

BERWITZ & DiTATA LLP

Attorneys and Counselors at Law

310 Old Country Road Suite 101
Garden City, New York 11530
Telephone (516) 747-3200 • Facsimile (516) 747-3727

Lawrence N. Berwitz

Maureen R. DiTata

Your Responsibilities as Agent Under a Power of Attorney

We have, from time to time, addressed the importance of creating a power of attorney in “A Step Ahead.” Through a power of attorney the “principal” authorizes an “agent” to manage property and make financial and business decisions on behalf of the principal. When an agent accepts his or her appointment, a special legal relationship, a “fiduciary” relationship, is created. This article addresses the agent’s responsibilities:

- To act according to the instructions of the principal or, where there are no instructions, in the principal’s best interest;
- To avoid conflicts that would impair the agent’s ability to act in the principal’s best interest;
- To keep the principal’s property separate and distinct from the agent’s assets;
- To keep a record of receipts, payments, and transactions conducted for the principal; and
- To disclose one’s identity as an agent whenever acting for the principal.

What is the Role of an Agent?

Although the power of attorney generally grants broad powers to the agent, these duties prevent the agent from doing whatever he or she wants with the principal’s money. The agent must follow the principal’s lawful instructions as enumerated in the power of attorney, must act with the highest degree of good faith in accordance with the principal’s best interests, must act prudently when handling the affairs of the principal, and must make decisions based upon the preferences of the principal. If the agent overrides the wishes of the principal or takes actions that are not authorized by the power of attorney, the agent can be held liable in court for breach of fiduciary duty. Additionally, the agent has a duty to keep bank statements and all other documents demonstrating the actions that have been taken on behalf of the principal. Maintaining such records will allow the agent to address any questions that may arise with respect to the management of the principal’s funds.

When Does the Power of Attorney Take Effect?

Most powers of attorney become effective once they are executed by both the principal and agent. Often, however, principals do not intend for the agent to begin utilizing the power of attorney until the principal becomes incapacitated or is otherwise unable to handle his or her own affairs. For this reason it is important for the principal and agent to discuss the principal's intentions.

Conclusion

The role of agent under a power of attorney is a responsibility that should not be taken lightly. If you have been appointed as an agent under a power of attorney and are unsure about your responsibilities, you should consult an experienced estate-planning attorney. Berwitz & DiTata LLP will be happy to assist you in determining your responsibilities as agent and ensuring that you are in a position to account for your activities as agent should the need ever arise.