



# Illinois Property Agents' Handbook

*Do's, Don'ts, and Tips for Those Serving  
under a Power of Attorney for Property*

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Visit Illinois Legal Aid Online at <http://www.illinoislegalaid.org> for the most up-to-date version of this handbook and for other legal resources.

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## **About Prairie State Legal Services**

Prairie State Legal Services is a private, not-for-profit civil law firm with a staff of skilled attorneys and paralegals who provide a full range of high quality, free legal services for low-income, elderly, and disabled clients in 36 counties in northern and central Illinois. Prairie State's mission is "to provide or coordinate the delivery of high quality legal services to lowincome individuals, families and groups." You can find more information about Prairie State at its website, <http://www.pslegal.org>.

## **Introduction**

If you are reading this handbook, someone has likely asked or appointed you to help them as their agent under a power of attorney for property. Congratulations! This is a significant gesture of trust. Prior to being appointed an agent, you may have related to the person who appointed you as a spouse, child, sibling, or friend. Now you have a new role: "fiduciary," and you must learn and abide by the requirements of this role. Living up to your fiduciary responsibilities is essential for your protection and the protection of the person who appointed you because disputes between agents and others who believe they have the appointing person's best interests in mind are common. If you follow the advice in this handbook you will avoid the most common pitfalls that get agents into trouble and provide peace of mind to the person you are helping.

Part 1 provides general background information on Powers of Attorney for Property and the relationship between principals and agents. Part 2 covers agents' duties to their principals. Part 3 discusses special circumstances that can arise when agents serve principals with diminished decision making

capacity. Part 4 addresses protecting a principal's resources and keeping her safe from financial exploitation. Finally, Part 5 concerns life changes that agents may need to make.

## **Getting More Help**

If there is anything in this handbook that you do not understand, you should consult a licensed Illinois attorney.

Your local bar association is a great resource for finding nearby attorneys who may assist you in this area of the law. The Illinois State Bar Association maintains a list of links to the websites of many local bar associations at <http://www.isba.org/leadership/affiliatedbars>. The Illinois State Bar Association also runs a lawyer referral service that can be found at <http://www.illinoislawyerfinder.com>.

Prairie State Legal Services offers a legal assistance for older adults telephone help line that can be reached at 888-965-7757.

## **Part 1 – Powers of Attorney for Property**

### **Background on Powers of Attorney for Property**

Faced with the prospect of one day losing the mental or physical ability to make and communicate decisions, many people are turning to powers of attorney, often abbreviated “POAs,” to delegate decision making authority to another trusted person to ensure that their wishes are known and respected. In Illinois, there are two kinds of powers of attorney. The power of attorney for health care covers personal and health care decisions while the power of attorney for property covers financial matters. This handbook does not discuss powers of attorney for health care

A power of attorney for property is a document by which one person, a “principal,” gives another person, an “agent,” the authority to make financial decisions on the principal’s behalf. These arrangements are called “agency” relationships. The principal signs the power of attorney for property, decides what the agent will do, and sets the rules for how the agent will carry out the principal’s goals. The agent then follows the principal’s directions. These days, most powers of attorney for property are “durable.” That is, they remain in force even after the principal loses the capacity to make and communicate instructions to the agent. The law requires third parties to deal with the agents as though they were dealing with the principals themselves.

While this handbook focuses on the Illinois Statutory Short Form Power of Attorney for Property, powers of attorney for property can be as varied as the people who make them. It is important to check what you read here against what is written in the power of attorney your principal made because he or she may not have used the statutory form. If you have questions about how best to fulfill your responsibilities to your principal after reading this handbook, you should seek the advice of a lawyer. The Illinois Power of Attorney Act (755 ILCS 45/1) contains the rules discussed in this handbook.

### **When Do I Become an Agent and for How Long?**

Becoming an agent is a two-part process. First, you must be actively authorized to serve in your principal’s power of attorney for property, and second, you must begin acting on your principal’s behalf. When these

conditions are met, you must begin following the rules discussed in this handbook.

Agents become actively authorized to serve in different ways, depending on the wording in the power of attorney for property. Some authorize the agent to act on the principal's behalf the moment the principal signs the power of attorney. Others authorize the agent to act after a specific date or event, like a doctor's determination that the principal cannot make financial decisions for herself. Look at your principal's power of attorney to find out when you were or will be authorized to act as agent. On the Statutory Short Form Power of Attorney for Property, paragraph six lists the date or event after which the power becomes effective, authorizing the agent to act.

