BANCROFT

FOR ADVISORS AND THEIR CLIENTS

A Guide for Power of Attorney Agents

What to do when you are named as someone's power of attorney agent. A step-by-step reference covering your authority, your limitations, your legal obligations, and how to work with institutions and professionals.

ABOUT THIS GUIDE

This guide is provided for informational and educational purposes only. It does not constitute legal, tax, or financial advice. Power of attorney laws vary significantly by state. The authority granted by a power of attorney document depends on the specific language in that document and the laws of the state where it was executed. Consult with an attorney before taking action on any matter described in this guide.

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When You Are Called to Act

If someone has named you as their power of attorney agent, they have placed extraordinary trust in you. A power of attorney (POA) is a legal document that authorizes you to act on another person's behalf when they cannot act for themselves. The person who granted you this authority is called the "principal." You are the "agent" or "attorney-in-fact."

Being named does not mean you must act immediately. In most cases, your authority activates only when the principal becomes incapacitated. Until that happens, the document sits in a drawer. But when the time comes, you will need to act quickly, and this guide will help you understand what to do, what not to do, and when to ask for help.

67%	54%	#1
OF ADULTS OVER 65 WILL NEED HELP MANAGING THEIR FINANCES AT SOME POINT	OF AMERICANS DO NOT HAVE A POWER OF ATTORNEY DOCUMENT	POA ABUSE IS THE MOST COMMON FORM OF ELDER FINANCIAL EXPLOITATION

These numbers show both sides of the POA relationship: the need for someone trustworthy to step in, and the responsibility that comes with the role.

Two Roles: Financial and Healthcare

Most estate plans create two separate power of attorney documents, each granting different authority to potentially different people. Understanding which role you hold is essential.

	FINANCIAL POA	HEALTHCARE POA
What it covers	Bank accounts, investments, real estate, tax filings, bill payment, insurance, business operations, legal transactions	Medical treatment decisions, hospital admission/discharge, access to medical records, end-of-life care decisions
When it activates	Depends on the document: immediately upon signing (durable) or only upon incapacity (springing)	Typically only when the principal cannot communicate their own decisions

	FINANCIAL POA	HEALTHCARE POA
Who typically serves	Spouse, adult child, trusted friend, or professional fiduciary	Spouse, adult child, close friend, or family member who understands the principal's values
Key document	Durable Financial Power of Attorney	Healthcare Power of Attorney (also called Healthcare Proxy or Medical Power of Attorney)
Ends when	Principal dies, principal revokes it, court revokes it, or agent resigns	Principal dies, principal revokes it, principal regains capacity, or agent resigns

> **You may hold one role or both.** Some people name the same person as both financial and healthcare agent. Others separate the roles, choosing one person for financial management and another for medical decisions. If you hold both roles, keep clear records of which capacity you are acting in for each decision. The legal standards and obligations differ.

When Your Authority Begins

The single most important thing to understand about a power of attorney is when it takes effect. This depends entirely on the language in the document.

Durable power of attorney

A durable POA takes effect immediately upon signing and remains in effect if the principal becomes incapacitated. "Durable" means it survives incapacity. This is the most common type used in estate planning. Even though it is effective immediately, the expectation is that the agent will not act unless the principal is unable to manage their own affairs.

Springing power of attorney

A springing POA takes effect only when a specific triggering event occurs, usually the principal's incapacity as certified by one or two physicians. The document itself defines what "incapacity" means and what evidence is required. Springing POAs provide an extra safeguard but can cause delays: financial institutions may refuse to honor the document until they are satisfied that the triggering condition has been met.

> **A POA does not survive death.** Your authority as agent ends the moment the principal dies. After death, the executor (named in the will) or the successor trustee (named in the trust) takes over. If you are also named as executor or trustee, your authority shifts to that role, but it is a different legal capacity with different rules. Any action you take after the principal's death under the POA is invalid.

How to prove your authority

When you need to act, you will present the original or a certified copy of the POA document to the institution or person you are dealing with. They may also require:

- A valid photo ID for both you and the principal
- Medical certification of incapacity (if the POA is springing)
- An affidavit stating that the POA has not been revoked and the principal is still living
- The institution's own POA acceptance form (many banks and brokerages have one)

> **Register your POA with institutions before you need it.** Many banks, brokerages, and insurance companies allow you to submit a POA for review in advance. Doing this while the principal is healthy avoids delays when you actually need to act. The institution reviews the document, adds it to their file, and may set up authorized-signer access on accounts. This is one of the most valuable steps you can take as a newly named agent.

