CWAG "Advocating for All Generations"

Coalition of Wisconsin Aging Groups
Intergenerational Leadership Development ▪ Education ▪ Advocacy ▪ Elder Law Center

The Coalition of Wisconsin Aging Groups is a nonprofit, nonpartisan, statewide membership organization that was founded in 1978.

DO-IT-YOURSELF CONSUMER PACKET

PLANNING FOR FUTURE FINANCIAL DECISION-MAKING

It is important to plan ahead for future financial decision-making to ensure that your financial affairs will be attended to in the event that you are unable to make your own financial decisions. To assist adults in managing their financial affairs, the Wisconsin legislature created a form called the "Wisconsin Statutory Form Power of Attorney for Finances and Property." This packet provides that state form, as well as educational information and instructions for completing the form. The state form is only one possible tool for financial planning and it is not appropriate for everyone. You may wish to consult an attorney to explore additional methods of financial planning, such as individualized, attorney-drafted Powers of Attorney for Finances and Property; power of attorney financial accounts; or trusts.

This packet includes three pieces, plus this cover sheet:

1. **An 11-page brochure entitled *Powers of Attorney for Finances: Frequently Asked Questions.*** This brochure explains what Powers of Attorney for Finances and Property are; the advantages and disadvantages of completing a Power of Attorney for Finances and Property, whether the state form or a customized, attorney-drafted version; the factors to consider in selecting an agent; your agent's fiduciary duties; authorities you may grant in the document; ways to protect yourself against abuse by your agent; actions to take if you believe your agent has stolen from you; and important information for your agent. *Read this brochure carefully to make sure you understand the impact of completing a Power of Attorney for Finances and Property.* The brochure can also help you decide whether to use the state form or consult an attorney about an individualized document.

2. **A 7-page handout entitled "Step-by-Step Instructions for Completing the 'Wisconsin Statutory Form Power of Attorney for Finances and Property.'"** These instructions also include information about steps to take after completing the document and steps to take if you decide to revoke (cancel) your "Wisconsin Statutory Form Power of Attorney for Finances and Property."

3. **The 14-page "Wisconsin Statutory Form Power of Attorney for Finances and Property."** Also referred to as the "statutory form" or the "state form," this form was created by the Wisconsin legislature in 1992, amended in 1998 and 2000, and replaced in 2010. A copy of the current state form is included for your use, if you decide that the state form is right for you.

This packet is also available at www.cwag.org. If you have questions about planning for future financial decision-making, please contact CWAG's Guardianship Support Center at 608-224-0606 ext. 314 or 1-800-488-2596 ext. 314 or e-mail guardian@cwag.org.

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POWERS OF ATTORNEY FOR FINANCES AND PROPERTY: FREQUENTLY ASKED QUESTIONS

1. What is a Power of Attorney for Finances and Property?

A Power of Attorney for Finances and Property is a document that you (the "principal") complete and sign, naming another individual (the "agent" or "attorney-in-fact") to manage your finances. You determine the money and property you want the agent to have authority over, as well as the authority you want the agent to have. The authority can be broad or specific, depending on your preference. Your Power of Attorney for Finances and Property may be created using the state form version, the "Wisconsin Statutory Form Power of Attorney for Finances and Property" ("state form"), or you may consult an attorney for a Power of Attorney for Finances and Property customized to fit your particular needs.

2. When does the Agent's Authority Become Effective? May I Continue to Make Decisions After Completing my Power of Attorney for Finances and Property?

The agent's authority takes effect **immediately** after you execute the document **unless** you expressly indicate otherwise.

If you want your agent's authority to take effect only after you have been found incapacitated, you must specify that instruction in the Special Instructions portion of the document. If you do not also specify in that special instruction a person (or persons) to determine when you are incapacitated and the definition of "incapacity," your "incapacity" will be decided using the standards set forth in the statute. Under the statute, "incapacity" is defined as the inability of an individual to manage property, finances, or business affairs because the individual meets one of the following criteria:

a. Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance (as determined by a licensed physician or psychologist);

b. Is missing; (as determined by an attorney, judge, or appropriate government official)

c. Is detained, including incarceration in a correctional facility (as determined by an attorney, judge, or appropriate government official);

d. Is outside the United States and unable to return (as determined by an attorney, judge, or appropriate government official).