Your authority to act as agent will continue until the agency relationship ends. Your agency relationship automatically ends when your principal dies, but may end before that time if the principal informs you that he or she no longer wishes you to be her agent. After you learn that the agency relationship has ended, you must stop acting on your principal's behalf.

### **What are the Limits on My Agency?**

Agents can do just about anything the principal herself could do. There are a few exceptions, however. The wording of the power of attorney itself may limit the agent's authority in some respect.

*My agent is not authorized to sell my blue 1968 Mustang convertible.*

Additionally, Illinois law prohibits agents from doing certain things without specific authorization in wording of the power of attorney itself.

*By default, agents may not change their principal's estate plans (wills, trusts, etc.) or beneficiary designations on financial instruments like certificates of deposit or give away the principal's property.*

Finally, being an agent under a power of attorney for property does not authorize you to make health care or residential placement decisions for your

principal. Only a power of attorney for health care can delegate that authority.

### **Who is the Decision Maker?**

Agents carry out their principals' wishes and follow their instructions; they do not override their principals' decisions. As an agent, you must follow the instructions that your principal gives you unless your principal loses her capacity to make and communicate decisions. If your principal has diminished decision making capacity, you must act in her best interest.

Acting in your principal's best interest is discussed in greater detail in Part 3 of this handbook.

## **Part 2 – Agents’ Duties: The Do’s and Don’ts**

Powers of attorney create “fiduciary” relationships between principals and agents. This means that agents have special legal responsibilities to their principals and must follow the principal’s directions, act in the principal’s best interest, and never take unfair advantage of the authority the principal has given them. The Do’s and Don’ts in this section will clarify your fiduciary duties.

### **Agency Do’s**

#### **Communicate with your principal about your actions**

The law says that you must “do what you know the principal reasonably expects you to do with the principal's property.”

Agents must obey their principal’s instructions and respect their wishes. You should regularly communicate with your principal about the financial decisions that she has authorized you to make on her behalf.

*The time has come for your principal to downsize her home. She enters into a contract on the home that will close in early December. Unfortunately, she will be in Florida during the closing. She entrusts the job of packing some of her belongings for storage and selling the rest at a garage sale to you. She has always loved a set of china that she received from her grandmother. The power of attorney does not mention it, but you know how much your principal loves her china. You would be violating your fiduciary duty to your principal if you sold the china without her authorization.*

Understanding what you are specifically authorized to do is just one part of effectively communicating with your principal. Understanding her wishes for the future, especially what to do if she begins to lose her decision making capacity, is also very important. For example, discuss what your principal would want if she needed to move out of her current living situation or what to do if her financial resources began to dwindle. These conversations might not be easy, but planning ahead will make future transitions easier on everyone involved. However, because it is unlikely that you and your

principal will be able to anticipate and discuss every possible decision that might need to be made, you may end up making decisions in your principal's "best interest" if she loses her decision making capacity. Part 3 discusses this kind of decision in greater depth.

### **Carefully manage and maintain your principal's property**

The law says that you must "act in good faith for the best interest of the principal, using due care, competence, and diligence."

When your principal's wishes are clear and there is no question that she has the mental capacity to direct how her resources are used, you must follow your principal's instructions concerning her finances.

Your principal may also turn to you for advice and guidance. Advice that you give your principal should be carefully considered and consistent with your abilities, including any specialized training or education you may have.

*Your principal is no longer able to live alone and has decided that it is time to move into an assisted living facility. She lists her home with a real estate agent and soon has an offer from a buyer. The offer is much less than her asking price, but the real estate agent is encouraging her to accept it anyway. She asks you for your advice on the matter. How do you know what advice to give? If you have some specialized knowledge about real estate, you must use that knowledge to help your principal make a decision. For example, you might consult market analyses of recent home sales in the area or encourage your principal to seek the counsel of another real estate professional. In either case, it would violate your duty to simply tell your principal to accept the offer without any additional investigation.*

As an agent, you do not have to have all of the answers yourself, but you must engage in the kind of reasonable investigation that an average person would undertake in a similar situation. Take your principal's questions to trustworthy third parties who can help her make significant decisions.

## **Keep detailed records of your actions**

The law says that you must “keep a complete and detailed record of all receipts, disbursements, and significant actions conducted for the principal.”

Every principal has a right to receive a record or “accounting” of how her agent has managed her property. This important agency rule is for your protection as much as it is for your principal’s. A good record is the best proof of having faithfully carried out your duties as an agent. Your record tracks each financial transaction that you perform for your principal during the entire period of your agency and should include notes about what you bought or sold and why. Find a record-keeping system that works for you and stick with it.

