the document. Nonetheless, if multiple agents are appointed, the principal can allow them to act independently or require them to act in unison, based on the wording of the power of attorney. In either case, multiple agents should communicate regularly to assure that their actions are consistent.

Should an agent keep any records?
Unless otherwise stated in the power of attorney document, the agent is required to keep detailed records of his or her actions under the power of attorney so the agent is able to answer any questions raised by the principal or other interested persons. The agent is required by law to provide an accounting to the principal and anyone else designated in the power of attorney. When an agent manages the finances for a principal, the most important rule for the agent is to maintain separate accounts. An agent should never commingle two or combine the agent's own funds with those of the principal.

Can the agent be reimbursed for expenses and compensated for work?
Unless otherwise stated in the power of attorney document, an agent may be reimbursed for reasonable expenses and compensated for his or her work. To ensure that the agent is reimbursed for expenses and compensated for work performed, especially an agent who is a close family member, the principal should include this direction in the power of attorney.

Can a principal hold an agent liable for the agent's actions?
An agent is a "fiduciary," which means that the agent must act with the highest degree of good faith on behalf of the principal. The agent must follow any and all instructions given by the principal. If the principal's wishes are not specific, the agent is free to do what is in the best interests of the principal. The agent must act in accordance with the principal's best interests, not the agent's interests. If an agent fails to act in accordance with the principal's wishes, or in the principal's best interests, the agent can be held liable for his or her actions.

When an agent acts for the principal's benefit under a Financial Power of Attorney, the law holds the agent to the "prudent man rule," which means that the agent must exercise "due care" and manage the principal's funds not as if they were the funds of the agent, but with the care needed for managing funds of another. The agent should avoid speculative investments, even if the agent would be willing to take more risk with his or her personal funds.

What if I think someone is misusing a power of attorney?
Although having a power of attorney has many advantages, the primary disadvantage is that it gives an agent the opportunity to take advantage of the principal. Financial exploitation, which includes the illegal and/or unauthorized use of an individual's funds, property, or resources for profit or advantage, is on the rise and requires prompt reporting. If you suspect that an agent is misusing a power of attorney, you should take immediate action.

If you suspect your agent is misusing your power of attorney, you should immediately request an accounting, revoke the power of attorney and notify any people or institutions that may have been given a copy of the document. If you suspect someone else's agent is misusing a power of attorney, or if you suspect that a principal was coerced to sign a power of attorney the principal did not (or could not) understand, you should contact Adult Protective Services to report your concerns.

Also, any person interested in the welfare of the principal who suspects an agent is misusing a power of attorney can make a written complaint to a court in the county where the principal resides. If an agent has misused a power of attorney, the court can force the agent to return any stolen assets.

What do I do with my power of attorney document?
You should give your original power of attorney to the agent you appoint, and keep a copy of the document for yourself with your other important papers. Additionally, you may want to provide banks or doctors with copies of the power of attorney for their files.

What if my agent wants to resign?
An agent may resign according to the terms and conditions stated in the power of attorney. The agent must notify, in writing, the principal, the guardian and / or conservator (if any), any successor agent named in the document and all reasonably ascertainable third parties who might be affected by the resignation. However, if the principal is incapacitated and there is no guardian, conservator, co-agent or successor agent, the agent may resign by giving notice to the principal's caregiver, another person the agent reasonably believes has sufficient interest in the welfare of the principal, or to a governmental agency having authority to protect the principal.

When does a power of attorney expire?
For a non-durable power of attorney, the power of attorney expires when the principal becomes incapacitated.

A durable power of attorney expires when either the principal dies (and the agent has knowledge of the death); the principal revokes the power of attorney, the agent's authority under the power of attorney provides that it terminates; the express purpose of the power of attorney is accomplished; or the agent dies, becomes incapacitated or resigns, and the power of attorney does not provide for another agent to act.

Is my power of attorney valid in other states?
A power of attorney is valid in any state, regardless of where the individual lived when the power of attorney was created. However, laws regarding powers of attorney very from state to state. Furthermore, powers of attorney are not binding on third parties.

What is a limited power of attorney?
A Limited Power of Attorney, also known as a Special Power of Attorney, grants an agent the legal authority, in writing, to perform a specific act or acts on behalf of the principal. For example, if you do not want to grant an agent full control over your financial matters, but would like an agent to cash your checks, you can limit the agent's powers by preparing a Limited Power of Attorney.

This pamphlet is published as a public service by the Colorado Bar Association. Its purpose is to inform citizens of their legal rights and obligations and to provide information regarding the legal profession and how it may best serve the community. Changes may have occurred in the law since the time of publication. Before relying on this information, consult an attorney about your individual case.

Financial Powers of Attorney

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FINANCIAL POWERS OF ATTORNEY

A Financial Power of Attorney, also known as a General Power of Attorney or General Power of Attorney for Property, is a very flexible and inexpensive method for a person (the "principal") to give another (the "agent" or "attorney-in-fact") legal authority to manage some or all of the principal's financial affairs. The agent has the obligation to make decisions based upon the preferences of the principal and the authority granted in the document. An agent may not override the wishes of the principal. In general, the agent has authority to do whatever the principal may do — withdraw funds from bank accounts, trade stock, pay bills, cash checks — except as expressly limited in the power of attorney. When transacting business on behalf of the principal, the agent must use the principal's finances as the principal would use them for the principal's own benefit.

What is the difference between a medical and a financial power of attorney?

