

# The Financial Agent's Role

You have been appointed to serve as the financial agent for Cory Jack Fryling, to be in charge of managing his financial matters as expressed in the *Durable Power of Attorney for Financial Management*.

An agent is someone who agrees to manage financial matters for someone else. Some agents assist a relative or friend who just wants some help with paying bills or managing investments. Others take over complete control of the financial matters of someone who can no longer handle them. It all depends on the circumstances and on the document, called a “power of attorney for finances,” which sets out your duties.

Serving as an agent is a serious responsibility, but in most situations, it involves little legal risk. In most cases, you don't need special financial or legal knowledge. Common sense, dependability and complete honesty are more important.

## Your Duties as an Agent

The power of attorney document is prepared and signed by the person who is granting you authority over his or her finances. (This person is called the principal.) It spells out exactly what authority has been granted. Read the document carefully. If there is anything you don't understand, talk to the principal or ask a lawyer to explain it to you. Depending on the circumstances, your duties may include, among others:

- Handling banking transactions for the principal—for example, writing checks, paying bills and depositing checks.
- Claiming Social Security and other benefits for the principal.
- Managing the principal's investments.
- Paying everyday expenses of the principal and his or her family.
- Managing real estate.
- Preparing and filing tax returns for the principal.
- Running the principal's small business.

Keep in mind that you can hire experts, if necessary, to help you with any of these tasks. Their fees are paid out of the principal's assets.

## Your Legal Responsibilities

An agent holds a position of great trust. As you perform your duties, the law requires you to be scrupulously honest and act only in the best interests of the principal.

Specifically, you must:

- Manage the principal's assets prudently, steering well clear of risky investments. You don't, however, need to worry about getting sued for honest mistakes you make while handling someone else's money. You will be liable for the losses only if you are extremely careless or intentionally do wrong.
- Avoid conflicts of interest. If you benefit personally from an action taken on the principal's behalf, the transaction is presumed to be fraudulent—no matter how pure your motives. You must avoid all such transactions unless the durable power of attorney document specifically allows them.
- Keep your property and the principal's separate, unless the power of attorney document expressly allows you to mix them.
- Keep in contact with the principal, to the extent possible, and do what you know the principal reasonably expects you to do with the principal's property. If you are acting on behalf of a principal who is incapacitated, and he or she gives you instructions that you believe are not in his or her best interest, you should seek court approval before you disobey his or her wishes.
- Do nothing beyond the authority granted in the power of attorney document.
- Disclose your identity as agent whenever you act for the principal by signing the name of the principal and signing your own name either in the following manner, or as directed by the individual or institution you are dealing with:

\_\_\_\_\_ by \_\_\_\_\_ as agent

- Cooperate with any person that has authority to make health care decisions for the principal and follow the principal's wishes to the extent you know what they are.

- Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.
- Keep good records. You must keep accurate and separate records of all transactions made on the principal's behalf. This shouldn't be too difficult. In most situations, it's enough to have a balanced checkbook and receipts for bills paid and claims made. You may, however, be required to furnish periodic reports of income and expenses to persons the principal named in the durable power of attorney.

## **Should You Take the Job?**

You do not have to accept the responsibility of serving as an agent. Before you decide, discuss these issues with the principal:

- How the principal wants you to make financial decisions.
- The potential for conflicts and tension if others close to the principal disapprove of your actions.
- When the principal wants you to start handling financial matters—for example, right away or only if, in your judgment, the principal is no longer able to manage alone.
- What expertise you need to manage the principal's property and keep necessary records.
- How much time your duties will require. If you are to be paid for your time, the power of attorney document should spell out the terms of the agreement.

## **Signing the Power of Attorney Document**

In California, you must sign the power of attorney before taking action under the document. Start by reading the "Notice to Person Accepting the Appointment as Agent" at the beginning of the power of attorney document. Then, if you will begin using the document immediately, add the date and your signature in the appropriate blanks at the end of the notice. If the principal has asked you to use the document only if and when the principal becomes incapacitated, there's no need to sign the notice now. You can sign it if you ever need to use the power of attorney.

## **When Your Job Ends**

You must stop acting on the principal's behalf if you learn of any event that terminates the power of attorney or your authority under the document. Your authority automatically ends if:

- the principal dies
- the principal revokes the power of attorney or your authority
- you resign (see below)
- the power of attorney states that the document will terminate upon the occurrence of a specific event, and that event occurs, or
- in many states, you file for divorce or separation from the principal.

If you aren't sure whether or not you have authority to act under the power of attorney document, consult a lawyer.

## **Resigning**

You can resign at any time. If you do, the alternate (successor) named in the power of attorney document will take over. If no alternate is named or none is available, you can, if the power of attorney allows it, delegate the job to a person you choose. Otherwise, the principal or a court (if the principal is incapacitated) will have to turn the job over to someone else.

If you need to step down temporarily, the power of attorney document may allow you to delegate your duties to someone else for a certain period of time. If the document doesn't permit this, you will have to resign and the principal or a court (if the principal is incapacitated) will assign the job to another person.