

MANAGING SOMEONE ELSE'S MONEY

Help for agents under a
power of attorney

Provided by:

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About the Consumer Financial Protection Bureau

The Consumer Financial Protection Bureau, or the CFPB, is focused on making markets for consumer financial products and services work for consumers — whether they are applying for a mortgage, choosing among credit cards, or using any number of other consumer financial products. We empower consumers to take more control over their financial lives.

The CFPB Office for Older Americans is the only federal office dedicated to the financial health of Americans age 62 and over. Along with other agencies, the Office works to support sound financial decision-making and to prevent financial exploitation of older adults. To help people (including family members) with legal authority to handle an older person's money, the Office contracted and worked closely with the American Bar Association Commission on Law and Aging to prepare national versions of the Managing Someone Else's Money guides, six sets of state-specific guides (AZ, FL, GA, IL, OR and VA), and tips and templates to help other states adapt the guides. Though the guides were developed by the American Bar Association Commission, they are not intended to provide legal advice or serve as a substitute for your own legal counsel. If you have questions or concerns, consider seeking the guidance of an appropriate legal professional.

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Why read this guide?

Like many people, you may never have been an agent under a power of attorney before. That's why we created *Managing someone else's money: Help for agents under a power of attorney*. This guide will help you understand what you can and cannot do in your role as an agent. In that role, you are a **fiduciary**. For this guide, a fiduciary is anyone named to manage money or property for someone else. You'll find brief tips to help you avoid problems and resources for finding more information.

This guide is for family and friends serving as an agent, not for professionals or organizations. The guide does not give you legal advice. Talk to a lawyer if you have questions about your duties.

If you want to learn about making a power of attorney, this guide is not designed for you. Talk to a lawyer or read other guides about powers of attorney from your state bar association or others.

Let's start with a scenario about how you might have become an agent under power of attorney

Your family member or friend is worried that she will get sick and will not be able to pay her bills or make other decisions about her savings and her house. For this guide, let's call her Martina. Martina has signed a legal document called a power of attorney. In it, she names you as her agent and gives you the power to make decisions about money and property for her.

The law gives you a lot of responsibility as Martina's agent under a power of attorney.

You are now a **fiduciary** with **fiduciary duties**.

What is a fiduciary?

Since you have been named to manage money or property for someone else, you are a **fiduciary**. The law requires you to manage Martina's money and property for her benefit, not yours. It does not matter if you are managing a lot of money or a little. It does not matter if you are a family member or not.

The role of a fiduciary carries with it legal responsibilities. When you act as a fiduciary for Martina, you have four basic duties that you must keep in mind:

1. Act only in Martina's best interest.
2. Manage Martina's money and property carefully.
3. Keep Martina's money and property separate from yours.
4. Keep good records.

As a fiduciary, you must be trustworthy, honest, and act in good faith. If you do not meet these standards, you could be removed as a fiduciary, sued, or have to repay money. It is even possible that the police or sheriff could investigate you and you could go to jail. **That's why it's always important to remember: It's not your money!**

Different types of fiduciaries exist

In your role as agent, you may act as or deal with other types of fiduciaries.

These may include:

Trustees under a revocable living trust—someone names them to manage money and property.

Representative payees or, for veterans, VA fiduciaries—a government agency names them to manage government money that is paid to someone.

Guardians or conservators—a court names them to manage money and property for someone who needs help.

Other guides explaining the duties of these fiduciaries are at:
www.consumerfinance.gov/managing-someone-elses-money.

Power of attorney questions and answers

What is a power of attorney?

A **power of attorney** is a legal document. Martina made a **power of attorney** to give you legal authority to make decisions about her money or property so that you can make decisions for her if she is sick or injured. In some states, the type of document that Martina made is called a **durable power of attorney**.

Under a **power of attorney**, Martina is called the **principal**.

You are called the **agent**. Another name for the agent is **attorney-in-fact**.

Martina could also make a **health care power of attorney** if she names someone to make decisions about her health care. (We don't discuss a health care power of attorney in this guide, but if you want more information about that, go to www.ambar.org/healthdecisions.)

Can Martina still manage her money and property after signing a power of attorney?

Yes, as long as she is still able to make decisions.

Can a power of attorney be changed or revoked?