*Your principal has limited income. She receives only Social Security Retirement benefits which are directly deposited into her checking account. As her agent, you sign checks from the account to cover her expenses. While you fill out the check book register with relevant information about payees and the principal’s account balance, you do not keep any additional records. This is a good start, but you need to record more information in a separate document as well. Use a paper ledger or spreadsheet program to include the information from the register as well as notes on what you paid for and why.*

Keep your record safe and confidential because it is one of the most important parts of being an agent. You are accountable to your principal and she may request an accounting of how you are managing her property at any time. If you are ever suspected of misusing your principal’s resources, you may be asked to account for your actions by an Elder Abuse Caseworker, a representative of the Long Term Care Ombudsman Program, a member of the Office of Inspector General of the Illinois Department of Human Services, or a judge. Other people, including the principal’s guardian, spouse, parent(s), descendant(s), or someone else entitled to receive property from the principal after she passes away, may bring a lawsuit on your principal’s behalf to determine if you have been behaving properly. Keeping a good record is serious business!

## **Respect your principal's estate planning**

The law says that you must “attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest.”

If your principal has an estate plan (documents that direct where someone's property will go after they die like wills, trusts, etc.), part of your job as agent is to avoid interfering with those plans if you know what they are. The Illinois Statutory Short Form Power of Attorney for Property does not automatically authorize an agent to alter the choices a principal has made in her estate plan, but some customized powers of attorney for property may authorize agents to make certain changes. Decisions in this area may also affect your principal's eligibility for certain public benefits like Medicaid. If you have questions about this area, you should consult your principal and a lawyer, if necessary.

### ***What about my principal's will?***

Being a property agent is not the same thing as being an executor, the person who distributes someone's property according to that person's will. When your principal passes away, the agency relationship ends automatically. You may only take part in distributing your principal's estate if you are appointed the executor in her will.

## **Get along with your principal's health care agent**

The law says that you must “cooperate with a person who has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually in the principal's best interest.”

A principal may appoint one person as agent for property decisions and another person as agent for health care decisions. Each agent is only authorized to act in the area in which they are appointed and may not act in other areas. For example, if you are not your principal's agent for health care decisions, you are not authorized to admit her to a hospital, nursing home, or comparable facility. If your principal has appointed you as agent under her power of attorney for property and another person as agent under a power of attorney for health care, you must respect your principal's wishes

to share authority with two different people and must work cooperatively with the other agent in your mutual principal's best interest.

*Your principal appointed you her agent under her power of attorney for property, and your sister as her agent under her power of attorney for health care. Unfortunately, you and your sister have a difficult relationship. After careful consideration and consultation with your principal and your principal's doctors, your sister proposes that your principal move into an assisted living facility. Your principal agrees that it is time to transition. Despite the fact that you do not get along with your sister and do not agree with her assessment of the situation, you must set aside your personal feelings and do your best to facilitate your principal's wishes by cooperating with your sister and compromising when necessary.*

## **Agency Don'ts**

You must not do certain things when you are acting as an agent. These include:

### **Don't take advantage of your authority**

The law says that you must not "act so as to create a conflict of interest..."

Someone with a fiduciary duty to someone else must put the other person's interests first. If the fiduciary seeks his own advantage at the expense of the person to whom he owes the duty, a "conflict of interest" results. As an agent, a conflict of interest exists when you or one of your close family members stands to gain unfairly from a financial transaction with your principal. Conflicts of interest often occur when agents buy from or sell to their principals.

*You have an old tube television set that you purchased in 1994 for \$600. You want to upgrade to a new 3D HDTV with all the bells and whistles, but you do not have the money you need. Knowing the tube TV is no longer worth \$600, you convince your principal that it is and sell it her for that amount. This is a conflict of interest and a breach of your fiduciary duty to your principal.*

Transactions with your principal are not wrong in and of themselves, but agents must buy and sell at the price third parties in the community would pay. This price is the item's "fair market value" and you may find out what it is with some diligent research.

*A few years ago, your principal bought a brand new Corvette. Unfortunately, she can no longer see very well and has had to give up her driver's license. It is simply not practical to keep the Corvette, and your principal agrees that it is time to sell the car. Knowing that you love Corvettes, your principal suggests that you purchase the car. You want to buy the car and research its fair market value. After you learn what the car is worth in the marketplace, you can purchase the Corvette from the principal at the market price with no conflict of interest.*

Using your principal's property in such a way that you benefit while she does not can also create a conflict of interest.

