

This download includes:

- Information Concerning Joint Fiduciary Accounts
- Declaration of Intent for Joint Fiduciary Accounts
- Model Form for Durable Powers of Attorney

Checklist for Power of Attorney

These steps may be helpful to you as you plan and fill out the document:

I have talked to my agent and alternate agent, if any, about this document before appointing them and they are willing to serve as agent and understand my wishes.

I have considered my options and the risks of powers of attorney carefully and am confident this document fits my circumstances.

I understand the significance of my power of attorney and I have consulted with an attorney or other professional as needed.

If I intend my power of attorney to be durable, I have made sure to include the words required by law to make it durable.

I have given a copy of my power of attorney to my agent and have kept an extra copy for myself.

I understand I can revoke my power of attorney at any time.

I understand I should review this document periodically to make sure it fits my circumstances.

INFORMATION CONCERNING JOINT FIDUCIARY ACCOUNTS

A joint fiduciary account allows you to give direction on how you would like your money to be spent, at the same time as it allows you to give another person (or persons) authority to withdraw money or write checks on your account. If you open a joint fiduciary account, you are considered the "owner" of the account. The person or persons you authorize to access the account are called a "fiduciary." The fiduciary shall handle your money in a way that is beneficial to you and to act according to your instructions. You, as the owner, always have the right to withdraw money from or to write checks on the account.

One way to understand the advantages of a joint fiduciary account is to compare it to alternative forms of accounts. A regular joint account is an account in two or more names. Both people have the same authority to take and use the money. Thus, even if the money really belongs to one of the account holders, and the intent was that it would be used for that person, nothing can be done to stop the other account holder from taking and using all the money for other purposes.

A sole account with multiple authorized signatures provides a little more protection than a regular joint account. At least it is clear with this account that the money really belongs to the person whose name is on the account, and does not belong to those who are only authorized to sign. (There are often tax reasons for a person to have a sole account with multiple authorized signatures rather than a joint account.) Nevertheless, nothing can be done to stop a person who is authorized to sign on the account from taking and using all the money for some purpose other than for the person whose money it is.

A joint fiduciary account provides more protection for the owner than either of the other accounts because the owner makes a clear statement about how the money can be used, and the fiduciary has to follow those instructions or be subject to civil or criminal liability, or both. The fiduciary is also legally required to keep track of how the money is spent so the owner or another authorized person can verify that the money was used according to the instructions.

How do you want your money to be spent?

If you open a joint fiduciary account, you decide how you want your money to be spent. This statement should be broad enough to include everything you need and want, but not so broad as to go too far beyond that. Thus, you might want to instruct the fiduciary to spend your money on "all my basic living expenses and, if any money is left over, on gifts to my children and grandchildren, but not to exceed five percent of deposits per year." What is included in the instructions to the fiduciary is completely up to you. If you want to pay your fiduciary for the services provided, or if you want your fiduciary to be able to make gifts to himself or herself or others, you must explicitly indicate that in your declaration of intent.

Do you want special instructions on accountings?

If you give no special instructions on accountings, the fiduciary must just keep track of how the money is spent and provide that information to you, your legal representative, a state agency or a court, but only if asked to do so. You might want to instruct your fiduciary to give a periodic accounting to you or to someone else. Thus, your instructions could include: "Give a copy of an accounting of your use of this account to me and to my attorney [or my daughter] every January."

If you want more than one fiduciary, what do you want their relationship to be?

For some account owners, it is useful to name more than one fiduciary. For example, you might want your daughter to be the primary fiduciary, but your nephew to be the fiduciary when she goes to Florida every winter. You can name more than one fiduciary, but it is useful for you to give them instructions on when you want each to act. Those instructions dictate how they should act. However, the financial institution holding the account is under no obligation to make sure the fiduciaries act in accordance with your instructions; it will still accept either signature as valid for taking money out of the account.

Are you trying to make sure your fiduciary takes certain actions, or just trying to give your fiduciary authority to act?

Sometimes an account owner wants to use the account to make sure the fiduciary takes certain actions, such as paying the utility bills or paying the mortgage. The joint fiduciary account cannot guarantee for you that the fiduciary will act as you hope. The account simply authorizes the fiduciary to act, but does not oblige the fiduciary to act. The same is true for a regular joint account, as well as a sole account with multiple authorized signatures. For any of these accounts, if you want to make sure certain bills are paid, you and your creditor may agree to have the creditor automatically debit your account on a specific day of the month for the amount of your bill.

Have you already given or do you want to give someone authority to make decisions for you beyond using the money in an account?

Creating a joint fiduciary account will only give the fiduciary authority to act on your behalf with regard to the monies held in the account. It can be combined with a power of attorney or a durable power of attorney (one that lasts even if you are no longer able to make decisions for yourself). You can name the same person to be your fiduciary on a joint fiduciary account and your agent under a power of attorney, or you can name different people for each. In either event, it is useful to think through who should be named in each document and the relationship between them if you are going to name different people. If you have an attorney preparing a power of attorney, consider consulting with the attorney when opening a joint fiduciary account.

