

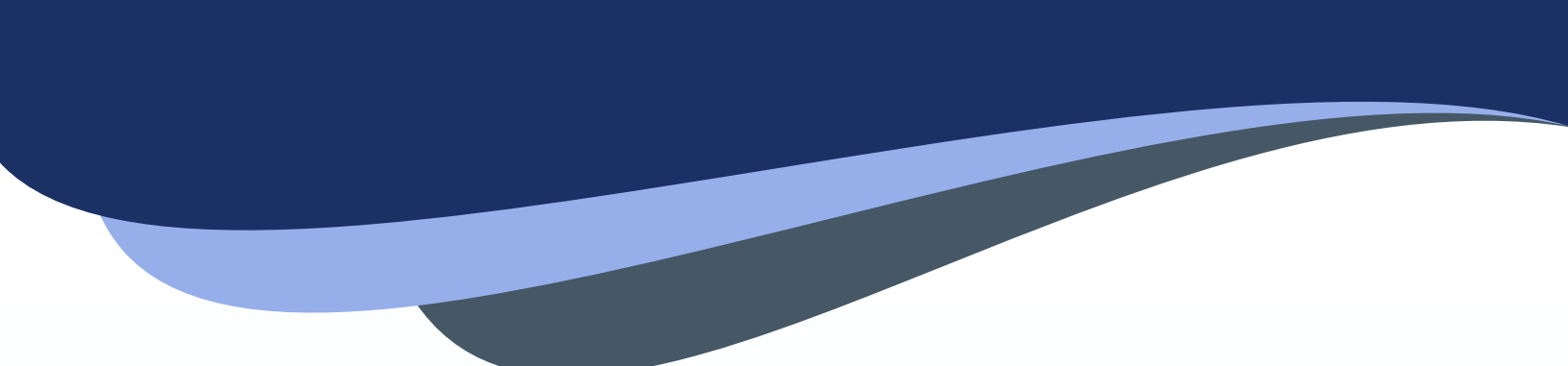
Fiduciary Resource Guide for Agents Granted by a Power of Attorney Document

Information from State Employees' Credit Union

State Employees' Credit Union®



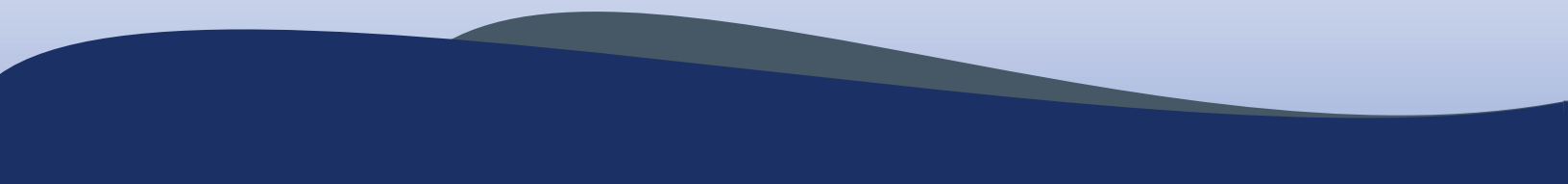
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Power of Attorney

A power of attorney (POA) is a document by which a person (the principal) appoints another person (the agent) to act on his or her behalf. For example, a friend or loved one might sign a power of attorney that grants you, as agent, the ability to perform banking transactions or to borrow money on the principal's behalf. Because a power of attorney grants power over the principal's property, the principal and agent should carefully read the document to ensure they understand the scope of the authority granted to the agent. If a friend or loved one has appointed you as their agent, this resource guide will help explain what you should and should not do. Best practices for acting as someone's agent are as follows:

- **Always act in the principal's best interest**
 - > Use funds only for the principal
 - > Think carefully before you loan or gift money
- **Be diligent in managing the principal's funds**
 - > Pay bills on time
 - > Invest carefully
 - > Keep a list of all accounts, properties, debts, etc.
- **Keep the principal's funds separate from your personal funds**
 - > Do not commingle funds
 - > Avoid joint accounts
- **Keep detailed records**
 - > Detail funds received and how funds are spent
 - > Avoid paying cash
 - > Keep all receipts



When a power of attorney is presented to the Credit Union, the Credit Union will review the document and request that you sign a Power of Attorney Affidavit before performing transactions or obtaining information about the principal's accounts. If you have questions regarding your role, or the power of attorney document, you should consult an attorney.