Martina can take away (or *revoke*) your authority to act as her agent at any time if she wants to and is still able to make decisions. If she does take away your authority as her agent, you must stop making decisions for her. Martina should tell any people or businesses you were dealing with about her decision to take away your authority.

What if you think the change was the result of fraud or abuse?

If you think Martina does not understand the decision she made to remove your authority and is being abused or exploited by someone else, talk to a trusted family member; a lawyer; or an official from **adult protective services**, the **police**, or the **sheriff**.

When do your responsibilities end?

If Martina revokes your authority, your responsibilities end. In addition, your authority ends when she dies. Promptly notify her bank or other businesses with which you interacted as her agent. Even if you can easily pay some of her outstanding bills, you will no longer have the authority to do so. If you are married to Martina, your authority to act as her agent may end if you get divorced or legally separated. If a court names a guardian of property or conservator to act for her, your authority as agent may end. The power of attorney document or state laws govern these situations.

What happens if you can no longer serve as agent?

If you are not able to act as Martina's agent and she cannot name someone else to act for her, tell a trusted family member or a government agency such as adult protective services. If you cannot act as her fiduciary, she will need someone else to help her.

Don't expect others to know what an agent is or does.

They may not understand that you have been named as an agent. They may think that you have more authority or less authority than you really have. You may need to educate them. You could show them this guide.

Four basic duties of a fiduciary

Duty 1 | Act only in Martina's best interest

Because you are dealing with Martina's money and property, your duty is to make decisions that are best for her. This means you must ignore your own interests and needs, or the interests and needs of other people.

To help act in Martina's best interest, follow these guidelines:

- **Read the power of attorney and do what it says.** Your authority is strictly limited to what the document and state law allow. Follow Martina's directions in the document, even if you have the best intentions in doing something different.
- **Understand when the power of attorney becomes effective.** It may be right away or only when Martina can no longer make her own decisions. Check to see if the document says how you will know when Martina can no longer make her own decisions.
- **As much as possible, involve Martina in decisions.** Many things can affect your decisions about Martina's money and property. For example, you might feel pressure from others. Martina's abilities to make decisions might change from time to time.

Even after it is clear that you must make decisions for Martina, ask her what she wants if she can communicate. If she can't say what she wants, try to find out what she would have wanted. Look at any past decisions, actions, and statements. Ask people who care about Martina what they think she would have wanted. Make the decisions you think Martina would have wanted, unless doing so would harm her. Put her well-being above saving money for others who may inherit her money and property. Make sure she is safe and comfortable, and her needs are met.

- **Avoid conflicts of interest.** A conflict of interest happens if you make a decision about Martina's property that may benefit someone else at Martina's expense. As a fiduciary, you have a strict duty to avoid conflicts of interest—or even the appearance of a conflict of interest.
- **Don't borrow, loan, or give Martina's money to yourself or others.** Even if the power of attorney or state law clearly allows gifts to you or others, be very careful to avoid conflicts of interest. Make sure that any gifts do not increase or complicate Martina's taxes or change her plans to give away her property when she dies. Any gifts or loans should be in line with what Martina would have wanted. For example, if Martina gave money every year to a charity, the power of attorney may allow you to continue doing that.

- **Avoid changing Martina's plans for giving away her money or property when she dies.** There may be rare situations in which changing Martina's plans would be in her best interest. But you should get legal advice to make sure that the power of attorney or state law allows that.
 - **Don't pay yourself for the time you spend acting as Martina's agent, unless the power of attorney or state law allows it.** If you are allowed to pay yourself, you need to show that your fee is reasonable. Carefully document how much time you spend and what you do.
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Avoid possible conflicts of interest

Sometimes people have good intentions, but do things they shouldn't. Because you are now a fiduciary, you should avoid any conflicts of interest. Here are a few examples of possible conflicts of interest:

Whose car is it?

You used Martina's money to buy a car. You use it to drive her to appointments, but most of the time you drive the car just for your own needs. This may be a conflict of interest.

Should you do business with family?

Martina needs repair work in her apartment. You hire your son and pay him from Martina's money. This may be a conflict of interest, even though the work was needed. It appears that you have put your personal interest to benefit your son in conflict with Martina's interests.