THE JOINT FIDUCIARY ACCOUNT WILL NOT BE VALID UNLESS A DECLARATION OF INTENT IS SIGNED BY YOU IN THE PRESENCE OF TWO OR MORE WITNESSES WHO ARE NOT A NAMED FIDUCIARY, AND IS ALSO SIGNED BY THE FIDUCIARY.

DECLARATION OF INTENT FOR JOINT FIDUCIARY ACCOUNT

OWNER OF ACCOUNT

I/We _____, hereby open a Joint Fiduciary Account. Following are my instructions to the fiduciary for how monies which are deposited into this joint fiduciary account shall be used:

(Attach additional pages as necessary.)

I/We hereby appoint _____ of _____ (town of residence) and _____ of _____ (town of residence) to be the fiduciary(ies) on the account, and acknowledge that I/we have received a copy of "Information Concerning Joint Fiduciary Accounts."

Dated at _____, this _____ day of _____, 20____

Signature of Owner of Account _____

Dated at _____, this _____ day of _____, 20____

Signature of Owner of Account _____

WITNESSES

I declare that the owner(s) appear(s) to be of sound mind and free from duress at the time of signing this Declaration of Intent for a joint fiduciary account, and that the owner(s) affirmed that he and/or she is (are) aware of the nature of the document and is (are) signing it freely and voluntarily. I further declare that I am not a person named as a fiduciary.

Witness Signature _____ Dated: _____

Witness Address _____

Witness (Print Name) _____

Witness Signature _____ Dated: _____

Witness Address _____

Witness (Print Name) _____

FIDUCIARIES (Only one is required.)

I declare that I am willing to act as the fiduciary on the Joint Fiduciary Account of _____ (owner(s)). I have read the Declaration of Intent and agree to use the money in the account only for the purposes stated therein. I further agree to maintain accurate records of my use of any monies in the account and to produce them upon request by the owner, by a legal representative of the owner, by a state agency, or by a court. I understand that my authority to act ceases when an owner changes the fiduciary, closes the account, or the last owner has died. I further acknowledge that I may be sued civilly if I intentionally or negligently fail to abide by the terms of the Declaration of Intent, or may be charged criminally if I intentionally fail to abide by its terms, or both. I acknowledge that I have received a copy of the Declaration of Intent.

Fiduciary (Print Name) _____

Fiduciary Address _____

If more than one:

Fiduciary (Print Name) _____

Fiduciary Address _____

Fiduciary Signature _____ Date _____

see reverse

For Financial Institution Use Only:

Financial Institution Name: _____ Account Number: _____

Address: _____

(3) The commissioner shall have the authority to adopt rules amending the disclosure statement and declaration of intent to reflect changes necessitated by a change in law or to make minor changes to the forms in this subsection.

(e) The fiduciary shall maintain accurate records to permit an accounting of the acts of the fiduciary, and shall provide such records and accounting if requested to do so by the owner, by a legal representative of the owner, by the attorney general, a state's attorney, or the department of aging and disabilities if any has reason to believe the fiduciary is in violation of this section, or by a court of competent jurisdiction.

GENERAL OR DURABLE POWER OF ATTORNEY

CAUTION: THIS IS AN IMPORTANT DOCUMENT. IT GIVES THE PERSON WHOM DESIGNATE YOUR AGENT BROAD POWERS TO HANDLE YOUR PROPERTY DURING YOUR LIFETIME, WHICH MAY INCLUDE POWERS TO MORTGAGE, SELL, OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY, WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU. THESE POWERS ARE EXPLAINED MORE FULLY IN CHAPTER 123 OF TITLE 14 OF THE VERMONT STATUTES ANNOTATED.

THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL OR OTHER HEALTH CARE DECISIONS. YOU MAY EXECUTE A DURABLE POWER OF ATTORNEY FOR HEALTH CARE. DO THIS UNDER CHAPTER 121 OF TITLE 14 OF THE VERMONT STATUTES ANNOTATED.

IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU. THIS FORM DOES NOT PROVIDE FOR ALL OPTIONS ALLOWED BY THE LAW. YOU MAY ALSO WISH TO CONSULT A LAWYER TO CONSIDER OTHER OPTIONS OR TO ASSURE THAT YOUR POWER OF ATTORNEY MEETS YOUR PERSONAL CIRCUMSTANCES.

This is intended to constitute a general power of attorney pursuant to chapter 123 of Title 14 of the Vermont Statutes Annotated:

I. APPOINTMENT OF AGENT:

I, (insert your name and address) _____

do hereby appoint (insert the name and address of your agent) _____

_____ as my agent 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, to the extent that I am permitted by law to act through an agent:

II. GENERAL POWERS:

I give my Agent the full authority to handle my personal financial affairs. My Agent shall have full authority to exercise or perform any act relating to any matter, transaction or property, now owned or later acquired by me, as I have the right to exercise or perform myself, except as provided in paragraph IV. AND V. below.