Frequently Asked Questions

1. Who should help create a power of attorney document?

- Anyone who needs a power of attorney document should contact an attorney, who will evaluate the circumstances and draft a document to fit the person's specific needs. A power of attorney document is included as part of SECU's Estate Planning Essentials Program. For more information about estate planning or SECU's Estate Planning Essentials Program, please contact a local branch and ask to speak with a Trust Representative.

2. Who can sign a power of attorney document?

- Any person who is at least 18 years of age can sign a power of attorney document, as long as the person has the capacity to understand the powers that the document grants. The attorney who drafts the document is responsible for determining whether the principal has the capacity to sign and understand the document.

3. When is a power of attorney document effective?

- Power of attorney documents are effective immediately upon the principal's signature, **unless** the document specifically states that it is only effective upon some future occurrence. For example, the document could state that it becomes effective only upon the principal's incapacity.



Frequently Asked Questions

4. Can a power of attorney document become effective only after the occurrence of a specific event, such as the principal becoming incapacitated?

- Yes. The agent may need to provide documentation proving that the stated event has occurred (for example, if the document becomes effective upon the principal's incapacity, the agent may need to provide two doctors' letters stating that the principal is incapacitated).

5. Can a power of attorney become ineffective at a specific date?

- Yes. A specific period of time can be stated in the document. After the time period has passed, the agent no longer has the authority to act using the power of attorney.

6. Can a power of attorney document be revoked?

- Yes. A principal can revoke the power of attorney in writing at any time, as long as the principal has the capacity to do so.
 - > If the power of attorney is recorded with the Register of Deeds, there are specific requirements that must be met in order to revoke the document.
 - > The principal should consult an attorney for questions regarding revoking a power of attorney document.

7. Can a power of attorney document allow the agent to act only with respect to a specific transaction?

- Yes. For example, a power of attorney document could grant the agent the power to cash a specific check or the power to complete the sale of a specific property without including other powers.



Frequently Asked Questions

8. What can an agent do at the Credit Union on the principal's behalf?

- It depends on the authority granted by the power of attorney document. The document may include powers such as banking transactions, lending transactions, and safe deposit box transactions.

9. Must an agent bring the power of attorney document to the Credit Union?

- Yes. The agent will need to bring a copy of the power of attorney document to the Credit Union. The Credit Union will review the document and request a signed Power of Attorney Affidavit before allowing the agent to perform the requested transaction.

10. May an agent get information, make deposits to or withdraw funds from the principal's Credit Union accounts?

- Maybe. An agent may have access to the principal's deposit accounts if the power of attorney document grants the power to deposit, withdraw, or perform banking transactions.
- The agent should always act in the principal's best interest when performing transactions on the principal's behalf.

11. May an agent handle the beneficiary's Social Security benefits instead of being appointed as Representative Payee?

- No. The Social Security Administration (SSA) does not recognize the use of a POA for purposes of handling SSA benefits. Only a designated Representative Payee may handle the beneficiary's funds from SSA.
- If you are serving as agent for a person who is receiving SSA funds, you cannot use the POA to handle the SSA funds. Someone must apply to be SSA Representative Payee, must keep SSA funds separate from the person's other funds, and must keep separate records regarding how the funds are spent.