Duty 2 | Manage Martina's money and property carefully

As Martina's agent, you might pay bills, oversee bank accounts, and pay for things she needs. You might also make investments, pay taxes, collect rent or unpaid debts, get insurance if needed, and do other things written in the power of attorney.

You have a duty to manage Martina's money and property very carefully. Use good judgment and common sense. As a fiduciary, you must be even more careful with Martina's money than you might be with your own!

Follow these guidelines to help you make careful decisions:

- **List Martina's money, property, and debts.** To make careful decisions, you need to know what Martina owns and owes. Your list might include:
 - Checking and savings accounts;
 - Cash;
 - Pension, retirement, annuity, rental, public benefit, or other income;
 - Real estate;
 - Cars and other vehicles;
 - Insurance policies;
 - Trusts for which Martina is a beneficiary;
 - Stocks and bonds;
 - Jewelry, furniture, and any other items of value; and
 - Unpaid credit card bills and other outstanding loans.
- **Protect Martina's property.** Keep her money and property safe. You may need to put valuable items in safe deposit boxes, change locks on property, and make sure her home or other property is insured. Make sure bank accounts earn interest if possible and have low or no fees. Review bank and other financial statements promptly. If Martina owns any real estate, keep it in good condition.
- **Invest carefully.** If you are making investment decisions for Martina, talk to a financial professional. The Securities and Exchange Commission (SEC) provides tips on choosing a financial professional at www.sec.gov/investor/alerts/ib_top_tips.pdf. Discuss choices and goals for investing based on Martina's needs and values.
- **Pay bills and taxes on time.**
- **Cancel any insurance policies that Martina does not need.**
- **Collect debts.** Find out if anyone owes Martina money, and try to collect it.

- **Take steps to have the power of attorney accepted.** Sometimes banks or other businesses won't do what you, acting as Martina's agent, want them to do. A bank may refuse to accept the power of attorney and want Martina to sign its own form. This is a problem if Martina has lost the ability to act for herself. As soon as you need to act as Martina's agent, contact any businesses (such as banks) or people that she deals with and give them copies of the power of attorney. Never give away the original document. You can get certified copies of the original document. If someone will not accept your authority as agent, talk to a supervisor. If they still won't accept it, talk to a lawyer. State law may require the business or person to accept the power of attorney.
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Can Martina get any benefits?

Find out if Martina is eligible for any financial or health care benefits from an employer or a government. These benefits might include pensions, disability, Social Security, Medicare, Medicaid, Veterans benefits, housing assistance, or food stamps (now known as Supplemental Nutrition Assistance Program or SNAP). Use the National Council on Aging benefits check-up at www.BenefitsCheckUp.org.

Help her apply for those benefits. The Area Agency on Aging where Martina lives can help you find information. Find the local Area Agency on Aging through the Eldercare Locator at www.eldercare.gov.

Medicaid is complicated

Get legal advice and be very careful about decisions that may affect Martina's eligibility for Medicaid. The Medicaid program provides medical assistance and long-term care to low-income people. It may have another name in your state. To find your state Medicaid agency, visit: www.benefits.gov/benefits/browse-by-category/category/MED.

Duty 3 | Keep Martina's money and property separate

Never mix Martina's money or property with your own or someone else's. Mixing money or property makes it unclear who owns what. Confused records can get you in trouble with Martina's family and also with government agencies such as adult protective services and the police or sheriff.

Follow these guidelines:

- **Separate means separate.** Never deposit Martina's money or property into your own or someone else's bank account or investment account.
- **Avoid joint accounts.** If Martina already has money or property in a joint account with you or someone else, get legal advice before making any change.
- **Keep title to Martina's money and property in her own name.** This is so other people can see right away that the money and property is Martina's and not yours.
- **Know how to sign as agent.** Sign all checks and other documents relating to Martina's money or property to show that you are Martina's agent. For example, you might sign "Juan Doe, as agent for Martina Roe." Never just sign "Martina Roe."
- **Pay Martina's expenses from her funds, not yours.** Spending your money and then paying yourself back makes it hard to keep good records. If you really need to use your money, keep receipts for the expense and maintain a good record of why, what, and when you paid yourself.

Duty 4 | Keep good records

You must keep true and complete records of Martina's money and property. The power of attorney or state law may say that someone else can review your records to check up on you. Unless the power of attorney or state law says you can't share your records, you may want to let another family member or friend of Martina's see them as a precaution.

