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Guide: Your Role as a Power-of-Attorney

A Power of Attorney document is a legal authorization for a designated person to act as someone's "Agent", thus allowing them make decisions and take actions on behalf of an individual (the "principal") as specified in the document.

Know the POA's effective (and ineffective) date.

POAs take effect in one of two ways. First, it may take effect as soon as the document is signed (called a Durable Power of Attorney). Second, it may take effect once a certain event has taken place (called a Springing Power of Attorney). This event is typically defined as the principal's incapacity as determined by one or two licensed physicians.

Generally, in Kentucky, the POA document is rendered immediately ineffective if any of the following take place:

1. The Principal dies
2. The Principal revokes the POA
3. Someone is appointed Guardian or Conservator over the Principal

Know what powers you have.

Some powers of attorney documents handle health and personal affairs and some handle financial and legal affairs. In some cases, the principal may appoint different people for their financial/legal and health/personal affairs. The following assumptions are general and you should read the Power of Attorney document in its entirety to see which powers the Principal has chosen to grant you.

If you are appointed as an Agent under a health care POA: You are granted power to access health care information for the Principal. In addition, you may make medical decisions on behalf of the principal.

If you are appointed as an Agent under a financial/legal POA: There is typically more variation in a financial/legal POA document. It almost always allows access to financial accounts and other assets. It only allows access to assets in the name of the Principal, not in the name of a trust where the Principal is listed as a beneficiary. The trustee of the trust will retain those powers. You will need to read the document to see if it grants you the power to create a trust, undertake appropriate Medicaid asset preservation planning/gifting, or transfer real estate. If it gives you real estate powers, the document should be filed with your local county clerk.

If you are appointed as a Co-Agent: If you are appointed as a Co-Agent with someone else, the document will specify whether you are required to act jointly.

Know your responsibilities.

As an Agent, you have four primary responsibilities. Failure to fulfill these can result in adverse legal consequences.

1. You must act in the best interest of the principal and avoid conflicts of interest. When possible, you should make decisions based on what the principal desires or would desire if competent.
 - a. Example: If the principal is religiously opposed to a certain type of medical treatment, you should not elect to have that treatment performed.
2. Manage the principal's money responsibly. It may be wise to get professional assistance from an attorney, accountant, or financial advisor.
 - a. Example: do not invest all the principal's money in a risky way. If you invest in an unstable stock and it tanks, there may be legal consequences. However, if you invest in a mainstream stock or mutual fund and it goes down, this is not a problem.
3. Do not combine or mingle the principal's finances with your own. Their money should only be used for their benefit. Unless you already have a joint bank account, keep your accounts separate. This responsibility may be different if the principal is your spouse.
4. Keep accurate records of your principal's income and expenditures. If you spend your own money on something for the principal that they otherwise would have purchased themselves, you are allowed to reimburse yourself. If you do this, **YOU MUST KEEP RECEIPTS!**
 - a. Example: a note that says "I spent \$5,000 on supplies" is not a sufficient record.

Some practical tips:

1. Know and understand what powers the documents give you.
2. Provide copies of the documents to the appropriate financial or medical institutions.
3. When signing a document on behalf of your principal, sign this way: John Doe, by Jane Doe, POA. Do not sign documents with your name without the POA afterwards. If you do not include the "POA" afterwards, you may create personal liability for yourself.
4. If the power of attorney is inadequate or if you have questions about the powers the document provides, consult an Elder Law Attorney. It is better to address these concerns early on.
5. You have the right to decline to accept the appointment or resign as the agent under a POA. The POA may specify the requirements for doing so (such as written notice given to the principal).

These materials reflect the laws of the Commonwealth of Kentucky and are for general informational purposes only. Consult an attorney for legal advice about Powers-of-Attorney.