

GEORGIA'S STATUTORY FINANCIAL POWER OF ATTORNEY

During the 1995 Georgia General Assembly, the Legislature voted to establish within the Official Code of Georgia Annotated, at § 10-6-140, a statutory form for the Financial Power of Attorney. The form that is set out in the statute may be used to create a Financial Power of Attorney. This form is merely a suggestion and is not the only form permitted to create a Financial Power of Attorney.

The information attached includes an explanation of the Financial Power of Attorney, cautionary language to those considering giving someone power over their financial affairs and instructions for completing the statutory form. Finally, attached is a copy of the form substantially the same as the form that appears in the Official Code of Georgia Annotated.

You may use this actual form or you may have someone prepare this form for you in another format. If you are thinking about executing a Financial Power of Attorney and these instructions are not clear to you, please talk with an attorney before completing the form.

This information is not intended as specific legal advice. It is provided to you as educational material by the Division of Aging Services, an agency within the Department of Human Services, which administers programs for the elderly in the State of Georgia.

The Division of Aging Services is located at 2 Peachtree Street, Suite 9.398, Atlanta, Georgia 30303-3142. For additional information, call (404) 657-5258.



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EXPLANATION FOR PRINCIPALS

WHAT IS A FINANCIAL POWER OF ATTORNEY?

This document is a “Financial Power of Attorney.” It allows us to name one or more persons to handle our financial or business affairs for us just as we would if we were handling them ourselves. Depending on our individual circumstances, we can give another person or persons all of our authority (power) or some of our authority (powers) to act on our behalf. This document does not give someone the power to make medical decisions or health care decisions for us.

WHAT CAN OUR AGENT DO?

The 'Agent' is the person we give power to handle our financial affairs.

We are the 'Principal'.

Our decision to use this document is a very important one and we should think about carefully and consider what financial decisions we want our Agent to make for us. With this document, we can give our Agent the right to make all financial decisions or only certain, limited decisions.

For example, we can allow our Agent to handle all of our financial affairs, including the power to sell, rent, or mortgage our home, pay our bills, cash or deposit checks, buy and sell our stock, investments, or personal items, or we can allow our Agent to handle only certain or specific financial affairs such as paying our monthly bills.

DOES THIS MEAN WE GIVE ALL OUR POWERS AWAY?

No. We can still handle our own financial affairs as long as we choose to or are able to; however, unless we limit our agent, he or she also has the legal authority to handle our affairs while we are handling our affairs.

We need to talk to our Agent often about what we want and what he or she is doing for us using the document. If our Agent is not following our instructions or doing what we want, we **can** and **should** cancel or revoke the document and end our Agent's power to act for us.

HOW DO WE REVOKE OUR FINANCIAL POWER OF ATTORNEY?

We may revoke our financial power of attorney by writing a signed and dated revocation of power of attorney and giving it to our Agent. We should also give it to anyone who has been relying upon the financial power of attorney and dealing with our Agent, such as our bank and investment institutions.

Unless we notify all parties dealing with our Agent of our revocation, they may continue to deal with our Agent. We should contact a lawyer if our Agent continues to act after we have revoked the power of attorney.

WHEN DOES OUR AGENT'S AUTHORITY END?

As long as we are living, the financial power of attorney will remain in effect even if we become incapacitated or unable to communicate our wishes unless:

- (1) A conservator is appointed for our property; or
- (2) We include a date or specific occurrence when we want our document to be canceled.

However, upon our death or the death of our Agent or successor Agents, the document will be canceled and the Agent's power to act for us will end.

We can also include a date or a specific occurrence like our incapacity or illness as the time when we want our document to be canceled and our Agent's power to act for us to end.

WHEN DO THE POWERS TAKE EFFECT?

Depending on our circumstances, we may wish to specify an occurrence or a future date for the document to become effective. Unless we do so, the power of attorney becomes effective immediately.

MUST OUR AGENT DO THOSE THINGS WE AUTHORIZE?

No. But if our Agent accepts this responsibility and agrees to act for us, he or she is required to sign and date the "Acceptance of Appointment" contained in the financial power of attorney form.

HOW DO WE COMPLETE THIS DOCUMENT?

Both the Principal and the Agent should read the full document carefully before initialing or signing. The Principal and the Agent should fully understand what powers are being granted to the Agent and what restrictions, if any, exist.

We should read each paragraph carefully. If we decide to give our Agent the power described in the paragraph, we should initial our name at the end of the paragraph.

If we do not wish to give our Agent the power described in a paragraph, we can strike through and initial the paragraph or any line within a paragraph.