*Your principal wants to keep her Corvette as a collector's item, but is willing to let you drive it from time to time. You should not drive the Corvette because the principal is getting no benefit from your use of the car. In fact, driving the car will not only diminish its value, it will also cost the principal money for maintenance, insurance, etc.*

Conflicts of interest are even more common when a principal lacks the capacity to make decisions for herself, but not all situations in which the agent also benefits will subject an agent to liability as long as the agent acts with due care for the benefit of the principal.

*Your principal is a close family member. She can no longer live alone because she is ill and has lost the capacity to make decisions. She is to move in with you and your family where you will care for her. Before she moves in, you use some of her money to remodel your basement. After the renovations are complete, she will have her own bedroom and bathroom in the basement, but the renovations will also add significantly to the*

*value of your home. While this may look like a conflict of interest at first glance because you benefit from the use of your principal's funds for the renovations, the conflict will be excused because you used the funds for your principal's benefit.*

A word of caution: do not go very far down this path! Many agents have attempted to justify using their principal's money for lavish trips and other personal luxuries because the principal also benefited in some narrow way. Courts will not look kindly upon this sort of behavior and the penalties for taking advantage of your authority can be severe.

If your principal's power of attorney for property provides for reasonable compensation for the agent, you may pay yourself that compensation. This is not a conflict of interest because the principal authorized it in the power of attorney itself. A "reasonable" amount of compensation is the "going rate" that organizations in the community would charge for the same or similar services.

### **Don't exceed your authority**

The law says that you must not "do any act beyond the authority granted in this Power of Attorney."

Being appointed your principal's agent does not give you the authority to do whatever you like with her property. You must follow her instructions and may not exceed the limitations on your authority contained in the power of attorney document itself. On the Statutory Short Form Power of Attorney for Property, principals can limit their agents' authority in paragraph two.

*Your principal lives in your home and has agreed to provide \$200 every month toward household expenses. A few years later, your town assesses homeowners in your neighborhood a large sum for sidewalk repairs. You do not have any extra money in your budget for this unexpected expense, but your principal has a sufficient amount in her savings account to cover the assessment. Using your principal's money to pay the assessment would violate your fiduciary duty. Just because your*

*principal lives with you does not give you the authority to use her funds in this way.*

If your principal loses her capacity to make decisions, the scope of your authority as agent does not change. You must still follow the limitations in the power of attorney and respect your principal's wishes that she expressed when she was able to communicate them.

### **Don't mix the principal's money with your money**

The law says that you must not "commingle the principal's funds with your funds."

Unless you are your principal's spouse, mixing your money with your principal's money is not allowed. "Mixing" most often takes place in the context of joint bank accounts. Many principals add their agents to their bank accounts without considering all of the implications of joint ownership. A power of attorney for property does not grant an agent any ownership in the funds he manages for his principal, but joint ownership grants both the agent and the principal full control over all the funds in an account, even if the funds originally belonged to the principal alone. For this reason, using a power of attorney is much safer for principals than adding their agent's name to their accounts. In fact, the unintended consequences of joint ownership can be so severe that if your principal added your name to her accounts before she appointed you her agent, you should remove your name immediately. Consider this example:

*After a run of bad luck, you fell behind on your credit card payments and now owe your credit card issuer \$5,000. The credit card company sues you, secures a judgment, and begins collection efforts. After sending a subpoena to your bank, the company discovers a joint account in your name and your principal's name. This account always "belonged" to your principal and she added your name for convenience. Unfortunately, the credit card company may recover the money that you owe from your principal's funds because of the rules of joint ownership.*

Additionally, any personal funds that an agent deposits into an account owned by his principal become property of the principal.

*Later, in a rare stroke of good luck, you win \$10,000 playing poker with your boss. Wanting to hide your windfall from your creditors, you deposit the money in an account that is in your principal's name alone. In the eyes of the law, you have made a gift to your principal. If you use the power of attorney to withdraw the money later, it will be stealing.*

Finally, it should go without saying that you should never add your name to your principal's accounts after becoming her agent. Well-intentioned bank personnel may suggest this, but it is a bad idea. Not only can it lead to the problems described above, simply adding your name to your principal's accounts looks like stealing because you now have ownership of funds that you did not have before becoming your principal's agent. This is a breach of your fiduciary duty.