A Medical Power of Attorney generally gives an agent the authority to make medical and personal care decisions on behalf of the principal. A Financial Power of Attorney gives an agent authority to manage the principal's finances and property, and to transact business on behalf of the principal.

What is a durable power of attorney?

A "durable" power of attorney permits an agent to make decisions on behalf of the principal even if the principal becomes incapacitated. Under prior Colorado law, to make your power of attorney durable, you must include language which states that "this power of attorney shall not be affected by disability of the principal" or "this power of attorney shall become effective upon the disability of the principal," or similar words to confirm that you intend for the agent's authority to continue regardless of your subsequent disability or illness. However, all financial powers of attorney signed after January 1, 2010 are considered "durable" unless otherwise stated in the document.

Why should I have a durable power of attorney?

If you become incapacitated because of an accident or illness, your agent can immediately step in and make decisions for you without going to court to obtain a guardianship and / or conservatorship. Guardianship and conservatorship proceedings may be expensive, public and time consuming. By preparing a durable power of attorney in advance, you decide who will make your decisions and, by doing so, you may save your family the stress and expense of a court proceeding.

How do I create a power of attorney?

Any adult, who understands what he or she is doing, can create a power of attorney by writing down the name of the person he or she wishes to designate as an agent and exactly what he or she wants the agent to do. Once the document has been prepared, it should be notarized.

Because a power of attorney should be tailored to your particular circumstances, it should be written by an attorney to assure that your intentions are clearly expressed. If you choose not to have an attorney assist you, you will find power of attorney forms available to the public through various sources. However, the "State of Colorado Statutory Form, Power of Attorney" is probably the best form to use. You will find this form at § 15-14-741, Colorado Revised Statutes (2010).

What are "hot powers"?

For all powers of attorney signed after January 1, 2010, the principal must have stated that the agent has certain powers, casually referred to as "hot powers." These "hot powers" include the power of the agent to: create, amend, revoke, or terminate a trust, make a gift; create or change rights of survivorship; create or change a beneficiary designation, delegate authority granted under a power of attorney; waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; exercise various powers held by the principal in a fiduciary capacity; and disclaim or release property or a power of appointment.

If the power of attorney does not include these "hot powers" then the agent lacks the authority to exercise any of these powers for the principal. The "hot powers" are all listed as options in the statutory power of attorney form mentioned above.

When does a power of attorney take effect?

The terms of a power of attorney will determine when it takes effect. In general, a power of attorney may take effect in two different ways. The first is referred to as a "springing power," which means that the power of attorney will take effect only when an event described in the instrument takes place. Typically, the event would be when a licensed physician determines that the principal is incapacitated. The second type is a "standing power," which takes effect as soon as it is signed by the principal. However, powers of attorney may contain language that blends these two concepts. For example, a principal may direct that a power of attorney is "standing" if the principal's spouse is acting as agent; however, if the spouse cannot act, the successor agent's power may be "springing." For all powers of attorney signed after January 1, 2010, if they are silent on the effective date, the power of attorney is considered a "standing" power.

Does a power of attorney take away a principal's rights?

A power of attorney does not take away a principal's rights to make decisions. An agent simply has the power to act along with the principal, in accordance with the authorization set forth in the document. Only a court, through a guardianship and / or conservatorship proceeding, can take away a principal's rights.

Can a principal change his or her mind?

A principal may change his or her mind and revoke a power of attorney at any time, so long as the principal has capacity. All a principal needs to do to revoke a power of attorney is send a letter to the agent notifying the agent that their appointment has been revoked. From the moment the agent receives a revocation letter, his or her agent can no longer act under the power of attorney. The principal should also send a copy of the revocation to any person or institution that may have received notice of the original power of attorney, such as doctors or banks. Otherwise, those individuals or institutions may continue to rely on the power of attorney until they are given notice of the revocation.

State law automatically revokes the principal's appointment of a spouse as an agent when a petition for divorce, annulment or legal separation is filed. However, if the principal named a successor agent in the document, the power of attorney would remain in effect for the successor agent.

Who should I name as my agent?

The selected agent should be an adult who the principal trusts. Common choices for agents are a spouse, an adult child, a sibling, or a trusted friend. Some principals choose professional fiduciaries to serve as their agents. Either way, you should ask the person you want to name for permission to name them as an agent to assure they are willing to accept the appointment. A principal needs to carefully consider the choice of agent, monitor the agent and consider other appropriate safeguards, such as including language in the document that allows successor agents or other family members to have some oversight of the agent currently serving.

What is a successor agent?

A successor agent is the person named to serve as your agent if your first choice for agent cannot serve due to death, incapacity, resignation or refusal to accept the office of agent. If a named individual is unable or unwilling to serve as agent, the next person in line under the document becomes agent.

No one can take over as an agent under a power of attorney unless the principal names a successor agent (or agents) in the document, or if the principal authorizes the agent to appoint a successor agent. If neither is possible, and the principal has become incapacitated, it may be necessary to petition the court for appointment of a guardian and / or conservator. Therefore, it is always best to name at least one successor agent in your power of attorney, or to give your agent, or a third party, the permission to name a successor agent if there are no more listed in the power of attorney.

What if a principal appoints multiple agents?

A principal may appoint more than one agent to serve simultaneously, but this typically is not recommended. Having more than one agent as a decision maker can create a circumstance in which the agents do not agree on a particular course of action. When the agents do not agree, a court may have to resolve the dispute. It is usually better to appoint only one person to be the decision maker, or to provide a tiebreaking mechanism in