Practice good recordkeeping habits:

- **Keep a detailed list of everything that you receive or spend for Martina.** Records should include amount of checks written or deposited, dates, reasons, names of people or companies involved, and other important information.
- **Keep receipts and notes, even for small expenses.** For example, write "\$50, groceries, ABC Grocery Store, May 2" in your records soon after you spend the money.
- **Avoid paying in cash.** Try not to pay Martina's expenses with cash. Also, try not to use her ATM card to withdraw cash or write checks to "Cash." If you need to use cash, be sure to keep receipts or notes.
- **Getting paid?** The power of attorney or state law may say that you can be paid for acting as agent. If you will be paid, be sure you charge a reasonable fee. It is up to you to keep detailed records as you go along of what work you did, how much time it took, when you did it, and why you did it.

More things you should know

What if there are other fiduciaries?

Co-agents

Martina may have named one or more co-agents to act with you. The power of attorney document or state law should say whether you and any co-agents can make decisions alone or must agree on decisions, either unanimously or by majority rule.

Either way, you must coordinate with any co-agent and share information about decisions. Even if you and a co-agent don't have to agree on all decisions, you cannot let a co-agent do something that harms Martina. You are still responsible for her and must act in her best interest.

Successor agents

Martina may have named a successor agent to act for her if you are not able to be the agent. A successor agent has no authority if you are still willing and able to act as Martina's agent.

Other types of fiduciary

Other fiduciaries may have authority to make decisions for Martina. For example, she may have a guardian of property, a representative payee who handles Social Security benefits, or a VA fiduciary who handles veterans benefits. It is important to work with these other fiduciaries, and keep them informed.

Government benefits require special fiduciaries

As agent, you cannot manage Martina's government benefits such as Social Security or VA benefits unless you get a separate appointment from the government agency as, for example, a representative payee or VA fiduciary. For more information, contact the government agency.

How can you avoid problems with family or friends?

Family or friends may not agree with your decisions about Martina's money and property. To help reduce any friction, follow the four duties described above and the guidelines we've given you.

Sharing information may help. For example, you might want to share any accountings you prepare or summaries of how you've spent Martina's money, unless Martina has said that you should not. It usually is easier to deal with questions about a decision when it happens than to deal with suspicion and anger that may build over a long time. In the end, you have to make the final decisions.

Some family or friends may be so difficult that it is better not to share information with them. Use your best judgment.

If family or friends don't agree with your decisions, try to get someone to help sort it out—for example, a family counselor or mediator. See *Where to go for help* on page XX of this guide.

What should you know about working with professionals?

In managing Martina's affairs, you may need help from professionals such as lawyers, brokers, financial advisors, accountants, real estate agents, appraisers, psychologists, social workers, doctors, nurses, or care managers. You can pay them with Martina's money. If you need help from any professionals, remember these tips:

- **Check on the professional's qualifications.** Many professionals must be licensed or registered by a government agency. Check credentials with the government agency. Make sure the license or registration is current and the professional is in good standing. Check the person's complaint history.
- **Interview the professional thoroughly and ask questions.**
- **Review contracts carefully before signing.** Before hiring any professionals, get their proposed plan of work and expected fee.
- **Make your own decisions based on facts and advice.** Listen to their advice, but remember you are the decision-maker.

Watch out for financial exploitation

Family, friends, neighbors, caregivers, fiduciaries, business people, and others may try to take advantage of Martina. They may take her money without permission, fail to repay money they owe, charge her too much for services, or just not do things she has paid them to do. These may be examples of financial exploitation or financial abuse. As Martina's agent, you should help protect her. You should know the signs of financial exploitation for five important reasons:

1. Martina may still control some of her funds and could be exploited;
2. Even if Martina does not control any of her funds, she still may be exploited;
3. Martina may have been exploited already, and you may still be able to do something about that;
4. People may try to take advantage of you as Martina's agent; and
5. Knowing what to look for will help you avoid doing things you should not do, protecting you from claims that you have exploited Martina.

