

# GUIDELINES FOR ATTORNEYS IN FACT

You have been granted power of attorney by an individual, "grantor", who trusts you to serve in a "fiduciary" capacity. As an attorney in fact, you must act for the benefit of the individual who appointed you, in complete good faith and candor. You generally are to act prudently, as you would in your own business affairs of the highest importance, rather than incurring high risks. You can become personally liable for breaches of fiduciary duty. Consider the following Guidelines of "DOs" and "DON'Ts" your guiding principles:

Your actions are not supervised by any Court. However, the grantor, a successor attorney in fact, or the grantor's heirs may request that you give an accounting of your activities. You must provide a complete accounting within sixty days of when you receive a request.

All income and expenses should be deposited in or drawn from a checking account in the name of the grantor with the grantor's social security number. Photocopy all checks deposited to the grantor's checking account and attach the copies to a copy of the deposit slip. This will greatly assist you in preparing an accounting should one be required.

Keep all cancelled checks and receipts. You may have to repay any money you spend without a receipt.

The grantor of a power of attorney does not give up the right to make financial decisions or to exercise any of the powers granted to you. As the result it is important to coordinate your activities with the grantor. The grantor may have appointed you so that you will be in position to help with financial matters should the grantor become incapacitated in the future. In that case, you may not have to do anything with regard to the power of attorney until some time in the future. You should request guidance from the grantor so that you understand the grantor's current needs and so that the grantor can let you know where assets and important documents are located for future reference.

You do not have to accept the responsibility of attorney in fact. If you decline to act on the power of attorney, you should let the grantor and the successor attorney in fact know your decision.

## IF YOU DECIDE TO ACCEPT THE RESPONSIBILITY OF ATTORNEY IN FACT

### Things to Do:

1. Identify all assets immediately. Their safekeeping is your responsibility. Locate, collect and maintain all property owned by the grantor. If

# ATTORNEY IN FACT INSTRUCTIONS AND ACCOUNTING RECORDS

The attached instructions and accounting sheets are provided to assist you with your responsibilities as attorney in fact.

necessary, fill out a change of address form with the Post Office immediately so the grantor's mail will be forwarded to you.

2. Assure that all real estate holdings and motor vehicles are adequately insured. Consult with the grantor's insurance agent to assure appropriate coverage.
3. If the grantor has stock or bond holdings or other investments, you should consult a professional for investment advice, as you will be responsible for the supervision of the portfolio and required to maintain prudent investments.
4. Ascertain all legal debts of the grantor. A review of the grantor's checkbook and business records should greatly assist you. Consult an attorney if you have questions about what to pay.
5. File all necessary income tax returns each year. You may retain an accountant to prepare taxes and will need to provide the accountant with the necessary information for tax return preparation.
6. Protect and preserve the grantor's assets, pay the grantor's legal debts and taxes.
7. You are entitled to a reasonable fee for the services that you render as attorney in fact, unless you waive the fee or the power of attorney indicates that no fee is to be charged. If you charge a fee, you must keep an accurate ledger of the time you have expended on the grantor's affairs in order to be compensated, as well as receipts for your out-of-pocket expenses. You will need records to be able to justify and defend your fee. No fee is to be taken by you as attorney in fact until you provide a statement to the grantor.
8. Promptly record all transactions in connection with affairs of the grantor's estate. This continuous record will simplify the preparation of an accounting if one is requested. If you use Quicken, QuickBooks, Microsoft Money or a similar product, you may want to open a separate file for tracking the grantor's finances, so as to simplify reporting. An accountant can assist with the appropriate income and expense categories for a fiduciary account.

**Things Not To Do:**

1. Never co-mingle or mix the grantor's assets or income with your personal or business property. The grantor's funds should never be co-mingled with your personal funds. This would be a breach of your fiduciary duty, and may cause you to incur personal liability.

2. Never use the grantor's funds other than for the payment of the grantor's legal debts and obligations. Unauthorized use of the grantor's funds will result in personal liability.