HOW DO WE EXECUTE THE DOCUMENT?

Two adult witnesses must watch us sign our name on the document. At least one witness cannot be the Principal's spouse or blood relative. After they witness us signing our name, the witnesses must sign their names.

This document does not need to be notarized unless real property (land with or without buildings on it) transactions such as leasing, selling, or mortgaging of property are authorized.

THIS DOCUMENT MUST REFLECT THE WISHES OF THE PRINCIPAL

We **must not** let anyone pressure us into making a financial power of attorney, naming an Agent, or granting a power unless it is our choice.

If we do not understand any portion of this document, we should ask a lawyer to explain it to us.

SAMPLE STATUTORY FORM

As described in the Official Code of Georgia Annotated § 10-6-140 et seq., The Georgia Statutory Form for Financial Power of Attorney shall be substantially as follows:

CAUTION

Be advised that banking institutions are now mandatory reporters for suspected Financial Exploitation under the Disabled Adults and Elder Persons Protection Act. Some banking institutions may be reluctant to accept Financial Powers of Attorney that have been executed under the following situations:

- if the principal does not personally informing the bank that this is being done;
- the financial power of attorney is executed after a physical or mental incapacitating event has already occurred,
- the financial power of attorney form is not one that the banking institution normally uses or is used to seeing,
or
- the agent(s) named is/are not known by the banking institution to have been previously associated with the principal.

Should this happen, the principal and/or the agent(s) may have to seek legal advice on how to proceed.

FINANCIAL POWER OF ATTORNEY

County of _____
State of Georgia _____

I, _____, (hereinafter 'Principal'), a resident of County, Georgia, do hereby constitute and appoint _____ my true and lawful attorney-in-fact (hereinafter 'Agent') for me and give such person the power(s) specified below to act in my name, place, and stead in any way which I, myself, could do if I were personally present with respect to the following matters:

(Directions: To give the Agent the powers described in paragraphs 1 through 13, place your initials on the blank line at the end of each paragraph. If you DO NOT want to give a power to the Agent, strike through the paragraph or a line within the paragraph and place your initials beside the stricken paragraph or stricken line. The powers described in any paragraph not initialed or which has been struck through will not be conveyed to the Agent. Both the Principal and the Agent must sign their full names at the end of the last paragraph.)

1. **Bank and Credit Union Transactions:** To make, receive, sign, endorse, execute, acknowledge, deliver and possess checks, drafts, bills of exchange, letters of credit, notes, stock certificates, withdrawal receipts and deposit instruments relating to accounts or deposits in, or certificates of deposit of banks, savings and loans, credit unions, or other institutions or associations. _____

2. **Payment Transactions:** To pay all sums of money, at any time or times, that may hereafter be owing by me upon any account, bill of exchange, check, draft, purchase, contract, note, or trade acceptance made, executed, endorsed, accepted, and delivered by me or for me in my name, by my Agent. _____

Note: If you initial paragraph 3 or paragraph 4 which follow, a notarized signature will be required on behalf of the Principal.

3. **Real Property Transactions:** To lease, sell, mortgage, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any interest in real property whatsoever, on such terms and conditions, and under such covenants, as my Agent shall deem proper; and to maintain, repair, tear down, alter, rebuild, improve manage, insure,

move, rent, lease, sell, convey, subject to liens, mortgages, and security deeds, and in any way or manner deal with all or any part of any interest in real property whatsoever, including specifically, but without limitation, real property lying and being situated in the State of Georgia, under such terms and conditions, and under such covenants, as my Agent shall deem proper and may for all deferred payments accept purchase money notes payable to me and secured by mortgages or deeds to secure debt, and may from time to time collect and cancel any of said notes, mortgages, security interests, or deeds to secure debt. _____

4. Personal Property Transactions: To lease, sell, mortgage, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any personal property whatsoever, tangible or intangible, or interest thereto, on such terms and conditions, and under such covenants, as my Agent shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens or mortgages, or to take any other security interests in said property which are recognized under the Uniform Commercial Code as adopted at that time under the laws of Georgia or any applicable state, or otherwise hypothecate (pledge), and in any way or manner deal with all or any part of any real or personal property whatsoever, tangible or intangible, or any interest therein, that I own at the time of execution or may thereafter acquire, under such terms and conditions, and under such covenants, as my Agent shall deem proper. _____

5. Stock and Bond Transactions: To purchase, sell, exchange, surrender, assign, redeem, vote at any meeting, or otherwise transfer any and all shares of stock, bonds, or other securities in any business, association, corporation, partnership, or other legal entity, whether private or public, now or hereafter belonging to me. _____