Without these special instructions, your document *immediately* gives your agent authority to act.

Remember: You retain the legal right to handle all of your own property and finances as long as you are willing and able. Essentially, you and/*or* your agent have authority to make decisions about your finances and property.

3. Is my Power of Attorney for Finances and Property "Durable" and What Does That Mean?

The term "durable" means that your agent has authority to act on your behalf *even if* you become temporarily or permanently unable to make your own decisions. The state form is automatically durable unless you specify otherwise. Therefore, your Power of Attorney for Finances and Property will take effect immediately and *remain* in effect even if you later become unable to make your own decisions for whatever reason (e.g. incapacity, out of the United States and temporarily unable to return).

Completing a Power of Attorney for Finances and Property allows *you* to choose the individual you want to make financial decisions on your behalf. It is very important to discuss with that individual your financial plans and wishes so they can act on your behalf according to what *you* want, especially if you later become unable to make your own decisions.

If you do not complete a Power of Attorney for Finances and Property, but later become incapacitated, there may not be anyone with legal authority to make necessary decisions and complete necessary transactions for you (for example, paying bills, selling real estate, closing bank accounts, selling stocks, cashing certificates of deposit, signing contracts, filing tax returns). Even when a husband and wife own a home jointly, one spouse cannot automatically sign for the other in the event the house is sold.

Without a Power of Attorney for Finances and Property, it may be necessary for your family or others to ask the court to appoint a Guardian of the Estate for you. This process can be costly, time-consuming, cumbersome and emotionally draining. It may not result in the person *you* would have chosen being appointed as your guardian. Additionally, the court-appointed guardian may not know how you would want your affairs managed.

4. How Can I Complete a Power of Attorney for Finances and Property?

You may hire a lawyer to draft a document tailored to your needs. Or you may use the state form created by the legislature. The form can be found at http://www.dhs.wisconsin.gov/forms/AdvDirectives/F00036.pdf It is not recommended that you buy a commercially available form as it may not be legally accurate or include provisions that protect you from abuse by your agent.

To receive a Do-it-Yourself Consumer Packet for the state form, including the form and step-by-step instructions for its completion, contact the Coalition of Wisconsin Aging Groups at 608-224-0606 ext. 314 or 800-488-2596 ext. 314 or e-mail guardian@cwag.org. The packet is also available at www.cwag.org.

5. What are the Advantages of Using the State Form?

The state form is free and easy to use. It allows you to delegate powers related to: 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; and Taxes.

Detailed descriptions of these powers are included as the Appendix to the state form and should be carefully read *prior* to executing this document.

By granting your trustworthy agent this financial authority, you are ensuring that if something should happen to you, your agent will be able to step in immediately and manage your finances and property. After all, you may not be able to pay your bills and someone needs legal authority to do so in your stead. This document is appropriate for any adult, age 18 and up. Incapacity is not just for the older population; incapacity can happen to anyone at any time and that is the purpose of doing advance planning through directives like this Power of Attorney for Finances and Property.

6. What are the Disadvantages of Using the State Form?

You must have a clear understanding of the powers you are delegating. The statute's short descriptions of these powers may not give you all the information you need. Additionally, the powers authorized in the state form, while extensive, still do not cover every authority needed to execute complex financial planning. Certain financial authorities must be expressly written in the Special Instructions and carefully drafted to ensure you are accomplishing your goals with that language while at the same time, not authorizing more power than you intended.

A lawyer can help you understand the consequences of executing a Power of Attorney for Finances and Property and customize a Power of Attorney for Finances and Property to meet *all* your needs if you feel the state form is or may be insufficient. If you have complex or sizeable assets, an attorney's assistance is strongly recommended. If you foresee family conflict arising if you are no longer able to manage your assets, you may want an attorney's assistance.

Remember, the state form is a legally binding document with very serious implications even though the form itself is relatively short and simple.

7. What are the Advantages of Hiring an Attorney to Draft My Power of Attorney for Finances and Property? How Can I Find an Attorney?

