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YOUR RESPONSIBILITIES AS AN AGENT UNDER A DURABLE POWER OF ATTORNEY (“DPOA”)

The Principal is the person signing the Power of Attorney. The role of an Agent is to act on behalf of the Principal, carrying out the wishes and directions of the Principal. The Agent doesn’t take over and make decisions for the Principal; rather, the Agent makes sure the Principal’s reasonable decisions are accomplished.

As Agent, you must understand the limits and scope of your authority. For example, you can only do those things mentioned in the Durable Power of Attorney (DPOA). If authority to sell real estate is not given in the DPOA, you cannot sell real estate under that DPOA. This DPOA references in Article II certain general powers that are defined by specific statutes. The attorney has reviewed these powers with the Principal. If any of these powers are removed, the removed powers will be listed under Article IV. Please refer NC General Statutes 32C-2-203 to 32C-2-217 on the NC General Assembly website if you have questions or you may call our office.

When the Principal dies, your authority ends. You should notify banks and businesses that the Principal has died. The Principal’s Executor under the Will (or Administrator if no Will) would consider whether they should set up an Estate with the Clerk of Court to obtain Letters Testamentary (or Letters of Administration) that would allow the Executor (or Administrator) to handle the Principal’s legal affairs. You can call us if you have questions as we handle Estate Administration too.

As an Agent, you are a fiduciary with fiduciary duties. This means you must do the following:

- **Respect the Principal’s wishes and act only in the Principal’s best interest;**
- **Involve the Principal in the decision making as much as possible;**
- **Realize that any money you are managing is not your own money;**
- **Manage all assets carefully, even more carefully than your own;**
- **Keep good records of everything you spend or receive; and**
- **Keep the Principal’s funds separate from your own.**

Given all the responsibilities you have as an Agent, your job may not be easy. Some businesses and banks may be reluctant to honor your authority, even if you have a DPOA, and may require a Certification that the Principal is alive and has not revoked the power of attorney. *If the Principal wants you to have access to bank accounts, it is best if you both go to the bank to sign the bank’s authorization forms and signature card and give them a copy of the DPOA with the Principal with you. Typically, a bank has its own forms to fill out before you will be able to access a particular account. It is best to get things squared away at the bank as soon as possible while the Principal is competent. A bank may require the DPOA to be recorded at the Register of Deeds Office before they will accept it.*

If a business refuses to accept the DPOA, ask to speak to a supervisor. You will need to make multiple copies of the DPOA and **never give out the original**. It is also a good idea to keep track of every person or entity for which you have given a copy. *Whenever you sign any document, you should sign as “(your name) as Agent for (person for whom you are the Agent).”*

Being an Agent can cause tension with family members. You can avoid these concerns with open lines of communication. Be willing to let others know about how and why you made major decisions or explain how you engaged the Principal in making the decision. It can be helpful to share your records or prepare a summary of accounts to demonstrate how you are managing the assets. If the Principal and DPOA document authorized you to be paid for your services in the DPOA, be sure to keep accurate records of the time you spend acting as Agent. Avoid using cash and never make gifts to yourself unless specifically authorized in the DPOA. These types of practices raise concerns about how Agents are managing another's money and whether the Agent has any conflicts of interest. If family members are unhappy with your decisions, you may want to get help with a family mediator or other trusted neutral party.

The Consumer Financial Protection Bureau has a guide, "*Managing Someone Else's Money: Help for Agents under a Power of Attorney*", at www.consumerfinance.gov/blog/managing-someone-elses-money/.

In January of 2018, a new law regarding Durable Powers of Attorney came into effect. This law allows businesses to request an AGENT'S CERTIFICATION that the Principal is still alive, and the Power of Attorney has not been revoked). Your agent may be asked to sign such a Certification in the future at the time when the power will be used. The Agent will need to sign the Certification in the presence of a Notary Public. Please note that under the law that went into effect in January of 2018, Durable Powers of Attorney signed before January 1, 2018 are still valid and will be interpreted under the prior laws.

We hope this information is helpful for you. Please contact us at 828-652-2441 if you have any questions or would like to schedule an appointment to discuss further.

Sincerely,

Sharon L. Parker
LAW OFFICE OF SHARON L. PARKER, PA