

On April 9, 2009, Colorado enacted the Uniform Power of Attorney Act, C.R.S. §§ 15-14-701, *et seq.*, effective January 1, 2010. The Act significantly changes the laws concerning the use of powers of attorney in Colorado. This form is the statutory form under C.R.S. § 15-14-741 (minor stylistic changes have been made to the statutory form). The Orange Book Forms Committee is preparing a new power of attorney form, which will include optional language for custom drafting. We expect a new power of attorney form to appear in the 2011 Supplement to *Orange Book Forms*.

Because of the significant changes to Colorado's power of attorney statutes, the Orange Book Forms Committee strongly encourages all practitioners to read the new statutes in detail and become familiar with them *prior to* drafting any powers of attorney, including the new statutory form, after January 1, 2010.

STATE OF COLORADO
STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the "Uniform Power of Attorney Act," Part 7 of Article 14 of Title 15, Colorado Revised Statutes.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die, revoke the power of attorney, the agent resigns, or the agent is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the special instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the special instructions. Coagents are not required to act together unless you include that requirement in the special instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the special instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I, _____, (name of principal) name the following person as my agent:

Name of agent: _____

Agent's address: _____

Agent's telephone number: _____

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of successor agent: _____

Successor agent's address: _____

Successor agent's telephone number: _____

If my successor agent is unable or unwilling to act for me, I name as my second successor

agent:

Name of second successor agent: _____

Second successor agent's address: _____

Second successor agent's telephone number: _____

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the "Uniform Power of Attorney Act," Part 7 of Article 14 of Title 15, Colorado Revised Statutes:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All preceding subjects" instead of initialing each subject.)

- Real property
- Tangible personal property
- Stocks and bonds
- Commodities and options
- Banks and other financial institutions
- Operation of entity or business
- Insurance and annuities
- Estates, trusts, and other beneficial interests
- Claims and litigation
- Personal and family maintenance
- Benefits from governmental programs or civil or military service
- Retirement plans
- Taxes

All preceding subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- Create, amend, revoke, or terminate an *inter vivos* trust
- Make a gift, subject to the limitations of the “Uniform Power of Attorney Act” set forth in C.R.S. § 15-14-740, and any special instructions in this power of attorney
- Create or change rights of survivorship
- Create or change a beneficiary designation
- Authorize another person to exercise the authority granted under this 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 fiduciary powers that the principal has authority to delegate
- Disclaim, refuse, or release an interest in property or a power of appointment
- Exercise a power of appointment other than: (1) The exercise of a general power of appointment for the benefit of the principal which may, if the subject of estates, trusts, and other beneficial interests is authorized above, be exercised as provided under the subject of estates, trusts, and other beneficial interests; or (2) the exercise of a general power of appointment for the benefit of persons other than the principal which may, if the making of a gift is specifically authorized above, be exercised under the specific authorization to make gifts
- Exercise powers, rights, or authority as a partner, member, or manager of a partnership, limited liability company, or other entity that the principal may exercise on behalf of the

entity and has authority to delegate excluding the exercise of such powers, rights, and authority with respect to an entity owned solely by the principal which may, if operation of entity or business is authorized above, be exercised as provided under the subject of operation of the entity or business

LIMITATION ON AGENT’S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the special instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the special instructions.

NOMINATION OF CONSERVATOR

OR GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a conservator of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of nominee for conservator of my estate: _____

Nominee's address: _____

Nominee's telephone number: _____

Name of nominee for guardian of my person: _____

Nominee's address: _____

Nominee's telephone number: _____

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

Your signature

Date

Your name printed

Your address

Your telephone number

State of Colorado)
) ss.
County of _____)

This document was acknowledged before me on _____ (Date), by _____
_____ (Name of principal).

(Seal, if any)

Signature of Notary

My commission expires: _____

This document was prepared by:

IMPORTANT INFORMATION FOR AGENT

Agent's duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

- (1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (2) Act in good faith;
- (3) Do nothing beyond the authority granted in this power of attorney; and
- (4) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's name) by (Your signature) as agent

Unless the special instructions in this power of attorney state otherwise, you must also:

- (1) Act loyally for the principal's benefit;
- (2) Avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) Act with care, competence, and diligence;
- (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- (5) Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and
- (6) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

Termination of agent's authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

- (1) Death of the principal;
- (2) The principal's revocation of the power of attorney or your authority;
- (3) The occurrence of a termination event stated in the power of attorney;
- (4) The purpose of the power of attorney is fully accomplished; or
- (5) If you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the special instructions in this power of attorney state that such an action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the “Uniform Power of Attorney Act,” Part 7 of Article 14 of Title 15, Colorado Revised Statutes. If you violate the “Uniform Power of Attorney Act,” Part 7 of Article 14 of Title 15, Colorado Revised Statutes, or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

NOTES ON USE

- 1) Durable powers of attorney are governed by C.R.S. §§ 15-14-701, *et seq.* The Colorado Revised Statutes were amended in 2009 to include the new Colorado Uniform Power of Attorney Act, Part 7 of Article 14 of Title 15, Colorado Revised Statutes, effective January 1, 2010. Drafters should familiarize themselves with this new act prior to drafting either the new Statutory Form Power of Attorney or a custom-drafted power of attorney. The new Act has many significantly different features and requirements than prior Colorado law.
- 2) The powers exercisable under C.R.S. § 15-14-724 are only authorized when specifically included in a power of attorney. The drafting attorney should carefully advise the principal as to the nature and extent of the power(s) being granted if any of the powers and authorities from C.R.S. § 15-14-724 are included in the power of attorney. They should not be used as “boilerplate.”
- 3) C.R.S. § 15-14-704 of the Colorado Uniform Power of Attorney Act makes all Colorado powers of attorney created after January 1, 2010 durable unless they expressly provide that they are terminated by the incapacity of the principal. However, the drafter should be aware that many states have not yet adopted the Uniform Power of Attorney Act, and the laws of other states may specifically require a durability clause. The drafter should consider the possibility that the power of attorney may be used in other states requiring the durability clause when drafting a Colorado power of attorney.
- 4) Language concerning the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA) and Social Security benefits is not required by Colorado law because such authority is granted in any general grant of authority in the power of attorney. However, because the Uniform Power of Attorney Act is relatively new and has only been adopted in a few states, the drafter should consider the possibility that the power of attorney may be used outside of the State of Colorado, and as a result may wish to include the suggested language:

My agent under this instrument is hereby designated as my “Personal Representative” as defined by Public Law 104-191 and supporting CFRs, otherwise known as the Health Insurance Portability and Accountability Act of 1996, as amended, or HIPAA. This Personal Representative may exercise all powers granted to a Personal Representative under said Act, as well as those granted under the authorities in §§ 1171 to 1179 of the Federal Social Security Act , 42 U.S.C. § 1302d, as amended, and associated Federal regulations.
- 5) The Colorado Uniform Power of Attorney Act does not require witnesses. However, some state power of attorney laws do require witnesses, especially if the authority to deal with real property is included in the power of attorney. The drafter should consider adding two witnesses to the execution portion of the power of attorney to ensure its compliance

with this requirement of other states.

- 6) The Uniform Power of Attorney Act does not preclude the practitioner from using a custom-drafted power of attorney rather than the statutory form provided here. Because of the significant changes from prior Colorado law, the practitioner should carefully read and analyze the new Act prior to attempting to draft customized powers of attorney for clients.