An attorney can:

- Fully explain the nature of the powers you may delegate to someone else.
- Help you decide which powers to delegate and the scope of those powers. This will make your Power of Attorney for Finances and Property specific to *your* needs.
- Help you decide what limits to place on your agent's authority (e.g. placing restrictions on making gifts, placing reasonable restrictions on the personal and family maintenance provision).
- Help you decide whether your agent should be accountable to someone else and if so, to whom and how.
- Ensure your Power of Attorney complements other estate planning, such as a living trust or your will.
- Meet with your agent to ensure your agent understands the authority being granted and your agent's responsibility to manage your property wisely. This may help prevent financial abuse by your agent.

To find an attorney, look in the yellow pages, ask friends for referrals, or call the State Bar of Wisconsin's Lawyer Referral Information Service toll-free number at 1-800-362-9082.

8. What Factors Should I Consider in Selecting an Agent?

Powers of Attorney for Finances are generally not supervised by any government agency or court, so ***the most important consideration is whether the potential agent is trustworthy.***

The importance of trustworthiness cannot be overemphasized. Your agent has the power to manage your property now *and* when you are no longer mentally capable of overseeing your agent's actions. Your agent is not subject to oversight by anyone else unless you expressly require your agent to account to someone else on a regular basis in the Special Instructions (see #13 below for more information).

Some questions to consider when choosing an agent include:

- Can he or she be trusted to safeguard your property? Will he or she invest wisely? Will he or she resist pressure from others to make gifts to them? Can he or she be trusted not to make gifts or loans to himself or herself?

- Will your potential agent follow your wishes and plans? For example, will he or she continue supporting your favorite charities? Will he or she follow your wishes by making sure any contract he or she signs will provide your preferred type of care or management?

- Does your potential agent have experience dealing with finances? Is this individual prudent with his or her own funds, or is he or she a poor money manager? Will he or she be able to read a contract and be sure you are getting a fair deal?

- Is your potential agent assertive? Will he or she stand up to your family when there is a conflict and continue to represent *your* choices? Will he or she be able to ensure that you are being treated fairly? Will he or she ask enough questions to make sure you are getting what your money is paying for?

- Is your potential agent geographically close? If he or she does not live near you, is your potential agent willing and able to travel in order to negotiate a contract or attend meetings?

Again, the most important quality is trustworthiness. A Power of Attorney for Finances and Property can be beneficial and can help ensure that your property continues to be well-managed, even if you are later incapacitated. ***But in the wrong hands, the document can be dangerous!*** You have worked hard for your finances and property; do not give someone else control over your hard-earned property and finances without serious consideration as to whether that person is trustworthy and will manage your finances and property the way you want. This document is not just about paying bills; it is also about your house, your car, your boat, the family silver, the diamond wedding ring from your grandmother. You can limit what authority you give your agent, but that is no substitute for choosing an honest agent. Consider consulting an attorney if you need to considerably limit your agent's authority. The act of executing this document is simple but the consequences can be serious. Give this document careful consideration prior to execution. If you do not have anyone you would trust completely, you

should *not* complete a Power of Attorney for Finances and Property. Instead, if the need arises, a conservatorship or guardianship can be pursued.

9. What are my agent's fiduciary duties?

Your agent should read the Power of Attorney for Finances and Property document carefully and exercise only those powers granted in the document. Your agent should talk with you and completely understand your plans and wishes. Your agent must act in accordance with your wishes and if your wishes are not known, then the agent must act in your best interests.

Your agent must avoid conflicts of interest and must act in good faith and with utmost loyalty to you at all times. Your agent must act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances. Your agent must be scrupulous, keeping all receipts and maintaining a record of every transaction and disbursement. Your agent must *never* keep your money and his or her money in the same account. Your agent should attempt to preserve your estate plan if preserving the plan is in your best interest based on the following factors:

- The value and nature of your property;
- Your foreseeable obligations and need for maintenance;
- Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
- And eligibility for a benefit, a program, or assistance under a statute, rule, or regulation.

An agent may *not* act to preserve your estate plan *solely* to preserve his or her potential future "inheritance" (if any) – this is a breach of your agent's fiduciary duty. However, an agent who acts with care, competence and diligence for your best interest is not liable just because the agent also benefits from the act or has an individual or conflicting interest in relation to your property or affairs.