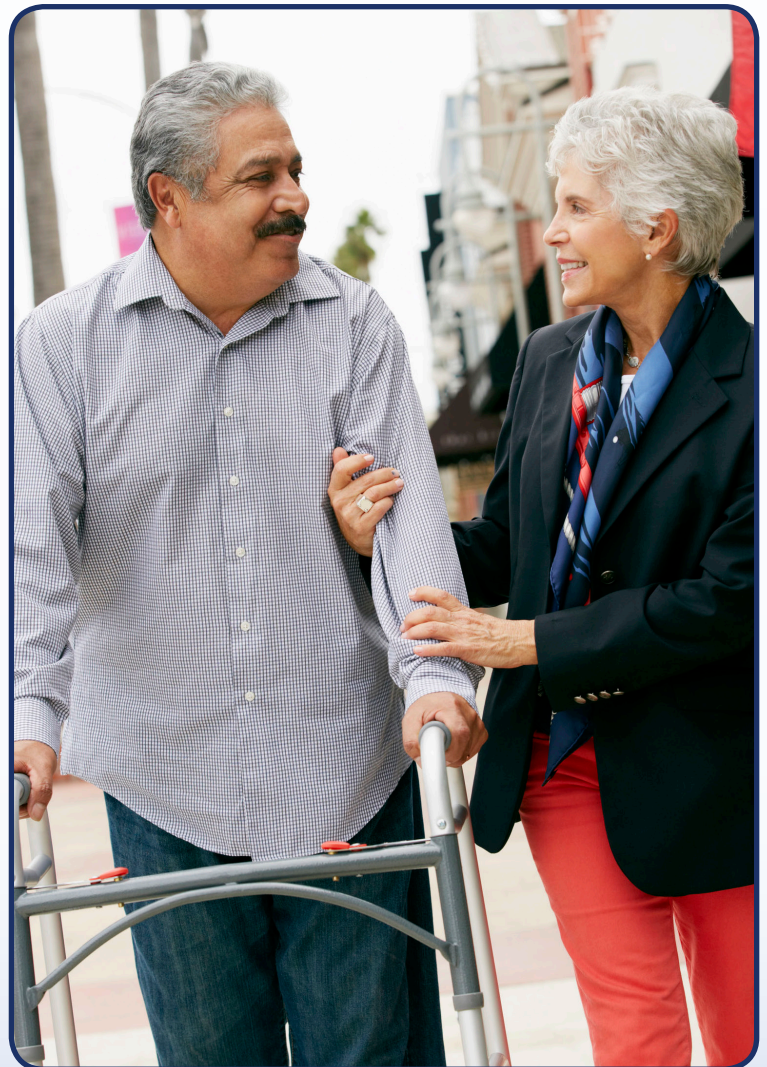
Frequently Asked Questions

12. May an agent restrict the principal's access to the principal's own accounts?

- No. Power of attorney documents cannot restrict the principal's ability to access the principal's own accounts or any other property.
- If the principal is putting assets at risk due to incapacity, it may be appropriate to contact the Clerk of Superior Court regarding a guardianship of the estate or a general guardianship. For more information about guardianship, please see the *SECU Resource Guide for Guardians Appointed in North Carolina*.

13. May an agent add a joint owner to the principal's accounts? What are the consequences of adding a joint owner to the principal's accounts?

- Maybe. An agent may add a joint owner to the principal's accounts if the power of attorney document allows it.
- If allowed to do so, an agent must carefully consider the consequences of adding a joint owner to the principal's accounts. Adding a joint owner could cause the principal's accounts to be subject to collection by the creditors of the new joint owner. In addition, adding a joint owner to Credit Union accounts will change how the account is distributed upon the principal's death. When the principal dies, the funds in the account will belong to the joint owner through right of survivorship, instead of the principal's estate, potentially disinheriting the principal's heirs.



Frequently Asked Questions

14. May an agent add or change payable on death beneficiary designations on the principal's accounts? What are the consequences of adding a payable on death beneficiary to the principal's accounts?

- Maybe. An agent may add a payable on death beneficiary to the principal's accounts if the power of attorney document allows it.
- Agents must carefully consider the consequences of adding or changing payable on death beneficiary designations, as doing so will change how the account is distributed upon the principal's death. When the principal dies, the funds will be payable directly to the beneficiary, which may not be in accordance with the principal's estate plan.
- The agent should consult with an attorney before adding or changing a payable on death beneficiary on any of the principal's accounts.