III. SPECIFIC POWERS:

[Optional] (The above general grant of powers will NOT grant authority for your agent to act in the following areas UNLESS you initial in the blank space to the left of any of following powers you wish to choose.) In addition to the General Powers granted in paragraph II, I give my agent full authority to handle the following powers, as I have chosen by initialing:

(____) (A) to handle all real estate transactions relating to any real property I now own or have an interest in or which I may later acquire;

(____) (B) to handle the following specific real estate transaction: (describe the real property involved in the transaction and the nature of the transaction) _____

(____) (C) to compensate him or herself with funds or property belonging to me for duties performed as Agent;

(____) (D) to make gifts or loans to persons other than the Agent with funds or property belonging to me;

(____) (E) to make gifts or loans with funds or property belonging to me to the Agent;

(____) (F) to appoint another person as successor Agent under this power of attorney;

IV. LIMITATION ON THE POWERS OF THE AGENT:

At all times my Agent must follow my directions specifically forbidding any action this power of attorney gives to my Agent, if I give those specific directions.

V. SPECIFIC LIMITATIONS ON THE POWERS OF THE AGENT

[Optional] (If there are any specific acts which you do *not* want your Agent to take on your behalf, list them here): _____

VI. DURABLE POWER OF ATTORNEY

If you would like this to be a durable power of attorney, which may be exercised notwithstanding your subsequent disability or incapacity, initial in the blank space to the left of the sentence below. If the blank space to the left of the sentence below is NOT initialed, the powers granted by you in this power of attorney shall terminate automatically should you become disabled or incapacitated.

(____) This power of attorney shall not be affected by my subsequent disability or incapacity.

VII. SUCCESSOR AGENT

[Optional] If the Agent I have named above is unable or unwilling to serve, I appoint (insert name and address of successor)_____

to be my Agent with all powers and limitations described in this power of attorney.

VIII. ACCOUNTINGS

My Agent must keep a written record of all transactions taken under this power of attorney and must provide me with a written statement of all such transactions at any time upon my request. [Optional] In addition my agent shall make accountings (you may specify a particular interval of time, such as every six months, at which you want your Agent to make accountings to a person in addition to yourself, such as a family member or your lawyer, to whom you want your Agent to make accountings, or both.)

IX. REVOCATION AND TERMINATION

THIS POWER OF ATTORNEY MAY BE REVOKED BY ME AT ANY TIME. This power of attorney also terminates with my death, my divorce from my Agent (if my Agent is now my spouse), by the resignation or death of my Agent (unless a successor Agent is named), or by the order of a court. MY AGENT MUST COMPLY WITH ANY REVOCATION OR TERMINATION OF THIS POWER OF ATTORNEY.

X. RELIANCE OF THIRD PARTIES

Any third party receiving a duly-executed copy or facsimile of this power of attorney may act in reliance on it. REVOCATION OR TERMINATION SHALL BE INEFFECTIVE AS TO SUCH THIRD PARTY UNLESS AND UNTIL ACTUAL NOTICE OR KNOWLEDGE OF SUCH REVOCATION OR TERMINATION HAS BEEN RECEIVED BY SUCH THIRD PARTY. (IMPORTANT: FOR THIS POWER OF ATTORNEY TO BE EFFECTIVE STEPS A, B, AND C BELOW MUST BE COMPLETED)

A. SIGNATURE OF PRINCIPAL

In witness whereof, I have hereunto signed my name this _____ day of _____, 20____

(YOU SIGN HERE:)

(Signature of Principal)

(IMPORTANT: AS PRINCIPAL, YOU MUST SIGN IN THE PRESENCE OF A WITNESS AND YOUR SIGNATURE MUST BE ACKNOWLEDGED BEFORE A NOTARY.)

B. SIGNATURE OF WITNESS AND NOTARY

I declare that the principal appears to be of sound mind and free from duress at the time the durable power of attorney for health care is signed and that the principal has affirmed that he or she is aware of the nature of the document and is signing it freely and voluntarily.

Witness: _____ Date: _____

Address: _____

At (city/town) _____, (state) _____, the above-mentioned principal appeared personally before me and acknowledged that he or she had signed this General Power of Attorney freely and voluntarily.

Notary: _____ Date: _____

Address: _____

(IMPORTANT: THE WITNESS AND THE NOTARY MAY NOT BE THE SAME PERSON. THE PERSON NAMED AS AGENT MAY NOT SERVE AS WITNESS OR NOTARY.)

C. SIGNATURE OF AGENT

I declare that I accept the authority granted to me as agent in this document, and understand the duties under the power and under the law.

Agent: _____ Date: _____

Address: _____