Your agent also must cooperate with a person that has authority to make healthcare decisions for you, to carry out your reasonable expectations to the extent they know of them and act in your best interest if your expectations are not known.

10. May I appoint co-agents?

A principal may designate in a Power of Attorney for Finances and Property two or more persons to act as co-agents. Unless the document otherwise specifies, each co-agent may exercise his or her authority independently.

Carefully consider whether you truly need co-agents in your circumstances or whether your need can be met another way (requiring your agent to provide an accounting [see #13 below], nominating one person as the primary agent and the other as a successor agent, etc.). Consider what will happen if the two co-agents disagree. How will a final decision be made? If you choose to appoint co-agents, it is strongly suggested you consult an attorney.

11. What Choices Should I Consider when Creating a Power of Attorney for Finances and Property?

The most important choices to be made are:

- Who will serve as your agent?
- Do you want to appoint an alternate agent, and if so, whom?
- What powers do you want to delegate?
- What limitations or special conditions do you want to attach to these powers?
- Do you want to nominate the agent, or someone else, to be guardian, should there ever be a need for a guardian of the person or a guardian of the estate?

An attorney can help you make these, and other, decisions based on your financial situation.

12. Do I have to compensate (pay) my agent to perform his or her duties?

Your agent is automatically allowed to receive "reasonable compensation" for his or her services performed under your Power of Attorney for Finances and Property unless you specify otherwise. Your agent may have to pay income tax on any compensation. Carefully consider the duties you are asking your agent to perform:

- Are you asking a great deal of your agent?
- Do you believe your agent might not do the job adequately without compensation?
- Will compensation encourage your agent to spend more time on your finances than necessary, just to run up a bill?
- Is the individual you are asking to serve as your agent requesting compensation?
- Can your agent be trusted to only pay himself or herself a fair rate of compensation?

If you decide you do not want your agent to be entitled to compensation or want to impose further restrictions upon it (e.g. imposing an hourly rate, monthly rate, etc.), you must expressly state so in the Special Instructions.

Note that the law does not explain how "compensation that is reasonable under the circumstances" is to be calculated, so you may want to add a Special Instruction as to how compensation is to be determined. Also remember that your agent is not required to provide an accounting of time spent, investments made or expenses paid unless you require it in the special instructions. Without an accounting, any overpayments or excessive payments to your agent as "compensation" may not be discovered as quickly or easily.

Note: Your agent is also automatically entitled to reimbursement for reasonable expenses he or she pays on your behalf. This is not the same as compensation; compensation is paying your agent to be your agent and perform the duties whereas reimbursement is paying your agent back for actual expenses he or she incurred while performing his or her duties as your agent. If you decide you do not want your agent to be entitled to reimbursement or want to impose further restrictions, you must expressly state so in the Special Instructions.

13. Should I Require My Agent to Provide a Regular Accounting?

Your agent is not automatically required to give a regular accounting to you and/or other people. An "accounting" is a listing of all income received during the accounting period and all expenditures made. Requiring an accounting of your agent can protect you because your agent will know that another individual (or individuals) will be reviewing his or her actions as your agent. Managing your finances and property, especially without compensation, may be a lot of work, and requiring accountings will mean more work for your agent. *It is recommended that you require an accounting on a regular basis*, but it is your decision. If you choose to require an accounting, specify how frequently you want your agent to submit the accounting (monthly,

quarterly, annually) and to whom. Provide the name and address of at least one other individual whom you want to receive a copy of the accounting. Pick someone you believe would take action if he or she found problems in the accounting. Possible actions include calling the agent and asking further questions, insisting on repayment of any funds wrongly spent, or hiring an attorney to consider legal action against the agent. Consider another family member, a close friend, your financial advisor or your lawyer. You can designate more than one person to receive the accounting if you wish.

The following list of people may request an accounting from your agent at any time regardless of whether you include an accounting provision in your Power of Attorney for Finances and Property document:

- The principal (you)
- The court
- A guardian, conservator, or another fiduciary acting for you
- A governmental agency having regulatory authority to protect your welfare
- Upon your death, the personal representative or successor in interest of your estate

(Wis. Stats. 244.14(8))

If the agent is ordered or requested to disclose information by one of these parties, the agent *must* comply with the request within 30 days (with one 30 day extension possible *if* the agent proves that it is necessary).

