 to report it.

Financial exploitation is also a crime. It can be a felony in Pennsylvania. The U.S. Department of Justice provides resources about the criminal implications of financial elder abuse on their website at www.justice.gov/elderjustice/financial-exploitation.

What is a Power of Attorney?

In the most general sense, a power of attorney is a legal document that allows a person, called the principal, to delegate authority to another person, called the agent, to do certain things on the principal's behalf and for the principal's benefit. Powers of attorney are governed by Chapter 56 of Title 20 of the Pennsylvania statutes, titled the Probate, Estates and Fiduciaries Code (sometimes called the PEF Code). There a different types of powers of attorney that are categorized based on the actions the agent can take on the principal's behalf. Powers of attorney can be drafted very broadly and allow the agent to do almost anything the principal can do. They can also be drafted narrowly, allowing the agent to perform only specific actions for specific purposes.

Read further to learn more about the different types of POAs. This publication focuses primarily on durable financial powers of attorney, one of the most common included in elderly individuals' estate plans.

Durable vs. Non-Durable Power of Attorney

A power of attorney is "durable" when the POA remains in effect even if the principal becomes incapacitated. A non-durable POA would become ineffective or expire when the POA becomes incapacitated. Durable POAs are part of many estate plans because they help avoid guardianship proceedings if the principal later becomes unable to make decisions for themselves due to age or illness. If a person has not executed a durable POA and they become incapacitated, then their family may have to petition the court to have someone appointed as their guardian in order to have the legal authority to handle decisions impacting their finances or day to day needs. Under a durable power of attorney, on the other hand, there is generally no need for a guardianship because the appointed agent already has the legal authority to do these things.

Springing Power of Attorney

Powers of attorney are generally effective once signed by the principal. However, springing powers of attorney are not effective upon signing by the principal. Instead, they become effective upon the happening of some event stated in the POA. For example, a springing power of attorney may state that it becomes effective only if the principal is incapacitated. The POA must explain who gets to determine whether the principal is incapacitated, typically the principal's physician. Springing POAs are not as helpful if the goal is to avoid guardianship proceedings because the agent must still go through the effort of having a physician determine the principal's capacity to make decisions and handle their financial affairs.

General Power of Attorney

A general power of attorney permits the agent to do almost anything the principal can do. Again, these types of POAs are often part of an estate plan when the goal is to avoid the need for future guardianship proceedings. However, Pennsylvania law still requires that certain powers (such as the power to give gifts or change beneficiary designations) be explicitly stated in the POA.

Limited Power of Attorney

A limited power of attorney is prepared for a narrow purpose. For example, a principal may sign a power of attorney for the sole purpose of allowing their agent to close a financial transaction on their behalf if they are unable to be present. Or, some people may execute a power of attorney that permits their CPA to handle tax matters on their behalf with the IRS. The agent is authorized only to take the actions specifically stated in the POA for the specified purpose.

Healthcare Power of Attorney

A healthcare power of attorney is a specific type of POA that gives an agent the authority to make healthcare decisions on your behalf if you are unable to do so. It is like a limited POA in that it is for a specific purpose, i.e., making healthcare decisions. It is also like a springing POA in that it only comes into play if you are unable to make healthcare decisions for yourself. For example, if you experience a significant illness or injury that causes you to become unconscious and your doctors require informed consent to perform a medical procedure, they will seek consent from your healthcare agent.

When is a Power of Attorney Effective?

A power of attorney is generally effective once it is signed by the principal in accordance with Pennsylvania legal requirements, unless it is a springing power of attorney as explained earlier. The power of attorney remains in effect until (1) the principal revokes the power of attorney; (2) the power of attorney expires; or (3) the principal dies.

An agent under a power of attorney may also resign, in which case a successor agent can take over if one is appointed in the document.

The principal can revoke a power of attorney at any time by providing written notice to the agent. A power of attorney may expire if the document states that it expires on a certain date or the happening of a certain event, such as the principal becoming incapacitated. Some powers of attorney state that they do not expire, but they can still be revoked and cannot be used after the principal's death.

All powers of attorney expire once the principal dies. If you are an agent appointed under a power of attorney, you can no longer act as the principal's agent after the principal's death. After the principal passes away, only the executor or administrator of the estate has the legal authority to manage the principal's affairs.