3. Never self-deal in any manner, unless specifically authorized in the Power of Attorney -- that means do not buy anything from the grantor, sell anything to the grantor, borrow any funds from the grantor, or the like. Such actions may result in personal liability.

4. Never pay with cash without obtaining a receipt.

**YOU ARE CHARGED WITH A DUTY OF FAITHFULLY  
ADMINISTERING AND ACCOUNTING  
FOR ALL ASSETS IN THE GRANTOR'S ESTATE; IF YOU HAVE  
ANY QUESTIONS WHATSOEVER,  
CONTACT AN ATTORNEY FOR ADVICE.**

# CHECKLIST OF GRANTOR'S ASSETS

if you assume responsibility for the grantor's affairs, you should gather the following documents. If you are not assuming responsibility for the grantor's affairs at this time, you should determine the location of the following documents for future reference.

## Real Estate

- All deeds, abstracts, certificates of title, and title policies
- Contracts for deed (land contracts)
- Mortgages and deeds of trust
- Leases
- Current year's tax statements
- Partnership agreements relating to real property interests

## Securities

- Stock and bond certificates
- Mutual fund statements
- Brokerage house statements

## Bank Accounts and Cash

- Amount and location of cash
- Uncashed checks on which grantor's name appears
- All checkbooks, bank books, certificates, and other evidence of deposits with financial institutions
- Promissory notes

## Life Insurance

- All policies on grantor's life
  - All policies owned by grantor on the lives of others
- Miscellaneous Assets**
- Business interests in sole proprietorships
  - Partnership agreements
  - Trust instruments and information on any pending estate or trust which grantor has an interest.
  - Description of tangible personal property and its value
  - Accounts receivable
  - Certificates of ownership in motor vehicles, boats, and recreational vehicles
  - Fraternal lodge benefits or union benefits
  - Employee benefits, i.e. IRA, Keogh, Profit Sharing, 401K, etc.
  - Annuities
  - Safety Deposit Box Numbers and Keys
- Other Items**
- Copies of grantor's income tax returns for last three years preceding guardianship
  - Any gift tax returns filed by grantor
  - List of grantor's debts at date of establishment of guardianship
  - Birth certificate
  - Marriage certificate and/or divorce decree
  - Military records (Branch of service, ID, dates of service)
  - Passport/Citizenship Papers
  - Advance Directives, Living Wills, Organ Donor Card
  - Burial arrangements and Cemetery information







## TOP TEN LIST FOR CAREGIVERS

1. **Organize and Keep Important Papers.** You can get information about how to get important documents at [www.socialsecurity.gov/vitalstats.html](http://www.socialsecurity.gov/vitalstats.html). You may be called upon to produce bank statements, deeds, birth certificates, marriage certificates, divorce decrees, death certificates, life, health, and long term care insurance policies, stock or bond certificates, IRA statements, 401(k) statements, Social Security cards, medicare cards, veteran identification cards, funeral arrangements, power of attorney, will, living will, appointment of health care representative, property transfer records, trust documents, income records, vehicle titles, and appraisals.
2. **Health Care Advance Directives:** Plan ahead concerning how decisions will be made if you are ever unable to consent to your own health care. You can state who you want to make health care decisions for you and what care you do or do not want in certain situations, such as at the end of your life. If you do not sign legal documents designating who you want to make health care decisions, anyone of the following relatives may decide for you: your spouse, adult child, parent, or adult sibling.
3. **Power of Attorney to manage your property and financial affairs:** Designate who you want to manage your property and finances if you are unable to handle this. If you do not designate someone in advance, then there may not be anyone with legal authority to act and a guardianship may become necessary. This lets you decide who you want to manage your affairs. It may or may not be the same person you want to make your health care decisions. If you do not designate a power of attorney, your financial matters may be managed by a representative payee for Social Security benefits or by a joint owner of a bank account.
4. **Estate Planning:** A will or trust determines how your property will be distributed after your death. (A trust can also be used to manage your property during your lifetime.) You should review this at least once a year and whenever anyone named in your will or trust dies before you.
5. **Review and Understand Your Health Care Insurance Coverage.** It is helpful to review and understand your health insurance coverage. Then you should consider whether you need to purchase additional coverage or whether you may qualify for Medicaid or other assistance. Many people are surprised to learn that most standard insurance covers little, if any, long term care costs. Though they can be expensive, depending on the age at initial purchase, there are long term care insurance policies available which are useful for some people. You can contact the Senior Health Insurance Information Program (SHIIP) at 1-800-452-4800 or 317-233-3475 for questions about Medicare, Medicare supplement, long term care, other health insurance policies, and assistance programs. SHIIP also has many written informational materials available, including a long term care insurance self-assessment guide.
6. **Pre-plan and Prepay your Funeral.** This will help your family when you die and will help insure that your funeral will meet your wishes. Pre-paying is beneficial because the family will not need to pay when you die, the price will be fixed, and any amount prepaid will not affect Medicaid eligibility, if it is ever needed. If you do not prepay your funeral

