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What you need to know if you're an agent under a power of attorney

If someone has named you as an agent under a durable power of attorney, you'll be allowed to handle that person's finances. (The person who signs the power of attorney is known as the "principal"; you'll be known as the agent or "attorney-in-fact.") Here are answers to some questions you might have:

What are my duties?

You're responsible for handling the principal's financial affairs. Generally, you can step into his or her shoes and take whatever investment and spending measures the principal would ordinarily take. This may include opening bank accounts, withdrawing funds, trading stocks, paying bills, and cashing checks. Read the power of attorney document carefully; it might give you other powers (such as making gifts), or place certain limits on your powers. Note that any financial steps you take must be consistent with your role as a "fiduciary."

What does it mean to be a fiduciary?

It means you must always act in the principal's best interest (not necessarily in your own best interest), and always keep his or her goals and wishes in mind when making any decisions.

When does the power of attorney take effect?

Some power of attorney documents take effect as soon as they're signed by the principal. Others, called "springing" powers, take effect only if the principal becomes incapacitated (and some require that the person's incapacity be certified by one or more doctors). But you should note that, even if a power of attorney is immediately effective, the signer often doesn't intend for it to be used unless he or she actually becomes incapacitated. You should discuss this with the principal so that you understand his or her wishes.

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What if there is more than one agent?

Some powers of attorney require all agents to agree on any action, and some say that each agent can act independently. But even if you

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CONNELLY LAW OFFICES
372 Broadway, Suite A, Pawtucket, RI 02860
Phone: (401) 724-9400
Fax: (401) 724-3046
www.connellylaw.com

Social Security can be seized to pay debts – sometimes

If you don't pay your debts, creditors can generally obtain a court order to garnish your wages. But what if your income comes from Social Security? In that case, the answer is a bit more complicated.

For most types of debts (including credit cards, medical bills, and personal loans), Social Security benefits cannot legally be garnished to pay them off. But how this actually works in practice can be tricky.

Suppose you receive $1,500 a month in Social Security, and have it directly deposited in your bank account. If a creditor tries to freeze your account, the bank must allow you access to any Social Security funds deposited within the last two months. So the bank would have to allow you access to $3,000 in your account.

On the other hand, if Social Security mails you a check and you deposit it yourself, the bank doesn't automatically have to exempt the money from a freeze. In order to stop a garnishment, you would generally have to go to court and prove that some of the money in the account came from Social Security.

You should also note that there are other types of debts for which a creditor *can* garnish your Social Security payments. These include federal taxes, federal student loans, and child support and alimony.

In general, if you owe federal taxes, the government can garnish 15 percent of your Social Security checks to pay your debt.

For student loans, the government can also take 15 percent of your Social Security checks, although it can't cause your account balance to fall below $750.

You might think that not many seniors are paying off student loans, but surprisingly, student loan debt is a growing crisis among elderly Americans. There's no statute of limitations on student loans, so it doesn't matter how long ago the debt occurred. In addition, many seniors aren't paying off their *own* loans; they're paying off loans that they co-signed for their children and grandchildren.

People who are 65 or older in the U.S. now owe some $18.2 billion on student loans, and 27 percent of these loans are in default. Among people aged 75 or older, the default rate is more than 50 percent.

As for child support and alimony, the rules vary from state to state. Under federal law, the maximum amount that can be garnished is 50 percent of your Social Security benefit if you're supporting another spouse or child, 60 percent if you're not supporting another spouse or child, or 65 percent if the support is more than 12 weeks in arrears. However, some states place additional restrictions on the amount that can be garnished.

These rules don't apply to Supplemental Security Income, which is protected from garnishment even if the creditor can garnish regular Social Security. However, Social Security Disability Insurance can be garnished in the same way that regular Social Security can be garnished.

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Long-term care premiums dip for men, rise for women

On average, long-term care premiums are decreasing for men and increasing for women, according to a study by the American Association for Long-Term Care Insurance, an industry trade group.

For instance, a healthy 55-year-old man can expect to pay an average of $1,015 annually for a new policy offering $164,000 in long-term care benefits, which is down 4.2 percent from last year, according to the group.

But for a woman in the same situation, the average premium would be $1,490 – an increase of 7.2 percent over last year.

The difference reflects the fact that, statistically, women are more likely than men to incur significant long-term care expenses.