Look for these common signs of financial exploitation

- **You think some money or property is missing.**
- **Martina says that some money or property is missing.**
- **You notice sudden changes in Martina's spending or savings.** For example, she:
 - Takes out lots of money from the bank without explanation;
 - Tries to wire large amounts of money;
 - Uses the ATM a lot;
 - Is not able to pay bills that are usually paid;
 - Buys things or services that don't seem necessary;
 - Puts names on bank or other accounts that you do not recognize or that she is unwilling or unable to explain;
 - Does not get bank statements or bills;
 - Makes new or unusual gifts to family or others, such as a "new best friend";
 - Changes beneficiaries of a will, life insurance, or retirement funds; or
 - Has a caregiver, friend, or relative who suddenly begins handling her money.
- **Martina says she is afraid or seems afraid of a relative, caregiver, or friend.**

- **A relative, caregiver, friend, or someone else keeps Martina from having visitors or phone calls, does not let her speak for herself, or seems to be controlling her decisions.**
-

What can you do if Martina has been exploited?

- Call the emergency 911 number if Martina is in immediate danger.
 - Call local adult protective services or the police or sheriff. You may be required by law to do this.
 - Alert Martina's bank or credit card company.
 - Call the local prosecutor or state attorney general.
 - Call the long-term care ombudsman program or the state Medicaid fraud control unit if Martina is in a nursing home or assisted living.
 - Consider talking to a lawyer about protecting Martina from more exploitation or getting back money or property taken from her.
 - Each agency or professional has a different role, so you may need to call more than one. For more information, see *Where to go for help* on page XX of this guide.
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Be on guard for consumer scams

As Martina's agent, you should be alert to protect her money from consumer scams as well as financial exploitation. Criminals and con artists have many scams, and change them all the time. They often seek unsuspecting people who have access to money. Learn to spot consumer scams against Martina—and against you as her agent.

How can you protect Martina from scams?

Consumer scams happen on the phone, through the mail, e-mail, or over the internet. They can occur in person, at home, or at a business. Here are some tips:

- **Help Martina put her number on the National Do Not Call Registry.** Go to www.donotcall.gov or call 1-888-382-1222.
- **Don't share numbers or passwords for Martina's accounts, credit cards, or Social Security,** unless you know whom you're dealing with and why they need the information.
- **After hearing a sales pitch, take time to compare prices.** Ask for information in writing and read it carefully.
- **Too good to be true?** Ask yourself why someone is trying so hard to give you a "great deal." If it sounds too good to be true, it probably is.
- **Watch out for deals that are only "good today" and that pressure you to act quickly.** Be suspicious if you are not given enough time to read a contract or get legal advice before signing. Also watch out if you are told that you need to pay the seller quickly, for example by wiring the money or sending it by courier.
- **Never pay up front for a promised prize.** Suspect a scam if you are required to pay fees or taxes to receive a prize or other financial windfall.
- **Watch for signs Martina already has been scammed.** For example, does she receive a lot of mail or e-mail for sweepstakes? Has she paid people you don't know, especially in other states or countries? Has she taken a lot of money out of the bank while she was with someone she recently met? Does she have a hard time explaining how she spent that money? Is she suddenly unable to pay for food, medicine, or utilities?

What can you do if Martina has been scammed?

If you suspect a scam, get help. Contact a local, state, or federal agency, depending on the type of scam. You may also need to talk to a lawyer.

Local agencies to call are adult protective services, the long-term care ombudsman program, the police or sheriff, and the local Better Business Bureau.

State agencies to call are the office of the attorney general or another agency that deals with consumer protection.

Call a federal agency if scammers are in other states or countries. Federal agencies are the Consumer Financial Protection Bureau, the FBI, the Federal Trade Commission, or the U.S. Postal Inspection Service.

Each of these agencies and professionals has a different role so you may need to call more than one.

For more information, see *Where to go for help* on page XX of this guide.