For example, if you are serving as an agent under a power of attorney but the principal has passed away, you can no longer use the power of attorney to make financial transactions on the principal's behalf, even if you intend to pay unpaid bills. While there are some circumstances under which you may not have to open a probate estate, you will likely have to petition the court to open the estate and become appointed executor (if appointed in the will) or administrator (if there is no will).

Responsibilities of an Agent

Pennsylvania law imposes several legal obligations and responsibilities on an agent acting under a POA. These laws can be found in Pennsylvania's Probate, Estates, and Fiduciaries Code (sometimes called the PEF code) in Chapter 56 of Title 20 of the Pennsylvania Statutes.

This section provides an overview of these obligations, but an exhaustive discussion exceeds the scope and purpose of this book. If you have specific questions about complying with your legal obligations as an agent under a POA, you should seek the advice of an attorney.

One of the most important things to understand about acting as an agent under a POA is that undertaking this role creates a "fiduciary relationship" between you and the principal. This means that as a matter of law, you owe certain duties to the principal. In general, fiduciary duties include a duty of loyalty, duty to exercise good faith, duty to disclose all material facts, duty to maintain the confidentiality of confidential information, duty to keep accurate records, and a duty to follow instructions. Misusing your authority under a POA or disregarding your fiduciary duties could expose you to a civil claim for "breach of fiduciary duty," and you could be civilly liable for damages to the principal or the principal's estate. Depending upon the nature of the misuse, it could also constitute a crime. These types of civil claims were a significant portion of my prior legal practice.

Pennsylvania law specifically requires that an agent who has accepted the role under a POA must:

1. Act according to the principal's reasonable expectations known to the agent;

2. Act according to the principal's best interest;

3. Act in good faith;

4. Act loyally for the principal's benefit;

5. Act only within the scope of authority granted in the power of attorney;

6. Keep the agent's funds separate from the principal's funds (there are very narrow exceptions to this);

7. Act with the care, competence and diligence ordinarily exercised by agents in similar circumstances;

8. Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

9. Cooperate with another person who has authority to make healthcare decisions for the principal; and

10. Attempt to preserve the principal's estate plan if doing so is consistent with the principal's best interests.

Under Pennsylvania law, an agent under a power of attorney can be personally liable for financial losses resulting from their failure to adhere to their fiduciary duties. Pennsylvania courts can assess a monetary penalty for an agent's failure to act with "common prudence, common skill and common caution" when acting in their capacity as agent. Therefore, an agent's failure to follow any of the above legal requirements could lead to personal liability for any resulting financial losses experienced by the principal.

How to Use a Power of Attorney

If you have been appointed as someone's agent under a power of attorney, there are specific rules you must follow when acting on the principal's behalf under your authority as their agent, as mentioned in the last section. There are also several best practices I recommend. Here is a quick summary of the rules and best practices to be discussed. Read further on for an explanation of each.

1. Read the POA & Talk to the Principal

2. Sign the acknowledgment
3. Make several copies
4. Disclose your role as agent under a POA
5. Properly sign checks & other papers
6. Keep accurate records

Read the Power of Attorney Document & Talk to the Principal

If your parent or someone else tells you they are appointing you as their agent under a power of attorney, the first thing you should do is have a conversation with them about how they want you to act on their behalf. Although the document may give you very broad, general authority, they may actually intend that you only use the document in certain circumstances or for specific purposes. For example, if their primary goal in executing the POA is to avoid the need for guardianship proceedings if they become incapacitated, then the POA is likely drafted very broadly. They may not want you to take all the permitted actions in the POA at the present moment.

Remember, once you assume the role of agent, you owe fiduciary duties to the principal. You must act loyally, in their best interests, and consistent with their intent as made known to you. Even if the document gives you the legal authority to take a certain action, you must still follow the principal's intent as they have communicated it to you. Understanding the principal's intent at the outset is also important so you can feel confident you are following their wishes if they do become incapacitated in the future. Moreover, if they did not have an attorney draft the document for them, they may not fully understand what authority they are granting in the document.