14. What Are the Authorities I Am Giving to My Agent When Executing a Power of Attorney For Finances and Property?

You give your agent a variety of authorities when executing your Power of Attorney for Finances and Property. It is easiest to understand the authorities when they are split into the three following categories:

1) General Authorities
2) Subject Authorities
3) Authorities Requiring a Specific and Express Grant of Authority (discussed in #15, below)

"General Authorities" are those authorities that are all-purpose and not specific to a certain *subject* of authority. "Subject Authorities" are the thirteen authorities specifically listed by subject matter in the Power of Attorney for Finances and Property. General Authority applies to these thirteen Subjects, so long as you grant your agent authority over each of the thirteen Subjects.

Unless you otherwise provide, your agent has General Authority to do *all* of the following:

- Demand, receive, and obtain by any lawful means, money or another thing of value to which you are, may become, or claim to be entitled; and conserve, invest, disburse, or use anything so received or obtained for the purposes intended.
- Contract with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on your behalf.
- Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating a schedule listing some or all of your property and attaching it to the Power of Attorney for Finances and Property.

- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against you or intervene in litigation relating to the claim.
- Seek on your behalf the assistance of a court or other governmental agency to carry out an act authorized in the Power of Attorney for Finances and Property.
- Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor.
- Prepare, execute, and file a record, report, or other document to safeguard or promote your interest under a statute, rule, or regulation.
- Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on your behalf.
- Access communications intended for you and communicate on your behalf by any means.
- Do any lawful act with respect to one of the thirteen Subjects you authorize and all property related to that subject.

The "Subject Authorities" are thirteen specific subject matters over which you may give your agent authority to act. The Subject Authorities are Wisconsin Statutory Sections 244.44 through 244.56. These sections are attached as seven-page Appendix to the end of the state form entitled "Power of Attorney for Finances and Property Statutory Authority Definitions" - **please go read those now.** It is *very* important that you understand the broad scope of authority you are granting by simply initialing next to the Subject title.

Now that you have read the Subject Authorities and understand what they permit in addition to the General Authorities, a few points to note:

- **Tangible Personal Property:** If you made specific bequests or created a list of tangible personal property under your will or revocable trust to dictate distribution of your personal effects upon your death, consider discussing the list/bequests with your agent in advance so that he or she is able to give that consideration in the appropriate management of your tangible personal property. For example, such a list would be "The dining room set to George; the silver tea service to Joan; my grandmother's gold locket engraved with "S.H.K." to Susie." This will help your agent continue to follow your wishes and your estate plan after incapacity.

- **Personal and Family Maintenance:** This Subject authority allows your agent to provide not only for *your* customary standard of living, but also for that of your immediate family – unless otherwise specified. It is *strongly* suggested that if you authorize this Subject, whether in full or specifically limited, you should require your agent to provide an accounting (see #13 above) to another party to ensure that your agent is performing his or her duties under this Subject authority appropriately. The annual family weekend trip to Lake Noquebay should not be turning into the annual Caribbean cruise against your wishes/best interest, and the accounting will help protect you from abuse (intentional or inadvertent) under this Subject authority. Requiring an accounting may also protect your *agent* from having to deal with false or speculative accusations of improper behavior because he or she is accountable to someone else.

Again, it is very important that you read these Subject authorities carefully. If you disagree with the authorities they grant, it is *strongly* suggested you see an attorney to have a customized Power of Attorney for Finances and Property created to meet your particular needs.

15. What Are the Authorities I May Give My Agent That Require a Specific and Express Grant of Authority?

Your agent may do the following on your behalf *only* if the Power of Attorney for Finances and Property expressly grants the agent the authority:

- Create, amend, revoke, or terminate an inter vivos (living) trust;
- Make a gift;
- Create or change rights of survivorship;
- Create or change a beneficiary designation;
- Delegate authority granted under the document;
- Waive your right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- Exercise fiduciary powers that you have authority to delegate;
- Disclaim property.