6. Safe Deposits: To have free access at any time or times to any safe deposit box or vault to which I might have access. _____

7. Borrowing: To borrow from time to time such sums of money as my Agent may deem proper and execute promissory notes, security deeds or agreements, financing statements, or other security instruments in such form as the lender may request and renew said notes and security instruments from time to time in whole or in part. _____

8. **Business Operating Transactions:** To conduct, engage in, and otherwise transact the affairs of any and all lawful business ventures of whatever nature or kind that I may now or hereafter be involved in. _____

9. **Insurance Transactions:** To exercise or perform any act, power, duty, right, or obligation, in regard to any contract of life, accident, health, disability, liability, or other type of insurance or any combination of insurance; and to procure new or additional contracts of insurance for me and to designate the beneficiary of same; provided, however, that my Agent cannot designate himself or herself as beneficiary of any such insurance contracts.

10. **Disputes and Proceedings:** To commence, prosecute, discontinue, or defend all actions or other legal proceedings touching my property, real or personal, or any part thereof, or touching any matter in which I or my property, real or personal, may be in any way concerned. To defend, settle, adjust, make allowances, compound, submit to arbitration, and compromise all accounts, reckonings, claims, and demands whatsoever that now are, or hereafter shall be, pending between me and any person, firm, corporation, or other legal entity, in such manner and in all respects as my Agent shall deem proper. _____

11. **Hiring Representative:** To hire accountants, attorneys at law, consultants, clerks, physicians, nurses, agents, servants, workmen, and others and to remove them, and to appoint others in their place, and to pay and allow the persons so employed such salaries, wages, or other remunerations, as my Agent shall deem proper. _____

12. **Tax, Social Security, and Unemployment:** To prepare, to make elections, to execute and to file all tax, social security, unemployment insurance, and informational returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government; to prepare, to execute, and to file all other papers and instruments which the Agent shall think to be desirable or necessary for safeguarding of me against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation; and to pay, to compromise, or to contest or to apply for refunds in connection with any taxes or assessments for which I am or may be liable. _____

13. **Broad Powers:** Without, in any way, limiting the foregoing, generally to do, execute, and perform any other act, deed, matter, or thing whatsoever, that should be done, executed, or performed, including, but not limited to the establishment of any Trusts for my interests and the appointment of a Trustee and including, but not limited to, powers conferred by Code Section 53-12-232 of the Official Code of Georgia Annotated, or that in the opinion of my Agent, should be done, executed, or performed, for my benefit or the benefit of my property, real or personal, and in my name of every nature and kind whatsoever, as fully and effectually as I could do if personally present. _____

14. **Effective Date:** This document will become effective upon the date of the Principal's signature unless the Principal indicates that it should become effective at a later date by completing the following, which is optional.

The powers conveyed in this document shall not become effective until the following time or upon the occurrence of the following event or contingency:

Note: The Principal may choose to designate one or more persons to determine conclusively that the above-specified event or contingency has occurred. Such person or persons must make a written declaration under penalty of false swearing that such event or contingency has occurred in order to make this document effective. Completion of this provision is optional.

The following person or persons are designated to determine conclusively that the above-specified event or contingency has occurred:

Signed: _____
Principal

Agent

PROVISION FOR A SUCCESSOR AGENT

Should at any point in time, the person named as my Agent become incapacitated and unable to serve as my Agent, I name as successor Agent to fulfill all duties named herein, _____ of _____, County _____.

It is my desire and intention that this power of attorney shall not be affected by my subsequent disability, incapacity, or mental incompetence. However, I understand that it shall be revoked and the Agent's power canceled in the event a conservator is appointed for my property. As long as no such conservator is appointed, any and all acts done by the Agent pursuant to the powers conveyed herein during any period of my disability or incapacity or mental incompetence shall have the same force and effect as if I were not disabled, incapacitated, or mentally incompetent.

I may, at any time, revoke this power of attorney and it shall be canceled by my death. Otherwise, unless a conservator is appointed for my property, this power of attorney shall be deemed to be in full force and effect as to all persons, institutions, and organizations which shall act in reliance thereon prior to the receipt of written revocation thereof signed by me and prior to my death.

I do hereby ratify and confirm all acts whatsoever which my Agent shall do, or cause to be done, in or about the premises, by virtue of this power of attorney.

All parties dealing in good faith with my Agent may fully rely upon the power of and authority of my Agent to act for me on my behalf and in my name, and may accept and rely on agreements and other instruments entered into or executed by the agent pursuant to this power of attorney.