expenses, you may designate the funeral director of your choice as the beneficiary of your life insurance policy. If you have no other funeral resources, you may have life insurance with a face value of up to \$10,000.00 and still qualify for Medicaid if the beneficiary of the policy is the funeral director or your estate. In order to qualify for Medicaid you will have to designate Medicaid as the beneficiary of any life insurance proceeds left over after your funeral is paid.

**7. Review Your Property Taxes, if you own your home.** There are additional real estate tax deductions and credits available to seniors for which you may be eligible. A person 65 years or older (or a surviving spouse 60 years or older whose deceased spouse was at least age 65 at the time of death) can qualify for an additional deduction if his or her adjusted gross income, for federal tax purposes, is less than \$25,000. There are also additional deductions for blind persons, disabled persons and disabled veterans.

**8. If Long Term Care is on the horizon, consult an attorney knowledgeable about Medicaid.** Nursing home care typically costs \$40,000 per year or more and will quickly drain many persons' assets. An attorney knowledgeable about Medicaid can advise you on what you can or cannot do with your assets to qualify for Medicaid. An attorney can help you to preserve income and assets for a spouse who does not have to go to a nursing home. An attorney can help you avoid Medicaid penalties. An attorney can help you appeal if your application for Medicaid is denied or if you need to keep a greater amount of income or assets for the spouse who does not go to the nursing home.

**9. Avoid Consumer Scams.** If it sounds too good to be true, it most likely is not true! Remember that you have the right to say "no". If you are getting calls at home that you do not want, you can telephone 1-888-834-9969 to join the "no call" list. Never sign a contract unless you have read it, understand it, and agree with it. You can also ask a trusted family member, friend, or lawyer to read the contract before you sign it. For direct solicitation at your home, you have three days to cancel your agreement, but you must do so in writing. Do not co-sign a contract for anyone unless you are willing and able to make the payments, as you can be held liable under that contract. Remember also that your Social Security and Veterans' benefits cannot be garnished or attached, even after they have been deposited in your bank account. You cannot be compelled to pay a bill, other than child support or a government debt, from these funds, even if a judgment is entered against you by a court.

**10. Review what assistance you may qualify for.** There are various programs available to help seniors in need. Contact your county Division of Family & Children to inquire about Medicaid, Hoosier Rx, and food stamps. SHIP can also give you information about prescription assistance programs, including the Medicare drug benefit. Your area aging agency (Generations or SWIRCA) can also assess your needs and help identify potential assistance which may be available. Your local Indiana Legal Services office is also a useful source of information.

This information was provided by Katherine Rybak, Indiana Legal Services, Inc., Evansville, IN. For legal assistance, call 1-800-852-3477 or 812-426-1295 Tuesday from 11:00 to 1:00 p.m. or Wednesday from 9:00 a.m. to 11:00 a.m.