What You Can Do

The scope of your authority is defined by the POA document itself. A well-drafted POA grants broad powers so the agent can handle whatever arises. The following are powers commonly granted in a durable financial POA:

FINANCIAL MANAGEMENT

- Access and manage bank accounts: deposits, withdrawals, transfers, bill payments
- Manage investment and brokerage accounts: buy, sell, rebalance, and monitor holdings
- File tax returns and communicate with the IRS and state tax authorities on the principal's behalf
- Collect income: Social Security, pension, rental income, dividends, insurance proceeds
- Pay bills and debts: mortgage, utilities, insurance premiums, medical bills, credit cards
- Manage real estate: pay property taxes, maintain insurance, hire contractors, collect rent

- Apply for government benefits: Medicare, Medicaid, Veterans Affairs benefits, Social Security disability

LEGAL AND ADMINISTRATIVE

- Access safe deposit boxes
- Manage insurance policies: file claims, change beneficiaries (if the document authorizes it), maintain coverage
- Operate or manage a business owned by the principal
- Hire professionals: attorneys, accountants, financial advisors, property managers
- Sign contracts on the principal's behalf (within the scope of the granted authority)
- Access digital accounts and manage digital assets (if the document includes digital asset authority under RUFADAA)

> **Read the document carefully.** Not every POA grants all of these powers. Some are narrowly drafted. Others include specific limitations or require co-agent approval for large transactions. Before taking any action, read the POA document to confirm that the specific power you need has been granted. If you are unsure, consult the attorney who drafted it.

What You Cannot Do

A POA does not make you the owner of the principal's assets. You are a fiduciary, meaning you must act in the principal's best interest at all times. The following actions are prohibited or restricted:

1. You cannot use the principal's assets for your own benefit. Every dollar must be spent for the principal's care, support, and financial obligations. Self-dealing is the most common basis for POA liability.
2. You cannot make gifts unless the document explicitly authorizes it. Even then, gifts must follow the terms specified. Many POAs allow annual exclusion gifts to continue a pattern the principal established, but this must be stated in the document.
3. You cannot change the principal's will or trust. A POA does not grant authority to modify estate planning documents. Only the principal can do that while competent.
4. You cannot override the principal's known wishes. If the principal is intermittently competent and expresses a preference, you should respect it unless doing so would cause harm.

5. You cannot act after the principal's death. Your authority ends immediately. Any transactions you conduct after death are invalid and potentially fraudulent.
6. You cannot delegate your authority to someone else unless the document specifically permits it. You were chosen for your judgment. You cannot hand that responsibility to a third party.
7. You cannot commingle funds. The principal's money must be kept in accounts titled to the principal. Never deposit the principal's funds into your personal account.

> **Fiduciary duty is personal liability.** If you breach your fiduciary duty as agent, you can be held personally liable for losses, required to return improperly used funds, and in serious cases, face criminal prosecution for financial exploitation. Courts take POA abuse seriously. The standard is not "did you mean well" but "did you act as a prudent person would in the same circumstances." Document everything.

Working with Institutions

Banks, brokerages, insurance companies, and government agencies each have their own procedures for accepting a power of attorney. Expect some friction. Institutions are cautious because they face liability if they honor a fraudulent or revoked POA.

WHAT TO EXPECT

INSTITUTION	TYPICAL PROCESS	TIPS
Banks	Submit POA for review by legal department (1-5 business days). May require their own POA form. Will set up authorized-signer access.	Submit the POA before you need it. Bring the original, a certified copy, your ID, and the principal's account numbers.
Brokerages	Similar to banks. May require a medallion signature guarantee. Some require the POA to be notarized within a specific timeframe (e.g., last 6-12 months).	Ask about their POA acceptance policy in advance. Some firms (Schwab, Fidelity) have dedicated POA/trust departments.
Insurance companies	Submit POA with a claim form or policy change request. Life insurance companies may require additional verification for beneficiary changes.	Contact the policyholder services department directly. Request a list of all policies the principal holds.

INSTITUTION	TYPICAL PROCESS	TIPS
Social Security Administration	Does NOT accept private POAs for most purposes. You must apply to become a "representative payee" through SSA's own process.	Visit your local SSA office with the POA, a physician's statement, and your ID. The process can take several weeks.
IRS	File Form 2848 (Power of Attorney and Declaration of Representative) to act on tax matters. The private POA alone is not sufficient.	File Form 2848 as soon as the POA is activated. This allows you to speak with the IRS, receive correspondence, and file returns.
Medicare / Medicaid	Requires the POA plus an authorized representative form specific to the program.	Each program has its own form. Start with the state Medicaid office or 1-800-MEDICARE.