This instrument shall not be effective as a grant of powers to my Agent until my Agent has executed the Acceptance of Appointment appearing at the end of this instrument. This instrument shall remain effective until revocation by me or my death, whichever occurs first.

Compensation of Agent. (Directions: Initial the line following your choice.)

1. My Agent shall receive no compensation for services rendered.
2. My Agent shall receive reasonable compensation for services rendered.
3. My Agent shall receive \$_____ for services rendered.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this _____ day of

_____, _____
(Month) (Year)

Principal

WITNESSES:

Signature and Address

Signature and Address

NOTE: A notarized signature is not required unless you have initialed paragraph 3 or 4 regarding property transactions.

I, _____, a Notary Public, do hereby certify that _____ personally appeared before me this date and acknowledged the due execution of the foregoing Power of Attorney.

Notary Public

County of _____
State of Georgia _____

ACCEPTANCE OF APPOINTMENT

I, _____ (print name), have read the foregoing Power of Attorney and am the person identified therein as Agent for _____ (name of grantor of power of attorney), the Principal named therein. I hereby acknowledge the following:

I owe a duty of loyalty and good faith to the Principal, and must use the powers granted to me only for the benefit of the Principal.

I must keep the Principal's funds and other assets titled in the name of the Principal and separate and apart from my funds and other assets. I must not transfer title to any of the Principal's funds or other assets into my name alone. My name must not be added to the title of any funds or other assets of the Principal, unless I am specifically designated as Agent for the Principal in the title.

I must protect and conserve, and exercise prudence and caution in my dealings with, the Principal's funds and other assets.

I must keep a full and accurate record of my acts, receipts, and disbursements on behalf of the Principal, and be ready to account to the Principal for such acts, receipts, and disbursements at all times. I must provide an annual accounting to the Principal of my acts, receipts, and disbursements, and must furnish an accounting of such acts, receipts, and disbursements to the personal representative of the Principal's estate within 90 days after the date of death of the Principal.

I have read the **Compensation of Agent** paragraph in the Power of Attorney and agree to abide by it.

I acknowledge that my authority to act on behalf of the Principal ceases at the death of the Principal.

I hereby accept the foregoing appointment as Agent for the Principal with full knowledge of the responsibilities imposed on me, and I will faithfully carry out my duties to the best of my ability.

This _____ day of _____, _____.

Signature _____

(Address) _____

Note: A notarized signature is not required unless the Principal initialed paragraph 3 or paragraph 4 regarding property transactions.

I, _____, a Notary Public, do hereby certify that _____ personally appeared before me this date and acknowledge the due execution of the foregoing Acceptance of Appointment.

Notary Public

County of _____
State of Georgia _____

**ACCEPTANCE OF APPOINTMENT
OF SUCCESSOR AGENT**

I, _____ (print name), have read the foregoing Power of Attorney and am the person identified therein as SUCCESSOR Agent for _____ (name of grantor of power of attorney), the Principal named therein. I hereby acknowledge the following:

I owe a duty of loyalty and good faith to the Principal, and must use the powers granted to me only for the benefit of the Principal.

I must keep the Principal's funds and other assets titled in the name of the Principal and separate and apart from my funds and other assets. I must not transfer title to any of the Principal's funds or other assets into my name alone. My name must not be added to the title of any funds or other assets of the Principal, unless I am specifically designated as Successor Agent for the Principal in the title.

I must protect and conserve, and exercise prudence and caution in my dealings with, the Principal's funds and other assets.

I must keep a full and accurate record of my acts, receipts, and disbursements on behalf of the Principal, and be ready to account to the Principal for such acts, receipts, and disbursements at all times. I must provide an annual accounting to the Principal of my acts, receipts, and disbursements, and must furnish an accounting of such acts, receipts, and disbursements to the personal representative of the Principal's estate within 90 days after the date of death of the Principal.

I have read the **Compensation of Successor Agent** paragraph in the Power of Attorney and agree to abide by it.

I acknowledge that my authority to act on behalf of the Principal ceases at the death of the Principal.

SUCCESSOR AGENT'S ACCEPTANCE

I hereby accept the foregoing appointment as Successor Agent for the Principal with full knowledge of the responsibilities imposed on me, and I will faithfully carry out my duties to the best of my ability.

This _____ day of _____, _____.

Signature _____

(Address) _____

<p>Note: A notarized signature is not required unless the Principal initialed paragraph 3 or paragraph 4 regarding property transactions.</p>
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I, _____, a Notary Public, do hereby certify that _____ personally appeared before me this date and acknowledge the due execution of the foregoing Acceptance of Appointment.

Notary Public