### **Don't borrow anything from the principal**

The law says that you must not "borrow funds or other property from the principal, unless otherwise authorized."

At the very least, unauthorized borrowing creates a conflict of interest and at the worst, it is the same as stealing. Agents may not allow other people to borrow things from their principals either. Renting out the principal's property at a market rate may be appropriate, but renting to yourself or your close relatives at a lower rate creates a conflict of interest because the principal loses, and you gain, the benefit of the difference between the market rate and the lower rate.

*A car accident puts your car out of commission and leaves you with a large repair bill. Your principal's account has more than enough to cover the cost of the repairs and you plan on paying the money back. Besides, you often use your car to take her to the hair salon and health care appointments. Borrowing your principal's funds without authorization to repair the car is simply not allowed, no matter how convenient it may seem.*

Even seemingly harmless lending can have unintended consequences for your principal, especially if she has begun to lose her capacity to make decisions.

*Your principal is no longer aware of the extent of her financial resources, but has ample savings that should be more than enough to sustain her for the rest of her life. Her daughter, on the other hand, has fallen on hard times and has significant financial troubles. She approaches you about a loan from your principal's savings. She promises to pay the money back and even offers to sign a promissory note. You know that your principal and her daughter had always enjoyed good relations in the past, but, using your authority as agent to extend your principal's daughter this loan will violate your fiduciary duty to your principal. It is also simply not a good idea. First, whether the money will ever be paid back is far from certain, and second, there is no financial benefit in this deal for your principal. It is best not to loan the money.*

When your principal loses capacity, you must act in *her* best interest. Helping her family members financially is not part of *her* best interest. In situations like this, an agent's decisions may seem rather cold, but the law requires that agents be strictly loyal to their principals alone.

### **Don't continue acting as agent after the agency has ended**

The law says that you must not "continue acting on behalf of the principal if you learn of any event that terminates this Power of Attorney or your authority under this Power of Attorney, such as the death of the principal, your legal separation from the principal, or the dissolution of your marriage to the principal."

An agency relationship can end in many ways, but when it does end, you must stop taking action on behalf of your principal because your authority to act has been revoked. However, you have an obligation to turn over your records and other information obtained in the course of your agency to your principal so she or another decision maker can pick up where you left off.

*Years ago, your principal executed powers of attorney for property and health care. Both documents had “springing” clauses that authorized the agent to act only after the principal’s doctor determined that the principal was unable to make decisions for herself. After a car accident, your principal entered a coma and was unable to make decisions for herself. During that period, you acted as her property agent, paying bills, maintaining her home, etc. You kept a complete and detailed record of your management of your principal’s property. Six months after entering the coma, your principal wakes up as good as new. She resumes making financial decisions for herself and is delighted to receive your record of receipts and other transactions made on her behalf. Great job! You have loyally and faithfully carried out your duties as agent.*

***How Will I Know If My Principal Terminated Her Power of Attorney?*** A principal with the mental capacity to do so may terminate (or revoke) her power of attorney for property in any way. The principal must simply communicate her termination to her agent or to someone else “related to the subject matter of the agency.” No special form or ceremony is required. When the agent learns of the termination, the agent must stop acting as agent and turn over all records and other things she has acquired on the principal’s behalf. Powers of attorney for health care may be terminated by the principal at any time regardless of capacity. Judges may also order the termination of a power of attorney.

## **Part 3 – Serving a Principal with Diminished Capacity**

### **What Does “Diminished Capacity” Mean?**

Signing a legal document, like a power of attorney, can only be done when the signer has “capacity.” Capacity is the ability to make and communicate one’s own decisions. Losing capacity is a sad fact of life for many people. People can lose capacity gradually, as in the case of Alzheimer’s disease, or suddenly, as in the case of an accident or stroke. People with diminished capacity often have more difficulty transacting financial business and may be

at risk of exploitation. A trustworthy agent, following the Do's and Don'ts described in this handbook, can protect a principal with diminished capacity.

Avoid making assumptions about your principal's capacity because someone with diminished capacity in one area may still have the ability to direct your actions in another. Assessing your principal's capacity should be left to a mental health professional who can identify and help you understand the level of support your principal requires.

## **Making Decisions in Your Principal's Best Interest**

Remember these rules about who makes the decision in an agency relationship:

- 1. If your principal is able to direct your actions, you must follow her directions.**

Powers of attorney are intended to empower principals, not subject them to the control of their agents. When you receive directions from your principal, you must follow them.

