

**A USER'S GUIDE FOR YOU AND YOUR AGENT:
SOME CONSIDERATIONS FOR UTILIZATION
OF YOUR PROPERTY POWER OF ATTORNEY**

Now that you've made your Property Power of Attorney, make sure that your agent (and successor agents, if any) knows that you have done this, and where it can be found in case of need. If it is kept in a safe deposit box, you must make certain the agent will be able to get into the box to get the Power of Attorney. That may mean making your agent a deputy on your safe deposit box and will certainly mean telling your agent where the key is.

You and your agent (and your successor agent, if your first agent is your spouse) should study this User's Guide together and engage in a very important discussion of when and how she or he will begin to act as your agent when the time comes, if ever. The Power of Attorney you have signed probably provides that the agent's authority began when you signed it, although you presumably do not wish the agent to make any of your decisions as long as you are able. It is over that point, 'when you are able', that problems can arise. Your agent may have good reason to believe you need help, but you see no reason for it, precisely because of the declining capacity your agent has observed. Now, while you are clear about the time you would want help, is the time you and your agent can best plan for handing over the reins gracefully and appreciatively. You should decide who might be called upon to help make the decision, if you and your agent are not 'on the same page'. It might be another family member, or members, a close neighbor, your pastor, primary care physician or a lawyer you had most recently consulted. . Especially the agent might gain some insights into the situation from the Alzheimer's website <http://www.helpguide.org> or from "The Caregiver Helpbook, Powerful Tools for Caregivers", in particular Chapter Seven, available from Legacy Caregiver Services, <http://www.legacyhealth.org/body.cfm?id=691>. The latter, in particular, may help your agent see the importance of involving you in the decision-making as much and as long as you are able. You and your agent should make fairly detailed notes of your discussion and conclusions. If the process is available, a DVD or at least an audio tape should be made of the suggestions considered and agreed upon for resolving a difference between you and your agent as to the need to transfer authority from you. Of course, transfer of authority does not always need to be complete and absolute. There may still be things you can do for yourself, while your agent assumes some of the tasks in your behalf. You may be able to do some advance planning now about how such a partial transfer of authority might work. This whole matter may be aided by frequent contact between principal and agent along the way. Through this relationship the principal will be better able to recognize the wisdom of surrendering appropriate control when that time comes. Too, it will help the agent be alert to his or her need to timely assume responsibilities.

It will be helpful to your agent, too, in helping you in a time of need, if he or she knows as much as possible about your business affairs. Account numbers and names of banks where any funds or certificates of deposit and the like are on deposit, and similar facts as to other investments, details about insurance you carry (house, auto, health and life), and location of automobile titles are just some of the things of which your agent may need to have knowledge. One of the first things an agent probably needs when called upon to help is the principal's checkbook and check register. Your agent needs to know, just as you do now, what income and expenses to anticipate.

You presently have complete trust in your designated agents that they will act in your best interests. Still you should tell them - for their own protection - that whenever they are acting for you under your Property Power of Attorney, they must keep complete records. They should always be able to account for all of your assets under their control, to show the source of any funds that come into their hands as your agents and to show the date, purpose, and person paid any of your funds and for significant actions they have taken as your agents. Your agents' best record of this would, of course, be to put all funds received in your checking account, detailing the source on the deposit ticket and then paying out any funds of yours directly from your checking account to the person being paid. Then bank statements, the deposit receipts and canceled checks will give your agents a good running record of receiving and using your funds for you.

An agent who is informed her or his principal is incapacitated (as provided in 755 ILCS 45/2-7.5) must be prepared to exhibit a record of receipts, disbursements and significant actions taken as agent to the provider agency under the Elder Abuse and Neglect Act (320 ILCS 20/2 or to the Office of the State Long Term Care Ombudsman acting under Section 4.04 of the Illinois Act on the Aging (20 ILCS 105/4.04).

Just as you probably do, your agent should make certain that any funds not needed in the foreseeable future are kept safely invested and earning fair income. As with other activities in carrying out duties as an agent under a property power of attorney, your agent can seek and pay from your funds for assistance in the investments. Your agent is also entitled to be reimbursed from your funds for any out-of-pocket expenses, such as mileage, telephone and mailing. If your Power of Attorney expressly provides it, your agent is also entitled to reasonable compensation for serving as your agent.

You may also want to suggest to your agent that he or she contact our office when it first appears necessary to perform duties for you under your Property Power of Attorney. This should assist your agent in serving you properly. Unless you now or in the future instruct us in writing not to do so, we will assume that your agent is acting in your behalf and we will share with him or her any information contained in your file for the purpose of assisting him or her in serving as your agent.

Whenever your agent signs any check or other document as such agent, it should be done in the following format:

Principal
By:
Agent

So that your agent does not become personally liable for your obligations, he or she should never just sign his or her name alone without expressly showing that the signature is as agent.

Often people being asked to rely upon the Power of Attorney will ask to see it. The statute provides that "any person who acts in good faith reliance on a copy of a document purporting to

establish an agency will be fully protected..." It also provides that "the named agent shall furnish an affidavit to the reliant on demand stating that the instrument relied on is a true copy of the agency and that to the best of the named agent's knowledge, the named principal is alive and the relevant powers of the named agent have not been altered or terminated." Such an affidavit, in blank, may have been attached as Exhibit A to your Power of Attorney, as a master copy from which your agent can duplicate, complete, date and sign copies as required by those relying on the Power of Attorney. If not a part of your Power of Attorney, we can furnish that form upon request.

If a successor agent is attempting to act for you, he or she will need to satisfy anyone asked to rely upon his or her authority that all prior named agents are either deceased, have become incompetent, have resigned or refused to accept the office of agent. Attached are suggested forms which may be used for some of these purposes. For proving death of a prior agent, a copy of the death certificate is the best evidence; for proving minority of an agent or successor agent, a copy of the birth certificate. That a prior agent has been adjudicated incompetent, or a disabled person, is best proven by a copy of the court order of such adjudication. The Affidavit of Reliance form referred to above is intended to make further proof of a prior agent's inability or unwillingness to serve unnecessary.

Should your agent ever have difficulty in getting someone to recognize his or her authority as your agent, that person should be referred to 755 ILCS 45/2-8 which says in part "Each person to whom a direction by the named agent in accordance with the terms of the...agency is communicated shall comply with that direction, and any person who fails to comply arbitrarily or without reasonable cause shall be subject to civil liability for any damages resulting from noncompliance."

Finally, should you, as principal, ever suspect that your agent is doing anything against your best interest, please contact us or the Illinois Department on Aging Elder Abuse Hot Line: 1-800-252-8966.

[YOUR FIRM NAME HERE.]

CERTIFICATION BY LICENSED PHYSICIAN

I, the undersigned licensed physician attending (name of agent or successor agent), agent or successor agent under Property Power of Attorney of (name of principal) dated _____, _____, hereby certify that said agent or successor agent is unable to give prompt and intelligent consideration to business matters.

Signed this _____ day of _____, _____.

_____, Physician

RESIGNATION OF AGENT

I, _____, named an agent or successor agent under Property Power of Attorney of (name of principal) dated _____, _____, resign as agent.

Signed this _____ day of _____, _____.

Agent/Successor Agent

REFUSAL OF AGENT TO ACCEPT OFFICE

I, _____, named an agent or successor agent under Property Power of Attorney of (name of principal) dated _____, _____, refuse to accept the office of agent.

Signed this _____ day of _____, _____.

Agent/Successor Agent

