

Who can act on your behalf if you are away on a lengthy trip or you are suddenly incapacitated? Everyone needs a backup, regardless of age or circumstances. The legal answer to this problem is the General Durable Financial Power of Attorney [DPOA].

The person who signs a DPOA is the PRINCIPAL. The Principal grants an individual the power to deal with his or her assets. The individual named to handle your assets in your DPOA is called your AGENT and Attorney-in-Fact.

The durable power of attorney gives your agent broad authority over all of your assets and grants your Agent the authority to make financial decisions on your behalf. The document is effective the minute you sign it. For this reason you must carefully consider to whom you should grant this power.

For most people a family member is a good choice to name to act as your Agent. Most people name a spouse, adult child, sibling or parent as their Agent under their DPOA. However, a trusted friend, accountant or attorney may also be named as your Agent or alternate Agent if you have no family member you wish to name as your Agent.

The DPOA survives your physical or mental incapacity unlike a non-durable power of attorney. When you are disabled your Agent can act for you, but the DPOA becomes invalid at your death. A DPOA is never a substitute for a will.

A DPOA authorizes your agent to sign checks, enter contracts buy or sell securities or real estate, deposit or withdraw funds, enter safe-deposit boxes, create trusts, run your business, make gifts, or do just about anything else that you could do with your money and property.

Although the powers granted in a DPOA are broad they can be limited or otherwise tailored to meet your specific circumstances or wishes.

The DPOA is a flexible legal tool that is valid from the moment you sign it until you die or revoke it. No formal transfer of title to your assets is required.

We are sometimes asked whether an Agent can force a business or individual to honor the DPOA. Unfortunately, the answer to this question is No. You cannot force an individual or bank to honor your DPOA.

However, if you anticipate that your Agent will need to use your DPOA in the near future, you can check with your bank or brokerage firm to confirm whether they will accept your DPOA. Some firms may require the Principal to complete the firm's form before honoring the DPOA. Other firms may ask the Agent to sign a sworn statement called an affidavit before a notary public stating that to the Agent's knowledge the DPOA has not been revoked and the Principal is still alive.

The person you name as your Agent in a DPOA is called a "fiduciary" a person who holds a

position of trust and who must act in the best interest of the Principal.

The Agent also called an Attorney-in-Fact must handle your property honestly and prudently, avoid conflicts of interest, keep your property separate from their property, and keep adequate records.

Even though an Agent acts for a Principal by signing checks and paying bills, the Agent does not become personally liable for the Principal's bills as long as the Agent has not personally obligated his or herself for the debt. For example, if an adult child writes a check to a nursing home on the account of a parent using the DPOA, the adult child does not become personally liable for the debt to the nursing home unless he or she personally obligated themselves to pay the debt.

In Virginia, the law now permits certain individuals to demand an accounting from the Agent for the actions taken under the DPOA during the past two years. This statute provides family members with the ability to obtain information from the Agent about his or her handling of the Principal's assets.

Signing as an Attorney-in-Fact

If you are an Attorney-in-Fact for another person and you must sign documents for them, the documents should be signed as follows:

[Sign Robert's name here]

Robert Principal

by Mary Agent

his Attorney-in-Fact