- 2. If you know what your principal would have wanted you to do in a certain situation, you must respect her wishes.**

If your principal loses capacity, you may not substitute your own idea of what is in her best interest for what you know she would have wanted you to do. You must, to the greatest extent possible, continue to make the decisions that your principal would have made if she still had capacity.

*Your principal, your mother, has supported your younger brother financially ever since he moved out fifteen years ago. Having plenty of money to do so, she sent him \$500 every month until she had a stroke and became incapacitated last month. As your mother's agent, you must continue to carry out her very clear wish to support your brother and must continue making the \$500 payments.*

Regardless of your personal feelings on a given matter, being a good agent means continuing to facilitate your principal's wishes even after she has lost capacity.

**3. If your principal cannot direct your actions and you are unsure of her wishes, you must act in her best interest.**

Some best interest decisions are easy: continuing to pay your principal's utility bills is obviously in her best interest. Sometimes, however, making a decision in someone's best interest is quite difficult because it will require that you consider all of the different factors that may affect your principal's health, comfort, and safety.

Best interest decisions must still be authorized decisions. The limitations and authorizations in your principal's power of attorney for property still bind your ability to make decisions after she loses capacity. You should also consult your principal to the extent possible.

If you need additional guidance in making a decision, consult appropriate medical, mental health, legal, and financial professionals, and those who know your principal well. Remember to document the process of how you reached your decision regarding your principal's best interest, too.

## **When Something is No Longer in Your Principal's Best Interest**

Making changes to long-standing arrangements that are no longer in your principal's best interest is one of the most difficult areas to navigate as an agent for a principal with diminished capacity.

*For years, your principal has given each member of her family a crisp, new \$100 bill for Christmas. She loved to see the faces of her children and grandchildren light up when they received this gift each year. Recently, your principal has begun to lose her capacity to make financial decisions. During the same period, her family has grown in number substantially. She can no longer afford to gift as much money to her family as she used to. As agent, you will have the difficult task of explaining how it is necessary to alter this cherished pattern of gifts.*

Making significant changes can be an especially painful process if your principal, due to her diminished capacity, is unable to understand your assessment of what is in her best interest.

*Your principal has lived in her home for more than 40 years, but can no longer afford to continue living there. The layout and architecture of the home also present a number of physical hazards for her. It is clear to you, others who care about your principal, and your principal's doctor that a change to her living arrangements must be made. Unable to understand the details of what is happening, your principal is adamant about staying in the home. Unfortunately, her best interest requires that she be placed in a long term care facility. This is one of the most difficult parts of being an agent. You can show respect for your principal by sensitively and compassionately guiding her through the coming transition.*

In dramatic cases, or if you are not authorized by the power of attorney to make certain necessary decisions, you may need to seek legal assistance and petition the court to be appointed your principal's guardian. A guardian is like an agent, but may only be appointed by a court. Guardians are fiduciaries who are charged with acting in the best interest of their wards (principals become "wards" in the guardianship context). Guardianships are more burdensome than agencies because a guardian must make detailed reports to the court each year. Seeking a guardianship may also be necessary if your principal does not have a power of attorney for health care that authorizes an agent to make residential placement decisions on her behalf.

*Your principal appointed you her property agent many years ago and has since lost her capacity to make decisions of any sort. She does not have a power of attorney for health care and now needs someone to assist her with health care decisions. Since she cannot now sign a power of attorney for health care (because she does not have capacity), you will have to go to court to ask a judge to appoint you or someone else the guardian of her person.*

Do not avoid a best interest decision because it is physically or emotionally difficult. If you need assistance, seek it out. Hundreds of dedicated professionals are willing to assist you in this process. Besides, your principal appointed you her agent because she knew she could count on you to come through for her in difficult times.

## **Part 4 – Protecting Your Principal’s Resources**

There are many practical steps you can take to protect your principal’s financial resources so she can maintain herself comfortably for as long as possible. When you begin acting as an agent, sit down with your principal and make an inventory of her financial resources and needs so you are aware of them and may take appropriate steps to protect them.

### **Protect Your Principal from Financial Exploitation**

Your principal may be at risk of financial exploitation even after appointing an agent under a power of attorney for property because she retains her legal authority to enter into contracts. (Only being declared disabled by a judge in a guardianship proceeding can definitively remove someone’s right to make decisions for herself.) Each day thieves and scam artists from all over the world try to take advantage of vulnerable people, especially the elderly and people with disabilities. You can protect your principal from harm by being vigilant and attentive.

