

# WADE ASH

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## **IMPORTANT INFORMATION FOR AGENT UNDER DURABLE GENERAL POWER OF ATTORNEY**

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Financial Powers of Attorney are either effective immediately, meaning an agent currently can sign documents to transfer assets for the principal (person creating Power of Attorney), or "springing," meaning the powers are not in effect until a physician signs a letter saying the principal is not able to handle his or her affairs. Either way, an agent named under a Power of Attorney has no duty to exercise the powers granted by the agency until he or she accepts appointment. Once the agent accepts the appointment, he or she must comply with the fiduciary duties conferred upon agents. C.R.S. § 15-14-714.

### Agent's Duties

- Act in the principal's best interest with regards to use of the principal's assets and property for the sole benefit of the principal and never commingle the principal's property with the agent's property.
- Act loyally for the principal's benefit, in good faith, and with care, competence and diligence.
- Do nothing beyond the authority granted in this power of attorney.
- 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

- Keep accurate records of the principal's finances and the agent's actions.

Agents are also given the authority to make decisions and perform tasks for the principal. A general summary of powers which are often included in the Power of Attorney (and which must be exercised with prudence) are:

- An agent may acquire property, sell property and manage property on behalf of the principal. Property in this context means real property, bank accounts, vehicles, securities and personal property.
- An agent may establish, modify or terminate bank accounts, access safe deposit boxes, and make, assign or guarantee promissory notes and negotiable instruments on behalf of the principal.
- An agent has the power to represent the principal in all tax matters for all tax years; such power includes accessing confidential tax information and preparing and signing all tax returns. The IRS may require its own power of attorney form.
- An agent may enter into, modify or terminate contracts in any manner with any person for the benefit of the principal.
- An agent may prosecute, defend, settle or enter arbitration in any matter for the benefit of or against the principal.

While this is a general list of agent duties and powers, it is not exhaustive. A principal has the authority to define the duties and powers of the agent. Under Colorado law, there are a number of powers a principal may only give an agent by specifically listing those powers in the Power of Attorney. These powers include:

- Making gifts of the principal's property on behalf of the principal.
- Create, amend, revoke, or terminate an *inter vivos* trust.
- Create or change rights of survivorship or beneficiary designations.
- Delegate authority granted under the Power of Attorney.
- Exercise powers held by the principal as a fiduciary and as a partner, manager or member of an entity.
- Disclaim or release a power of appointment and waive the principal's right as beneficiary of a joint and survivor annuity.

An agent should always read the Power of Attorney document to determine the agent's specific duties and powers. If you have questions regarding the duties of the agent, please contact us or other legal counsel. If an agent violates the Uniform Power of Attorney Act, or acts outside the authority granted in the Power of Attorney, the agent may be liable for any damages caused by the violation. The agent's authority terminates upon (1) the death of the principal; (2) revocation of the Power of Attorney by the principal; (3) legal action for divorce between the agent and the principal; or (4) another limitation as listed in the Power of Attorney.

The agent may run into problems with third parties (banks, brokerage houses, title companies, etc.) accepting the agent's directions. The last page of the Power of Attorney is a certification for the agent to sign. The certification cites the Colorado statute which allows third parties to rely on the Power of Attorney and protects those who have relied on the document from liability. The statute requires third parties to comply with the agent's directions and states the damages for not complying with the agent's directions, which may include the cost of obtaining court appointment of a conservator.



IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice included in this written or electronic communication was not intended or written to be used, and it cannot be used by the taxpayer, for the purpose of avoiding any penalties that may be imposed on the taxpayer by any governmental taxing authority or agency.