Second, you should actually read the POA document. The document will specify what actions you can and cannot take. If you do not understand the scope of authority granted in the document, you should ask the principal or seek legal advice. If what the document states is inconsistent with the conversation you had with the principal, then you should seek clarification from them on what they want you to do.

If you are uncomfortable taking on the role of agent under the POA, you can refuse. This may result in an uncomfortable conversation with the principal, but they cannot force you to take on this role if you do not want to.

Sign the Acknowledgment

Although the POA is effective once it is signed by the principal, the agent cannot act until he or she has signed another document called an acknowledgment. If the power of attorney was drafted by a qualified attorney, the acknowledgment should have been provided to the principal when they signed the POA. Pennsylvania law requires that the acknowledgment contain very specific language intended to notify the agent about their legal obligations when acting under the POA. By signing the acknowledgment, the agent acknowledges and agrees to abide by these obligations. The signed acknowledgment must be attached to the POA when the agent presents the POA to a third party, such as a bank.

As explained above, you can refuse the appointment. In this case, you would not sign the acknowledgment and would not take any actions as the agent. The principal would have to appoint someone else.

Make Several Copies & Provide to Third Parties

Unlike a will and other estate planning documents, third parties can rely on a photocopy of a POA. The principal should provide you with a copy. It is a good idea to make several copies or scan the document and save it to your computer. This way, you have a copy handy when it is needed. If you know you will need to use the POA for frequent transactions, such as helping with your parents' bills, then you should provide one to third parties in advance in case company policy requires review by their legal department. If there is an emergency, you do not want to be waiting on approval by a corporate legal department.

Different banks may also have different policies and requirements for accepting a power of attorney. You should always ask about these policies in advance.

Disclosing Your Role as Agent

When acting in your capacity as an agent, you must disclose that you are acting in your capacity as an agent. If you fail to disclose your role as agent, you could become personally liable for some transactions. You should also make clear when you are doing something in your personal capacity for yourself versus as agent for the principal's benefit. Consistently and clearly identifying in which capacity you are acting will help prevent the inadvertent appearance of self-dealing.

Properly Signing Checks & Other Papers

In line with the prior requirement, you should always sign checks and other papers in a way that discloses you are acting in your capacity as agent.

There are a few different ways to sign a check or other paper as POA, but they generally follow the same format of [principal's name] by [agent's name] as POA. Below is an example of Jane Doe signing a check for her father, John Doe, as his agent under a POA:

John Doe by Jane Doe as POA

Instead of writing "POA," you can also write "attorney-in-fact." You can also check with the bank to confirm this complies with their policies.

You should never sign just your own name when you intend to be acting as an agent. If you are signing a check, this could cause the check to be rejected. Further, this could also result in you becoming personally liable. For example, if you sign your own name on a contract for the principal but do not disclose that you are acting as POA, then you could be personally liable on the contract if the principal breaches the contract.

Keeping Accurate Records

As discussed earlier, Pennsylvania law requires that agents under a POA keep accurate records of receipts, disbursements, and transactions. The law does not explicitly state in what manner you must keep these records. You should document all financial transactions you take as agent, when you took them, and why. For example, if you withdraw cash from your mother's bank account as her agent for the purpose of buying her groceries or paying someone to plow her driveway, you should keep a record of what you did with the cash. Keep folders or envelopes of receipts (always ask for a receipt when possible), and you can even keep a notebook with notes. Fill in the memo line on checks to clearly

> *"…keeping accurate records is not just a best practice; it is a legal requirement."*

indicate what the check is for.

When I was litigating breach of fiduciary duty claims, we would comb through all the principal's bank statements for suspicious transactions. We always sought explanations for cash withdrawals or checks and other transactions we could not easily trace. If an agent was unable to account for what they did with the funds, it increased suspicion. Even if you intend to act in your parents' best interests as their agent, a motivated, angry relative can always try to spin the narrative. Keeping accurate records is not only a legal requirement, it protects you and the principal.

As an illustration, consider a 2015 Pennsylvania Superior Court case in which there was confusion over which checks the agent made on the principal's behalf versus which checks were made in his personal capacity. In *In re Estate of Bechtel,* 2015 Pa. Super. Unpub. LEXIS 1256, a man named Larry sued his brother Donald, alleging that Donald breached his fiduciary duty as their mother's agent under a financial POA. In this case, the mother appointed Donald as her agent under a POA and then later also added him as a joint owner to her checking account. As a result, Donald could take actions on his mother's behalf as her agent under the POA, *and* he had a legal right to use the funds in the checking account in his personal capacity because he was a joint owner.