### **Warning Signs of Financial Exploitation**

If some of the following warning signs begin to appear in your principal’s life, investigate quickly to ensure that your principal is not being financially exploited.

- *Unpaid bills, eviction notices or notices to discontinue utilities*
- *Unexplained withdrawals or transfers from the principal’s bank account(s)*
- *Financial statements that are sent to someone other than the principal*
- *New friends of the principal who no one else knows*

- *The existence of legal documents, such as new powers of attorney, which the principal didn't understand at the time she signed them*
- *Caregivers of the principal expressing excessive interest in the amount of money being spent on the principal*
- *Missing property, personal belongings, or financial documents of the principal*
- *Suspicious signatures on the principal's checks or other documents*
- *Unsatisfactory explanations about the principal's finances by the principal or a caregiver*

If it becomes clear that your principal is being exploited, contact the police and your local elder protective services. You may also need to seek assistance from a lawyer.

## **Defenses Against Financial Exploitation**

The following steps can safeguard your principal's resources:

- *Keep your principal's financial information secure*

Unless your principal lives with you, it may be difficult to monitor the safety of your principal's financial information. Your principal's bank statements and correspondence from Social Security and other organizations may be vulnerable. Consider opening a post office box to which your principal's sensitive correspondence can be directed. Be sure to balance this protection with open and respectful communication with your principal about the state of her finances.

- *Be cautious when granting access to or hiring others*

Your principal may require in-home or other services delivered by people that she does not know personally. Be sure to thoroughly research agencies and individuals that your principal considers allowing into her home. Ask to be involved in any interviewing process that may occur. You may even want to conduct a criminal background check on individual caretakers. In Illinois, you may request a criminal background report on someone by contacting the

Illinois State Police, Bureau of Identification, located at 260 North Chicago Street, Joliet, Illinois 60431-1060 or (815) 740-5160.

- *Minimize unwanted solicitations*

Many older adults are victimized by telephone solicitors who may be well aware that the person on the other end of the line has diminished capacity.

Discuss placing your principal's telephone number on the National Do Not Call Registry. Visit <http://illinoisattorneygeneral.gov/donotcall/donotcall.htm> to learn more about how to do this.

- *Protect your principal's credit and identity*

If your principal does not anticipate applying for or needing credit in the future, it may be a good idea to place a freeze on her credit reports. This will cut down on the possibility of identity theft. You may request that the major credit reporting agencies freeze your principal's credit report by contacting them at the following websites:

Equifax – <http://www.equifax.com>

Experian – <http://www.experian.com>

Trans Union – <http://www.transunion.com>

You can get a free copy of your principal's credit report at <https://www.annualcreditreport.com>. By law, the credit reporting agencies must offer completely free credit reports to all Americans once each year. To safeguard your principal's private information, take a moment to confirm that you are visiting the official site when you seek this information.

- *Stay alert to scams that target vulnerable people*

Use resources like the AARP and the Illinois Attorney General to stay alert to scams. If your principal receives an unusual or suspicious phone call, make sure that she knows to contact you for verification and assistance before she offers anyone money.

- *Communicate about the possibility of financial exploitation*

Make sure that your principal's first and best source of information about her financial security is you. Help her understand the importance of involving you and other trusted advisors when she is contacted by solicitors. A simple but firm, "I have to discuss this matter with my agent" is usually enough to end a conversation with a telephone or door-to-door salesperson.

## **Getting Help for Your Principal**

If your principal is in danger, you should immediately contact your local police department. You should also report physical or verbal abuse, exploitation, or neglect of an older (60+) person to the statewide, 24-hour Elder Abuse Hotline at 1-866-800-1409.

If you suspect your principal has been a victim of fraud, you can contact the Illinois Attorney General's Senior Citizen Consumer Fraud Hotline at 1-800-243-5377. More information is available at the office's website, <http://illinoisattorneygeneral.gov/seniors/index.html>.

The website of the federal Consumer Financial Protection Bureau at <http://www.consumerfinance.gov/older-americans> has a wide range of information concerning the financial wellbeing of older individuals.

If your principal needs legal assistance, you can visit the website of Illinois Legal Aid at <http://illinoislegalaid.org> for information on how to resolve some legal matters yourself or to obtain representation from an attorney. The Illinois State Bar Association also maintains a lawyer referral service at <http://www.illinoislawyerfinder.com>.

## **Part 5 – Your Life as an Agent**

Being an agent requires that you interact with your principal and third parties in the community in special ways and that you observe additional formalities that may be unfamiliar.