If an institution refuses your POA. Most states have laws that penalize institutions for unreasonably refusing a valid POA. If a bank or other institution rejects your document, ask for the specific reason in writing. Common issues: the document is too old (some institutions want one executed within the last year or two), it lacks specific powers the institution requires, or it has not been notarized. Your attorney can help resolve disputes and, if necessary, invoke the state statute that requires acceptance.

Record-Keeping

Detailed records are your best protection against accusations of mismanagement. If you cannot document a transaction, you cannot defend it. Treat every dollar as if you will be asked to explain it in court, because you might be.

WHAT TO DOCUMENT

- ☐ Every deposit, withdrawal, transfer, and payment made on the principal's behalf. Include the date, amount, payee, and purpose.
- ☐ All income received: Social Security, pension, investment income, rental income, insurance proceeds.
- ☐ All bills paid: mortgage, utilities, insurance, medical expenses, taxes, credit cards. Keep receipts.

- ☐ Any assets bought, sold, or transferred. Include the reason, the price, and any professional advice you relied on.
- ☐ Communications with financial institutions, attorneys, accountants, and government agencies. Save letters, emails, and notes from phone calls.
- ☐ Your time spent on POA duties. If you are entitled to compensation, your time log supports the claim.
- ☐ Medical decisions made (if you are the healthcare agent). Include the date, the decision, the medical professional consulted, and the reasoning.

HOW TO ORGANIZE

Keep a dedicated file (physical or digital) for POA activity. Separate it from your own financial records. A simple spreadsheet with columns for date, description, amount, and category is sufficient. Attach or link supporting documents (receipts, statements, correspondence) to each entry.

At least quarterly, prepare a summary of all transactions and the principal's current financial position. Share this with other family members or interested parties if appropriate. Transparency prevents disputes.

> **Retain records for at least seven years.** Tax-related records should be kept for at least seven years. Records related to real estate transactions should be kept indefinitely. If the principal dies, hand all records to the executor or successor trustee. They will need them for the estate administration and for preparing the principal's final tax returns.

Healthcare Decisions

If you are named as the healthcare power of attorney agent (also called a healthcare proxy), you make medical decisions when the principal cannot communicate their own wishes. This is a deeply personal role that requires understanding what the principal would want, not what you would want.

YOUR RESPONSIBILITIES

1. Follow the principal's advance directive. If the principal has a living will or advance directive, it governs end-of-life decisions. Your job is to ensure those wishes are carried out, even if you personally disagree.

2. Make decisions the principal would make. When the advance directive does not cover a specific situation, apply "substituted judgment": decide as the principal would have decided based on their known values, beliefs, and prior statements.
3. Communicate with the medical team. Attend appointments when possible. Ask questions. Request explanations in plain language. You have the right to access the principal's medical records under HIPAA (the healthcare POA itself serves as HIPAA authorization in most states).
4. Coordinate with family. Keep close family members informed of the principal's condition and the decisions being made. You are the legal decision-maker, but maintaining family communication reduces conflict.
5. Document decisions and reasoning. Write down what was decided, why, what the medical team recommended, and what the principal's known wishes were. This protects you if a family member later challenges a decision.

DECISIONS YOU MAY FACE

- Consent to or refuse medical treatment, surgery, or procedures
- Choose or change physicians, hospitals, or care facilities
- Authorize or refuse diagnostic tests and medications
- Decide on pain management and palliative care
- Make end-of-life decisions: life support, resuscitation (DNR orders), feeding tubes, ventilators
- Authorize organ and tissue donation (unless the principal registered their own preference)
- Arrange for home health care, assisted living, or nursing home placement

> **The hardest conversations happen before the crisis.** If you have been named as someone's healthcare agent, have the conversation now. Ask them: What does quality of life mean to you? Under what circumstances would you not want to be kept alive? How do you feel about feeding tubes, ventilators, and resuscitation? Do you want to die at home or in a hospital? These conversations are uncomfortable, but they are far less painful than guessing during a crisis.

