



November 21, 2011

## ***USE OF A POWER OF ATTORNEY***

We receive a number of questions about the use and legality of a power of attorney. Here are some of the most common questions we get, together with the answers.

### **WHAT IS A POWER OF ATTORNEY?**

A power of attorney is a written, legally binding, appointment or authorization whereby one person names and gives legal authority to another to act on their behalf. The giver of the power of attorney is frequently called the “Principal” and the person to whom the power is given is called the “agent”, “attorney in fact” or sometimes “attorney”. A person appointed agent under a power of attorney is a “fiduciary” and must follow fiduciary rules in handling property.

### **WHO CAN BE GIVEN POWER OF ATTORNEY?**

Generally, anyone can be given a power of attorney. The person named as agent does NOT have to be a lawyer.

### **IS COURT SUPERVISION REQUIRED?**

The law does not require Court supervision, however the agent can be required to give a detailed list of all property, receipts and expenses. Keep careful records be kept of everything that is done for the principal so that if there are any questions, the answers are obtainable. A small notebook (the size of a shorthand pad) used as a diary is an excellent way to record everything that is done.

***PLEASE SEE THE TOP RULES FOR FIDICIARIES WITH THIS SHEET.***

### **WHAT CAN “THE ATTORNEY” DO?**

The attorney-in-fact can do only those things listed in the document naming them an attorney-in-fact. A general power of attorney allows the holder to do everything (with certain exceptions, such as writing a will) that the principal could do. A limited power of attorney sets out certain limited things that the holder can do, such as sell a certain piece of real estate, etc.

### **HOW DO I SIGN?**

This is one of the more confusing parts of using a power of attorney. Generally, a document is signed as follows: (Where *John Doe* named *Bill Smith* power of attorney):

JOHN DOE

By: ***Bill Smith***

His Attorney-in-fact

In this example, Bill Smith has signed HIS name; John Doe’s name is typed or printed.

### **HOW LONG IS IT VALID?**

A power of attorney is good until it is revoked or until the Principal (person giving the power) becomes disabled or dies, unless there is some limitation on the time specified in the document granting the power. Many powers-of-attorney provide that if the principal becomes disabled, the power granted continues in force (this is called a “Durable Power of Attorney”).

### **WHO NEEDS TO SEE IT?**

Anyone who has property or funds of the principal such as a bank or stockbroker. Also, if the agent is handling real estate for the principal, the power of attorney will have to be recorded the same place as the deed to that real estate. Most of the time one can show the original and leave a photocopy.

### **LIMITATIONS & GOVERNING LAW**

These comments are based on the laws of the Commonwealth of Virginia. Other states may be different. If you have any other questions about how or when to use a power of attorney, please call Hart & Hart Attorneys, LTD at 540-375-3281, or visit our website at [www.hhatty.com](http://www.hhatty.com), and we will gladly answer your questions.

## ***TOP RULES FOR FIDUCIARIES UNDER POWER OF ATTORNEY:***

As a person acting under a Power of Attorney, you are considered by the law to be a Fiduciary. Below are some important rules you need to follow as you fulfill your duties; these aren't the only rules but are the more important ones.

1. **KEEP MONEY SEPARATE** – DO NOT deposit any fiduciary money in your personal account. DO NOT put personal money in the fiduciary account. NEVER use fiduciary money to pay your personal bills – Criminal penalties could happen if you do. Open a special account at a bank for all fiduciary funds. New accounts must be opened as their name, “care of” you.
2. **GET RECEIPTS OR PROOF OF PAYMENT** – Virginia law allows certain parties to demand an “Accounting” which is a detailed statement of everything that you got and paid on behalf of your “principal”. You may have to prove that someone actually received the money you say you paid. If you give someone cash or personal property, you have to prove that they got it AND what it was worth; thus a receipt is necessary. Also, if you purchase or make any payments by check you must retain the check image (or cancelled checks) that the bank provides you.. If you don't do this , then at your personal expense you'll have to get other proof that can be approved by the Court if it gets involved.
3. **CAREFULLY TRACK ALL MONEY** that comes in or goes out. For EACH item, you need to write down WHEN – WHO – WHAT/WHY – HOW MUCH. Example: If you get a \$200.00 check from an insurance company, you need the WHEN (date you got it), WHO (name of insurance company) WHAT/WHY (payment on medical treatment or refund on premium) and HOW MUCH (the exact amount of the check). If you can, photocopy all checks before depositing them in the bank.
4. **KEEP RECORDS** – Get a medium sized spiral notebook for a diary. In it write everything you do in handling the estate – who you talk to, what was said, what was done. For money, the checkbook register MUST be accurate. (Hint: Put money transactions in BOTH the notebook AND the checkbook register).
5. **GET RECEIPTS AND KEEP COPIES OF ALL BILLS**. If you give someone personal property, you may have to prove that they actually got it AND what it was worth. A receipt is the best way to do this. Keep copies of all the bills you receive for the individual.
6. **DON'T PAY BILLS AND DEBTS TOO QUICKLY**. If there's not enough money available, you can be personally responsible if you overpaid creditors. THIS INCLUDES THE FUNERAL BILL if the person dies. There are laws that say who is entitled to what payment when, and if you think there may not be enough money to pay everything, consult an attorney.
7. **ASK QUESTIONS**. There are strict and detailed rules for handling someone else's money; few people have experience doing it. Find a lawyer experienced in this area and use him/her as a resource. Asking a stupid question is a lot cheaper than making a stupid mistake.
8. **TAKE CARE OF TAXES**. You may be responsible for making sure all tax returns are filed and taxes paid on time. If you're not sure what to do, get an accountant to help you.
9. **USE A COMPUTER** (if you have access to one) to keep track of all receipts and expenses. Our office uses Quicken™ on a daily basis and we recommend it; there are other programs that do as good a job.
10. **THE POWER OF ATTORNEY DIES WITH THE INDIVIDUAL WHO GAVE IT**. Once they die, you cannot do anything else under the power of attorney except deliver any property or money you have to the executor/administrator of their estate.