If you want your agent to have any of these powers, it is strongly suggested you seek an attorney's assistance to create a personalized Power of Attorney for Finances and Property. These authorities are vulnerable to abuse and should not be granted without careful consideration of the consequences. Gifting is the most commonly abused of these authorities (see #16 below).

16. What Factors Should I Consider Before Including a Gifting Power?

You have the option to give your agent the authority to make gifts on your behalf if you expressly grant this authority in the Special Instructions. However, this is the provision most widely abused and it should only be added after much consideration and ideally, consultation with an attorney.

For example, you may have permitted your agent to make gifts with the intent to only make $25 birthday gifts to your close friends and relatives, but under a poorly drafted gifting provision, an unscrupulous agent might make $2,500 gifts to whomever he or she chooses. The missing money is not the only consequence you may face - third parties, such as Medicaid, the IRS, and title companies may not consider the gift a valid gift and impose a penalty that will directly and negatively impact *your* finances and lifestyle.

The power to make gifts of your money or property can be dangerous if your agent is dishonest. You may decide not to give your agent the power to make gifts. If this is your preference, the best practice is to include a statement in your Power of Attorney for Finances and Property prohibiting gifting. If you use the state form, your agent is automatically prohibited from making gifts.

If you decide to give your agent the power to make gifts, you have to decide how extensive the gifting power should be. Should it be limited to a certain class of persons (e.g., spouse, children, etc.)? Should it be limited to specific circumstances such as Medicaid (MA) planning*? Should there be a monetary limit on gifts? Should charitable gifts be permitted? Should the agent be permitted to make gifts to himself or herself? ***Note:** an attorney's assistance is *especially* recommended for any gifting provisions related to Medicaid planning.

Note that your agent is not allowed to make gifts to himself or herself unless you clearly, expressly authorize that. For example, if you permit your agent to make gifts to "all of your

children" and your agent is one of your children, your agent will *not* be able to make gifts to himself or herself from that authorization alone.

Unless specifically stated, a Power of Attorney for Finances and Property does not authorize gifting, self-dealing (agent taking money for himself/herself), or oral amendments (an agent cannot act against the provisions of the document even if the principal told the agent something different).

17. How Can I Protect My Power of Attorney for Finances and Property Against Abuse?

The best protection is to pick an individual you trust (see Question #8 above). Other methods of protecting yourself include:

- requiring that the agent be bonded;
- prohibiting or limiting gifts;
- limiting the "personal and family maintenance" provision;
- requiring the agent to send regular accountings to another person or persons;
- asking the agent to meet with your lawyer to better understand the powers being delegated, your expectations and his or her fiduciary duties;
- including a statement of the agent's fiduciary duty in the document;
- and requiring your agent to sign the "Important Information for Agent: Agent's Duties" form included in the state form packet.

Close any joint accounts you have with your potential agent. Joint accounts should *never* be used for incapacity planning and *never* used once the agent is able to act under the Power of Attorney for Finances and Property. Your agent will be able to use your state form or attorney-drafted Power of Attorney for Finances and Property to perform his or her duties with respect to your accounts. Alternatively, you can open a Power of Attorney Account. Under a Power of Attorney Account, only *you* have an ownership interest; the agent on the account is able to access the money just as easily as with a joint account, but the agent now has a fiduciary duty and no ownership interest. Terminating joint accounts when a Power of Attorney for Finances and Property takes effect is also especially important for incapacity planning because joint accounts can create serious public benefits eligibility problems, especially with Medicaid (MA).

18. What Can I Do if I Believe My Agent Stole From Me?

The first and most important step is to immediately revoke (cancel) your Power of Attorney for Finances and Property document. This is best accomplished by signing a dated statement indicating that you are revoking the document. This statement should include the date you signed the original document, the agent's name, and should clearly state you are revoking all of the agent's power. It is wise to sign the revocation document in front of a notary public. Make copies of the revocation document and immediately send them to all individuals and institutions (for example, banks) that you believe have a copy of the Power of Attorney document and/or would be asked to honor it. You must also provide your agent with a copy of your revocation statement; generally, it is best to give your agent a copy of the revocation statement *after* you have given notice to everyone else who may be asked to honor and accept the document.