After their mother died, Donald was appointed executor of the estate and filed an inventory of their mother's assets. Larry disagreed with Donald's accounting of his mother's checking account sued Donald, claiming that Donald breached his fiduciary duty by misusing funds in the account. The evidence included over 800 separate financial transactions. Some of these transactions were made by the mother herself, but it was not clear which transactions Donald undertook in his personal capacity, and which transactions he made in his capacity as agent. Nonetheless, the trial court found that Donald breached his fiduciary duty to his mother because he could not explain every transaction. The court held him responsible for a judgment of just over $17,000. Donald appealed the trial court's decision. The Superior Court ultimately reversed the decision, finding that there was insufficient evidence to show that Donald breached his fiduciary duty. However, Donald unfortunately had to defend this lawsuit through trial and appeal, which likely resulted in significant legal costs and emotional drain.

Two lessons can be learned from this case. First, appointing someone as your agent under a POA and adding them as a joint owner on your bank account can cause unnecessary confusion. Not to mention, if the person is appointed as your agent, they do not need to be a joint owner on your account to help you handle your finances. Second, carefully documenting all transactions you take as agent can protect you from unfounded allegations.

But remember, keeping accurate records is not *just* a best practice; it is a legal requirement.

Frequently Asked Questions

1. What is the Difference Between an Agent and an Attorney-in-Fact?

An agent appointed under a POA and an "attorney-in-fact" are the same thing. Attorney-in-fact used to be the more common term. As Pennsylvania law evolved over the years to use the term "agent," agent became more common. Regardless of which term is used, the legal requirements and obligations of the role are the same.

2. Should I just add my children as joint owners to my bank account instead of appointing them as agents?

Adding your child or children as joint owners on your bank account is very different from appointing them as your agent under a POA. First, the children become actual owners of the funds in your bank account. This means that your children have the legal right to take the money out for their own purposes. Your money is also exposed to your children's debts and other legal risks, such as divorce proceedings. Further, this could complicate your estate plan if you do not intend for that child to receive the balance of the account upon your death. A POA on the other hand, permits your child to help manage your finances but does not change the ownership of your assets or financial accounts.

3. What if I do not trust my agent, or I think they may be misusing the power of attorney?

If you do not trust someone to act as your agent under a POA, then you should not appoint them as your agent, or you could discuss with your attorney giving them only very specific, limited authority. If you have already appointed an agent but do not trust them, or you suspect they are abusing their authority, you should consult an attorney for legal advice as soon as possible. An attorney can help you revoke the agent's authority. If you want to take immediate action, you can provide the agent written notice that you have revoked their authority under the POA. However, I highly recommend seeking legal advice in this situation so you can understand your legal rights and ability to recover any misused funds or other damages.

Remember, you do not have to appoint an agent under a POA. If you do not appoint an agent, then it is possible guardianship proceedings would be required if you become incapacitated. However, if you are unable to make decisions for yourself and the court appoints a guardian, the guardian must be approved by the court and will be subject to court supervision. This means the guardian will be required to file periodic accountings of your finances with the court. Although this process may be inconvenient for your guardian, it does provide greater accountability and oversight. In addition, in some circumstances, a trust can also be used to avoid guardianship but still provide more oversight than a POA.

4. Am I entitled to compensation for acting as an agent under a POA?

Pennsylvania law permits agents to receive reasonable compensation for services that are actually assumed and rendered in the agent's capacity as agent under a POA. However, the actual POA document can restrict or prohibit the agent from receiving compensation. In such a case, the POA would prevail over what the law allows. This should be discussed between the principal and agent before signing the POA, and legal advice should be sought if there is a question as to whether the POA permits compensation or what would constitute reasonable compensation.