### **Maintaining Separate Financial Lives**

Recall that an agent may not commingle funds with his principal. If you had been sharing a bank account with your principal before you began acting as an agent, you must create a new account for yourself and stop depositing

your funds into your principal's account. Your principal's income must go into a separate account for her protection. This will also make recordkeeping easier.

## **Sharing Household Expenses**

Also recall that an agent may not benefit from his status as an agent. You are allowed to share household expenses with the principal if you live in the same household, but if you do, it is essential that you do so fairly and proportionately.

If you have not yet begun to act as agent and your principal has capacity, draw up an agreement with your principal that outlines who will be responsible for what expenses in the home. This document does not need to be written by a lawyer or formally executed, but it should indicate that you have both agreed to share expenses in an appropriate way and that the agent will respect the agreement in the future.

## **Interacting with Third Parties in the Community**

Agents must observe certain formalities when interacting with third parties on behalf of their principal.

## **Signing Documents for Your Principal**

You must indicate to other people that you are signing on your principal's behalf. Follow this formula: "[PRINCIPAL'S NAME], by [YOUR NAME] as Agent" when you sign for your principal.

*If John Smith were signing for his principal Mary Smith, he would sign "Mary Smith, by John Smith as Agent."*

## **Proving You Are the Agent**

Because of society-wide concerns about fraud, you may from time to time be asked to sign an Agent's Certification and Acceptance of Authority. This document is a part of the Power of Attorney Act and is simply a promise that you are the rightful agent and that the power of attorney for property you have presented is valid. You should not hesitate to sign a certification if requested to do so.

## **What to Do If Your Principal's Power of Attorney is Refused**

Sometimes, third parties in the community may have reservations about honoring your principal's power of attorney for property. It may be that they have never encountered one before or are being cautious. However, if the power of attorney is properly drafted and executed, your principal is entitled to have her wishes honored.

If your principal's power of attorney is refused, ask for an explanation and take notes on what the third party believes it needs to see or to confirm before it will honor your principal's wishes. If you are unable to resolve the issue quickly, you may need to seek legal assistance. You will not, however, be liable to your principal because of the third party's unwillingness to cooperate with your requests.

## **Navigating Family Dynamics**

Sometimes, a principal's choice of agent may alienate members of the principal's family who feel that they should have been appointed instead of the chosen agent. Those family members may then begin second guessing the agent's decisions or otherwise interfering with the agent's duties. Navigating this relational dynamic can be very difficult, but remember that you are accountable to your principal and the law, not to your principal's family members. Continue to follow the Do's and Don'ts presented in this handbook.

## **Confidentiality and Disclosure**

You are not required to disclose information about your principal's finances to your principal's family members unless told to do so by the principal. However, it may be a good idea to discuss confidentiality and disclosure with your principal to learn if your principal is comfortable sharing information about her finances with other members of her family. If she is comfortable sharing information, you may do so as appropriate. If not, help other family members understand that your job is to respect your principal's wishes and that you are legally required to keep her affairs confidential.

## **Taking Care of Yourself**

Your principal is counting on you to faithfully uphold your responsibilities as agent. However, you cannot be the agent your principal deserves if you are exhausted, overly distracted, or unable to continue serving as agent.

If you feel overwhelmed by the scope of the assistance that your principal requires, contact the Senior HelpLine at 1-800-252-8966 for help locating services that can help your principal and provide needed respite for you.

## **Resigning as Agent**

Part of being a good agent is knowing when to call it quits. If you feel like your own physical or mental limitations or the demands of your everyday life are interfering with your ability to fulfill the duties outlined in this handbook, there is no shame in stepping down and passing the torch on to your principal's successor agent. Recognizing your limitations is just another part of acting in your principal's best interest.

If you choose to resign, first tell your principal of your intention to resign and then contact your principal's successor agent if one is named in the power of attorney for property. If the successor agent agrees to serve in your place, your principal will be taken care of. You might even provide the successor agent with a copy of this handbook so he or she can learn about how to faithfully discharge their new fiduciary responsibilities to the principal.

If there is no successor agent and your principal has diminished capacity, your resignation will leave your principal without a decision maker. In this case, contact the Senior HelpLine at 1-800-252-8966 and ask how to find legal assistance for seeking the appointment of a guardian for your principal.

## **Conclusion**

Serving as an agent is a noble, if difficult, calling that demonstrates a willingness to help that not everyone possesses. You should feel proud of yourself. We hope that this handbook has been helpful to you as you do your best to serve your principal. He or she deserves nothing less.



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