Common Consumer Scams

Relative in need	Someone who pretends to be a family member or friend calls or e-mails you to say they are in trouble and need you to wire money right away.
Charity appeals	You get a call or letter from someone asking for money for a fake charity—either the charity does not exist or the charity did not call or write to you.
Lottery or sweepstakes	You get a call or e-mail that you have a chance to win a lot of money through a foreign country's sweepstakes or lottery. The caller will offer tips about how to win if you pay a fee or buy something. Or the caller or e-mail says you already have won and you must give your bank account information or pay a fee to collect your winnings.
Home improvement	Scammers take money for repairs and then they never return to do the work or they do bad work. Sometimes they break something to create more work or they say that things need work when they don't.
Free lunch	Scammers invite you to a free lunch and seminar, and then pressure you to give them information about your money, and to invest the money with them. They offer you "tips" or "guaranteed returns."
Free trip	Scammers say you've won a free trip but they ask for a credit card number or advance cash to hold the reservation.
Government money	You get a call or letter that seems to be from a government agency. Scammers say that if you give a credit card number or send a money order, you can apply for government help with housing, home repairs, utilities, or taxes.
Drug plans	Scammers pretend they are with Medicare prescription drug plans, and try to sell Medicare discount drug cards that are not valid. Companies with Medicare drug plans are not allowed to send unsolicited mail, emails, or phone calls.
Identity theft	Scammers steal personal information—such as a name, date of birth, Social Security number, account number, and mother's maiden name—and use the information to open credit cards or get a mortgage in someone else's name.
Fake "official" mail	Scammers send letters or e-mails that look like they are from a legitimate bank, business, or agency to try to get your personal information or bank account number.

Where to go for help

Local and state agencies

Adult Protective Services

Find the state or local agencies that receive and investigate reports of suspected elder or adult abuse, neglect, or exploitation by contacting the national Eldercare Locator.

1-800-677-1116

www.eldercare.gov

Area Agency on Aging/Aging and Disability Resource Center

Find the local agencies that can give you information about aging and disability services and whether there are any support groups for fiduciaries or caregivers by contacting the national Eldercare Locator.

1-800-677-1116

www.eldercare.gov

Attorney General

Find a listing of state attorneys general on the website of the National Association of Attorneys General. Attorneys general can take action against consumer fraud.

www.naag.org

Better Business Bureau

Find a state or local bureau on the website of the national Better Business Bureau. The BBB can help consumers with complaints against businesses.

www.bbb.org

Long-Term Care Ombudsman Program

Find state and local advocates for residents of long-term care facilities by contacting the national Eldercare Locator.

1-800-677-1116

www.eldercare.gov

Mediators

Find a listing of local mediators on the website of the national Association for Conflict Resolution. Mediation can help resolve disputes and may sometimes be an alternative to legal action.

www.acrnet.org (Click on "Membership," then "Membership Directory," then "Search")

Medicaid/Medical Assistance

Find a listing of state agencies that provide Medicaid/Medical Assistance on the federal Benefits.gov website.

www.benefits.gov/benefits/browse-by-category/category/MED

Medicaid Fraud Control Unit

Find a listing of state units on the website of the National Association of Medicaid Fraud Control Units. These units investigate and prosecute abuse and fraud by health care providers.

www.namfcu.net

Police or Sheriff

Find a law enforcement agency by checking the local directory.

Federal agencies

Numerous federal agencies play a role in combatting fraud and abuse and educating consumers. Contact them for more information.

Consumer Financial Protection Bureau

1-855-411-CFPB

www.consumerfinance.gov

Do Not Call Registry

1-888-382-1222

www.donotcall.gov

Federal Bureau of Investigation

www.fbi.gov/scams-safety

Federal Trade Commission

1-877-FTC-HELP (382-4357)

www.consumer.ftc.gov

Financial Fraud Enforcement Task Force

www.stopfraud.gov

Postal Inspection Service

1-877-876-2455

<https://postalinspectors.uspis.gov/>

Social Security Administration

1-800-772-1213

www.socialsecurity.gov/payee

Department of Veterans Affairs

1-888-407-0144

www.benefits.va.gov/fiduciary

For legal help

Free legal services for people over age 60

Find local programs that provide free legal help to people over age 60 by contacting the national Eldercare Locator.

1-800-677-1116

www.eldercare.gov

Free legal services for low-income people

Find local programs that provide free legal help to low-income people on the website of the Legal Services Corporation.

www.lsc.gov/find-legal-aid

Fee-for-service lawyers

This is a web page sponsored by the American Bar Association. It provides information about how to find a lawyer in each state. It also has information about legal resources available in each state, how to check whether a lawyer is licensed, and what to do if you have problems with a lawyer.

www.findlegalhelp.org

For accounting help

Accountants

Find a local certified public accountant on the website of the American Institute of CPAs.

www.aicpa.org/ForThePublic/FindACPA/Pages/FindACPA.aspx