5. Should I use my bank's standard POA form?

Using a financial institution's standard POA form can seem more efficient if the financial institution requires their own legal department to approve POAs. However, these kinds of standard financial POAs give your agent authority to act on your behalf only with regard to that specific financial institution. Your agent could not use the POA at another bank or entity. If you want your agent to have broader authority, then you should contact an attorney to draft a more general POA for you, and then provide it to your financial institutions proactively so it can undergo any required legal review before your agent needs to act on your behalf.

6. If I am my mother's agent under a POA, can I become personally liable for her debts or other legal obligations?

As an agent under a POA, you do not automatically become liable for the principal's debts or other legal obligations. However, you could inadvertently expose yourself to personal liability if you do not clearly indicate when you are acting in your capacity as agent, as discussed earlier.

7. What if I am not comfortable taking on the role of agent under a POA?

If you do not want to take on the role as agent you do not have to. However, you should communicate this to the principal and refuse to sign the acknowledgment. The POA document may appoint a successor agent to take over if the primary agent is unable to serve or is unavailable. Otherwise, the principal may need to execute a new POA designating someone else as their agent.

8. Is a POA the same thing as an authorization to disclose information?

No. A POA is not the same as an authorization to disclose information. While an agent under a POA has the authority to request and receive confidential information related to their authorized powers, the POA also authorizes them to take certain actions on your behalf. An authorization to disclose information, on the other hand, only gives a third party the authority to disclose confidential information to someone else. It does not authorize anyone to take other actions on your behalf. For example, signing a HIPAA release authorizes your healthcare provider to release your protected medical information to a third party. The HIPAA release does not authorize anyone to make medical decisions on your behalf.

Glossary

Agent: In the context of a power of attorney, an agent is the person designated to act on the principal's behalf.

Durable Power of Attorney: A legal document that designates someone to act on another person's behalf even if that person becomes incapacitated.

Fiduciary Duties: Specific legal duties owed by a person in a fiduciary relationship to another person; includes a duty of loyalty, a duty of confidentiality, and a duty to exercise good faith, among others.

Fiduciary Relationship: A special legal relationship in which one person must act in the best interests of another. A fiduciary relationship exists between a principal and an agent under a power of attorney.

General Power of Attorney: A general power of attorney grants someone broad authority to manage another person's financial, legal, and business affairs.

Guardianship: A legal process through which a court grants a person, called the guardian, the authority to make decisions on behalf of another person who is unable to do so due to incapacity, age, or disability.

Healthcare Power of Attorney: A healthcare power of attorney grants someone the authority to make healthcare decisions on another person's behalf if they are unable to make healthcare decisions for themselves.

Incapacitated: A legal determination that an individual is unable to make decisions for themselves, often regarding their day-to-day needs or finances.

Principal: The person who grants authority to the agent under a power of attorney.

Springing Power of Attorney: A power of attorney that becomes effective only upon the happening of a certain event, such as the principal's incapacity.

About Ferrara Law

Ferrara Law, PLLC is a law practice located in Edinboro, PA and founded by myself, Lacey Ferrara, focusing primarily on estate planning, probate and trust administration. I founded Ferrara Law in 2025 endeavoring to focus on legal work that I enjoy and to provide much needed legal services in my community.

As an estate planning and elder law attorney, I seek to advise my clients on both the practical and legal consequences of their decisions. Just because the law allows you to do something, does not mean that you always should. Several factors go into designing an estate plan for an individual or married couple, and there is no one-size-fits-all approach. That is why consulting with an estate planning attorney is an important first step in planning for the future.

At Ferrara Law, I consider all aspects of my clients' situation before recommending a particular estate plan or course of action. I consider their goals, family dynamics, finances, potential tax liabilities, health, age, and more. My background litigating estate and trust disputes allows me to see potential pitfalls of an estate plan. It also gives me the ability to recommend best practices that are not necessarily legal requirements, but that can protect an estate plan from family disputes down the road.

For more information about Ferrara Law and the services I offer, check out my website at www.ferraralawpllc.com. You can also visit my blog for answers to commonly asked estate planning and elder law questions.

Thank you for taking the time to read this resource. I hope you found it informative and helpful. If you are looking to update your estate plan or are seeking legal advice about estate planning, probate, or elder law you can call me at (814) 622-7310 or email me at lacey@ferraralawpllc.com to schedule a consultation.

-Lacey Ferrara, Esq.