Common Mistakes

Most POA agent errors come from good intentions paired with poor understanding of the rules. The following are the mistakes professionals see most often:

1. Commingling funds. Never mix the principal's money with your own. Keep separate accounts. This is the single most common mistake and the one that creates the most legal exposure.
2. Making gifts to yourself or family members. Unless the POA document explicitly authorizes gifts and specifies the terms, any gift from the principal's assets is a breach of fiduciary duty. Even continuing a pattern of holiday gifts requires documented authorization.
3. Failing to keep records. "I spent it on Mom's care" is not a defense without receipts, bank statements, and a transaction log. Courts and family members will demand documentation.
4. Acting before the authority activates. If you hold a springing POA, you cannot act until the triggering condition (typically physician-certified incapacity) has been met. Acting prematurely invalidates everything you do.
5. Continuing to act after the principal dies. Your authority ends at death. Any transactions after that moment are unauthorized. Notify institutions immediately and transition responsibility to the executor or trustee.
6. Changing the principal's estate plan. You cannot amend a will, change trust terms, or alter beneficiary designations on life insurance and retirement accounts unless the POA document specifically grants that power (which is rare and should only be done with attorney guidance).
7. Ignoring the principal's wishes. You were named because the principal trusts your judgment. But that does not mean substituting your preferences for theirs. If the principal expressed clear wishes while competent, follow them.
8. Not registering the POA with financial institutions in advance. Waiting until a crisis to present a POA to a bank causes delays, frustration, and sometimes outright rejection. Register early.
9. Failing to coordinate with other agents. If one person holds the financial POA and another holds the healthcare POA, you need to communicate. Financial decisions (paying for care) and healthcare decisions (choosing a facility) overlap constantly.
10. Trying to handle everything alone. Attorneys handle legal questions, CPAs handle tax filings, financial advisors manage investments, and geriatric care managers coordinate medical care. The estate pays for these professionals. Use them.

When to Call a Professional

You are not expected to be an expert in law, tax, finance, or medicine. The following professionals can help with specific aspects of your role as agent.

PROFESSIONAL	WHEN TO ENGAGE
Elder law attorney	POA interpretation questions, Medicaid planning, guardianship concerns, disputes with family members or institutions, real estate transactions on behalf of the principal
CPA / Tax advisor	Filing the principal's income tax returns, estimating tax obligations, managing rental income or business income, gift tax implications if gifts are authorized
Financial advisor	Managing the principal's investment portfolio, coordinating account access, consolidating accounts, keeping the portfolio appropriate for the principal's current needs
Geriatric care manager	Coordinating medical care, evaluating care facilities, managing in-home care, navigating Medicare and Medicaid, acting as a local advocate if you live far from the principal
Social worker	Connecting with community resources, adult protective services concerns, respite care, caregiver support
Insurance agent	Filing long-term care insurance claims, maintaining property and casualty coverage, reviewing life insurance policies, filing health insurance claims

Glossary

Agent (Attorney-in-Fact)

The person authorized to act on the principal's behalf under a power of attorney. Despite the name "attorney-in-fact," this person does not need to be a lawyer.

Advance Directive (Living Will)

A document that states the principal's wishes regarding end-of-life medical treatment, including life support, resuscitation, and pain management. Works alongside the healthcare POA.

Durable Power of Attorney

A POA that remains in effect even after the principal becomes incapacitated. "Durable" is the critical word. Without it, the POA would automatically terminate at incapacity, which is precisely when it is needed most.

Fiduciary Duty

The legal obligation to act in the principal's best interest, with loyalty, prudence, and transparency. Breach of fiduciary duty can result in personal liability, removal as agent, and criminal prosecution.

Healthcare Proxy

Another name for a healthcare power of attorney agent. Used in some states (notably New York and Massachusetts) instead of "healthcare power of attorney."

HIPAA Authorization

A document that authorizes named individuals to access the principal's medical records and communicate with healthcare providers. A healthcare POA typically includes HIPAA authority, but a standalone HIPAA authorization may also be needed.

Incapacity

The inability to manage one's own affairs due to illness, injury, cognitive decline, or disability. The POA document defines what constitutes incapacity and how it must be established (typically by physician certification).

Principal

The person who creates the power of attorney and grants authority to the agent. The principal must be competent at the time the POA is signed.

Representative Payee

A person appointed by the Social Security Administration to manage Social Security benefits on behalf of someone who cannot manage their own funds. This is a separate designation from a private POA.

RUFADAA

Revised Uniform Fiduciary Access to Digital Assets Act. Governs an agent's authority to access the principal's digital accounts and assets. The POA document should specifically reference digital assets for the agent to have clear authority under RUFADAA.

Springing Power of Attorney

A POA that takes effect only when a specific triggering event occurs, usually the principal's incapacity as certified by one or two physicians. It "springs" into effect rather than being effective immediately.

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