Rates for policies covering married couples are declining. For example, if a married couple who are both age 60 buy a policy this year covering $328,000 of long-term care, the average premium will be $2,010 – down 7.5 percent from last year. If the couple elect an inflation growth option that will build their benefit pool to a combined $730,000 at age 85, it will cost an average of $3,560 a year, which is 9.4 percent lower than last year.

The study considered policies in Tennessee, which the trade group considers a representative state. However, rates in other states may vary somewhat.

Also, the group notes that there is a wide range of premiums, such that some companies charge well above the average while others charge considerably less. So it's worth the effort to shop around.

What you need to know as an agent under a power of attorney

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can act independently, it's important to communicate with any other agent, to make certain your actions are consistent.

Can I be held legally liable for my actions as an agent?

Yes, but generally only if you act with willful misconduct or gross negligence. If you do your best and keep the principal's interests in mind as the basis of your actions, you should be fine.

Can I be fired?

Yes. A principal may revoke a power of attorney at any time, usually just by sending you a letter to this effect. If a conservator or guardian is appointed for the principal, this doesn't automatically cancel a power of attorney. However, conservators and guardians can choose to revoke a power of attorney if they want to.

What records should I keep?

It's very important to keep good records of your actions, so as to be able to answer any questions anyone might raise. The most important rule is not to commingle the funds you're managing with your own money. Keep everything in separate accounts. Often, the easiest way to keep records is to run all funds through a separate checking account; the checks will act as receipts and the checkbook register can serve as a running account.

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Can I be paid for acting as an agent?

Yes, if the principal agrees to pay you. In most cases, the agent is a family member and doesn't expect to be paid. If you'd like to be paid, you should discuss this with the principal, agree on a rate of payment, and put that agreement in writing so as to avoid misunderstandings. Any payments for services should be reasonable; a payment that's too large might raise tax issues or suggest that you're not truly acting as a fiduciary.

Be careful if different people handle your finances, health care

It's not uncommon for seniors to name one person in their power of attorney document to handle their finances if they become incapacitated, and to name someone else to make decisions for them in their health care proxy.

For instance, a senior might live with one child or be very close to him or her, and trust that child to make medical decisions – because the child is familiar with the senior's day-to-day health issues. On the other hand, that child might be bad with finances, or another child might simply have a much more helpful financial background or a greater willingness to handle bills, taxes and investments.

That's fine – as long as the two get along and agree on everything. A problem can arise, though, if the two ever disagree. That's because a child making health care decisions might not be able to put them into effect unless the other child agrees to pay for them.

For instance, what if one child believes the senior needs nursing home care, while the other prefers having aides at home? The child named in the health care proxy can make all the decisions he or she wants, but those decisions will have little effect if the child named in the power of attorney document refuses to release the funds.

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That's not to say that you shouldn't name different people for the two tasks, but it's wise to give some thought to how to resolve any conflicts. You might, for instance, specify in your power of attorney document that your agent must comply with decisions made by the person named in your health care proxy.

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372 Broadway, Suite A, Pawtucket, RI 02860
Phone: (401) 724-9400
Fax: (401) 724-3046
www.connellylaw.com

Medicare now covers conversations about end-of-life care

Did you know that 40 percent of people over age 65 haven't written down their wishes regarding life support and other end-of-life treatment? One reason for this may be that people haven't had a conversation with their doctor about the options that are available.

In the past, Medicare didn't cover these doctor-patient conversations – except during the patient's initial "Welcome to Medicare" visit, a time when the topic might not seem very relevant.

Under new regulations, however, Medicare will cover these conversations at any time.

These purely voluntary discussions are intended to help patients who may at some point face a terminal illness, and be unable to express their wishes, to deal with such a situation on their own terms. For instance, for many patients, life-prolonging medical procedures that don't improve quality of life are unwanted and unwelcome, while others may want certain treatments only under certain circumstances.

Patients can learn about options such as life support, palliative care, and hospice care. They can also learn about legal documents they can sign to make their wishes clear, such as advance directives and health care proxy forms.

The government believes paying for the discussions will save money in the long run, since a quarter of all Medicare expenses are incurred during the last year of life, and Medicare often pays for treatments that patients would decline if they had the choice.

Under the new regulations, end-of-life discussions are reimbursable under Medicare Part B. A co-payment will be required, unless the discussion takes place as part of an annual wellness visit.