

INSTRUCTIONS TO DURABLE POWER OF ATTORNEY AGENT

An Agent is the individual named to serve under a Durable Power of Attorney for an individual who is unable to act for themselves, who is called the Principal. The Agent is considered to have accepted the role when the Agent performs an act that is consistent with the powers given in the Durable Power of Attorney.

If the named Agent chooses to undertake to serve, here are the things the law says the Agent must do:

- Act within the scope of the authority granted in the power of attorney, but in a manner not contrary to the Principal's reasonable expectations (to the extent the Agent actually knows them);
- Act in good faith and in a manner not contrary to the Principal's best interest;
- Attempt to preserve the Principal's estate plan, the extent the Agent knows what it is, assuming that preserving the plan is consistent with the Principal's best interests;
- Act personally, i.e., the Agent may not delegate their power to others (in general);
- Keep adequate records of all transactions made on the Principal's behalf; and
- Maintain an accurate inventory of a safe deposit box, if applicable.

The Agent will also be expected to act with care, competence, and diligence (and if the Agent has special skills or expertise, to use them); to act loyally for the Principal's benefit; and not to create a conflict of interest impairing the Agent's ability to do so. If the Agent was not tasked with making the Principal's Health Care decisions, the Agent will also need to cooperate with the person who has the authority to make those decisions.

There are some things the Agent cannot do. The Agent may not:

- Perform duties under a contract requiring the Principal's personal services;
- Make an affidavit as to the Principal's personal knowledge;
- Vote on the Principal's behalf in a public election;
- Execute or revoke Will or Codicil; or
- Exercise powers or authority the Principal holds in a fiduciary capacity (e.g., as a Trustee).

The Agent may have been given some authority to make gifts of property. In deciding whether or not to make such gifts, the Agent should take into account the Principal's objectives and the Principal's best interest based on relevant factors, including:

- The value and nature of property;
- Foreseeable obligations and need for maintenance;
- Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
- Eligibility for a benefit, a program, or assistance under a statute or regulation; and
- The Principal's personal history of making or joining in gifts.

In exercising a Durable Power of Attorney, the Agent may need to present an affidavit regarding certain facts.