15. May an agent make a gift of the principal's property to someone else? May an agent make a gift of the principal's property to himself or herself? For example, can the agent transfer funds from the principal's account to an account owned by another person, or to an account owned by the agent?

- Maybe. Gifting provisions in power of attorney documents can be restrictive regarding the circumstances under which the agent can make gifts and the persons who can receive these gifts.
- If allowed to do so, the agent must carefully consider the consequences of gifting funds owned by the principal. For example, the agent needs to consider whether the principal has enough funds to pay for living expenses, whether there will be tax consequences for the gift, and whether the gift will prevent the principal from qualifying for governmental benefits, such as Medicaid. Agents making gifts in order to qualify the principal for governmental benefits should consult with an elder law attorney or a caseworker who works for the government agency to ensure that all transfers comply with the strict qualification guidelines.



Frequently Asked Questions

16. May an agent obtain a loan on the principal's behalf?

- Maybe. An agent may obtain a loan on the principal's behalf if the power of attorney document allows the agent to borrow money on the principal's behalf or to otherwise encumber the principal's property.
- The principal must qualify for the loan. The agent's income and credit history will **not** be considered for a loan in the principal's name.

17. May an agent access the principal's safe deposit box?

- Maybe. An agent may access the principal's safe deposit box if the power of attorney document specifically allows the agent to access the safe deposit box on the principal's behalf.



Frequently Asked Questions

- 18. If the power of attorney document names more than one person as agent, must all of the agents sign for each transaction?**
- Maybe. The document could require all agents to act together, or could allow the agents to act independently. The document could also require that all agents act together only with respect to certain types of transactions. Agents must ensure that they are acting in accordance with the document.
 - If multiple agents need to act on the principal's accounts simultaneously, all agents will need to sign the account signature form to be added as authorized signers on Credit Union accounts. Successor agents will not have any authority or be listed on the principal's accounts until the successor begins to act as agent.
- 19. May an agent access the principal's accounts after the principal becomes incapacitated?**
- Maybe. To be effective after the principal becomes incapacitated, the power of attorney document must be durable. For documents drafted in North Carolina, a document is considered durable unless the power of attorney specifically states that it ends upon the principal's incapacity.
- 20. May an agent access the principal's accounts after the principal's death?**
- No. Upon the principal's death, the power of attorney document is no longer effective. Therefore, power of attorney documents cannot be used after the principal's death.



- 1. Power of Attorney:** A legal document in which a person (the principal) appoints another person (the agent) to act on the principal's behalf to perform transactions based on powers granted in the document.
- 2. Principal:** A person who has executed a power of attorney document appointing someone to act as an agent.
- 3. Agent (also referred to as attorney-in-fact):** A person named in a power of attorney document to act on the principal's behalf in regard to the powers granted in the document.
- 4. Durable Power of Attorney:** A power of attorney document which continues in effect notwithstanding the principal's incapacitation.
- 5. Springing Power of Attorney:** A durable power of attorney document that is effective only after the occurrence of a specific event, such as the principal becoming incapacitated.
- 6. Limited Power of Attorney:** A power of attorney document which is only effective during a time period stated in the document.
- 7. Special Power of Attorney:** A power of attorney document which limits the agent's authority to only a specific matter.
- 8. Incapacitated:** To be impaired by mental or physical illness or disability to the extent that personal decision-making is compromised.
- 9. Incompetent:** To have been declared, by the Clerk of Superior Court, unable to manage affairs or communicate important decisions due to a lack of sufficient mental capacity.
- 10. Power of Attorney Affidavit:** An affidavit where the agent swears or affirms that actions they have taken under the power of attorney document are within the scope of the document's authority. The Credit Union requires all agents to sign an affidavit before acting on the principal's account(s).



