



Essential Guide for Agents Under a Power of Attorney

Many of us have created Powers of Attorney (POA) documents, expecting that if we cannot manage our affairs, the person we named as our "agent" in the POA can step in and act on our behalf. Similarly, many of us have been named as the agent or backup agent in someone else's POA, often for a family member or close friend. We accepted this role, thinking we might never need to use the document. But what happens if the person who appointed us (the "principal") becomes incapacitated and can no longer act for themselves? What do you, as the agent, need to know?

The following "Top Ten" list is a comprehensive guide for agents, designed to help you understand and exercise the authority granted in a POA. While it may not cover every possible scenario, it does provide a summary of the most common situations you may encounter as an agent.

The "Golden Rule" – it is not just a duty, but your absolute responsibility to always act in the principal's best interest. As an agent under a POA, you hold a fiduciary duty to act in the principal's best interests. This is not just a role, but a position of immense trust and responsibility. Your actions can significantly impact the principal's life, underscoring the importance of your role. Failure to act in their best interest could result in personal liability.

Sign properly on behalf of the principal to avoid personal liability. This is a crucial step to protect yourself and the principal. If signing a document on behalf of the principal, be sure not to sign only your name. Doing so could cause you to incur personal liability, which could result in financial loss or legal action. Instead, sign the document as follows: '[Principal's Name],

by [Your Name], POA.' This simple act can safeguard both your interests and the principal's.

Give copies and not originals. If a bank, financial institution, or other party requests the POA to keep on file, remember that you have the control. Do not give them the original document. Instead, only permit them to retain a copy of the POA. You can allow them to make a copy of the original, but make sure they only keep it and return it to you. This control over the document's distribution is a key aspect of your role as an agent.



Don't record the POA unless you are selling real estate. You only need to record an original POA if you are selling or transferring real estate on behalf of the principal. Otherwise, the document does not need to be a matter of public record.

Don't set up a joint account. When setting up an account on behalf of the principal, don't make it a joint account with you as a joint owner. Setting up a joint account is equivalent to gifting the assets to yourself, as you would be the sole owner of the account on the principal's

death. Self-dealing is a big "no-no" as an agent. Instead, set up the account in the principal's name alone with you (the agent) listed as "POA."

Don't alter the principal's estate plan to name yourself beneficiary (including life insurance and retirement plans). An agent should be careful not to modify the principal's estate plan (for example, by changing beneficiary designations) unless the POA provides authority to do so. The agent should not alter a principal's estate plan to benefit him or herself. Both instances could lead to personal liability for the agent. An agent cannot write a Will for the principal.

Keep good records. Remember, as an agent under a POA, you have a fiduciary duty to act in the principal's best interests. To defend any claims of a breach of fiduciary duty, you must document and keep good records of your actions. This is not just a suggestion but a necessity. Retain all financial statements, canceled checks, and check registers. If the principal is somewhat competent, regularly review your actions with the principal. Meet regularly with the principal's financial advisor, CPA, insurance agent, and banker and take notes at those meetings.

Don't make gifts unless authorized in the POA. Agents under a POA are only authorized to perform acts authorized in the document, or if the document incorporates powers provided under state law, those powers are provided under state law. The law in Ohio does not authorize an agent to make gifts on the principal's behalf, so if the document does not give the agent the authority to make gifts, then an agent could be subject to personal liability for making unauthorized gifts.

File the principal's income tax returns (including estimated payments). Incapacity is no defense

for failure to file income tax returns. As an agent for the principal, you have a fiduciary duty to act in their best interests and on their behalf. Failure to file an income tax return on the principal's behalf could lead to an agent's personal liability.

Stop acting if a guardian of the principal's estate is appointed or the principal dies. A guardian of the estate takes precedence over an agent under a POA. If one is appointed, you should immediately cease acting under a POA. In addition, once the principal dies, all powers granted to an agent are extinguished. Since an agent does not have the authority to act after the principal's death, the agent could be liable for any action taken.

If you've been appointed as an agent under a POA, it's crucial to understand your responsibilities and the legal implications of your actions. Review this guide thoroughly, and if you have any questions, seek professional advice to ensure you're acting in the principal's best interest. Your role is one of trust and responsibility—make sure you are prepared.