A revocation packet with thorough instructions and suggested language is available at www.cwag.org. After you revoke the document, you may consult with a private attorney about civil actions you could bring against your agent to recover your money or property. These might include actions for conversion, an accounting, breach of an agent's duty to the principal, constructive trust and others. An attorney can fully explain these actions to you. If guilty, your

agent is liable under the statute for the full amount required to restore the value of your property to what it would have been had the abuse not occurred and to reimburse you for the attorney fees and costs you incurred as a result of the agent's abusive acts. However, if your agent already spent the stolen funds and has no other funds to repay you, even a successful lawsuit may not result in your funds being returned to you.

You may also report the theft to the police. If the police believe a crime (for example, theft or abuse of an adult at risk) has been committed, your agent may be prosecuted. A criminal prosecution may result in your agent paying a fine or serving time in jail or prison. It does not automatically guarantee that you will be repaid stolen funds, however, unless the sentencing judge orders your agent to "make restitution" to you. Therefore, choosing a trustworthy agent to avoid abuse is the most important decision you will make in this process.

19. What Is The "Important Information for Agent" Document?

This document is for your agent to read and sign when accepting his or her position as your agent. This form is not mandatory and will not impact the validity of your Power of Attorney for Finances and Property. This document outlines your agent's legal and fiduciary duties. It is practical information intended to help the agent understand his or her responsibilities. Ideally, you will have your agent sign and date this document immediately or shortly after you execute your Power of Attorney for Finances and Property. Your agent's signature does not have to be witnessed or notarized. You do not have to be present when your agent signs the form. You may mail your agent the form and ask him or her to sign his or her name, date it, and return the document to you.

After executing the document, individuals frequently forget two of the most important steps:

1) informing the agent of his or her position, and
2) sitting down for a lengthy discussion with the agent about your wishes and how you want your finances managed.

This document serves as confirmation for you that you have notified your agent about his or her responsibilities. Sometimes a named agent does not want the responsibility and will refuse to act as your agent, so it is important to know this well in advance of incapacity so that you can plan accordingly.

20. What is The "Agent's Certification As To the Validity of Power of Attorney for Finances and Property and Agent's Authority" document?

This document is intended to be used by an agent during the time period he or she is acting as your agent. This document allows the agent to certify facts concerning your Power of Attorney for Finances and Property – most importantly, it certifies that the document is still valid and the agent is still authorized to act. This form is optional and does require acknowledgement by a notary public. It should be noted that parties asked to accept and rely upon your Power of Attorney for Finances and Property may request your agent to complete this form before allowing him or her to act.

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The Coalition of Wisconsin Aging Groups is a nonprofit, nonpartisan, statewide membership organization that was founded in 1978.

STEP-BY-STEP INSTRUCTIONS FOR COMPLETING "THE WISCONSIN STATUTORY FORM POWER OF ATTORNEY FOR FINANCES AND PROPERTY"

These instructions are to be used with "The Wisconsin Statutory Form Power of Attorney for Finances and Property" created by the Wisconsin Legislature. The current state form is effective September 1, 2010. If you have questions about how to complete this state form, contact CWAG's Guardianship Support Center at 608-224-0606 ext. 314 or 1-800-488-2596 ext. 314 or e-mail guardian@cwag.org. You should also read "Powers of Attorney for Finances: Frequently Asked Questions" included in this packet.

STEP 1: BEFORE FILLING OUT THE FORM

a. **Consider your reasons for completing a Wisconsin Statutory Form Power of Attorney for Finances and Property ("state form").** Do you want to make plans to address the management of your finances if you become incapacitated? Does the state form meet your financial planning needs? Do not fill out this state form because someone else told you that "you should."

b. **Read the "IMPORTANT INFORMATION" section on the first page of the state form. Then read the entire state form, including the "Important Information for Agent," "Agent's Certification as to the Validity of the Power of Attorney for Finances and Property and Agent's Authority," and the Appendix.** Make sure you understand that by completing this state form you are giving another person broad powers to handle your money, investments, accounts and other property.

   Determine whether the state form is the right document for you. If you have significant finances and assets, including real estate or your own business, the state form may not be the right document for you. Also, if you want some property handled in specific ways, it may be wiser for you to hire an attorney to personally draft a document for you. You must have a clear understanding of the powers you are delegating. The state form's short descriptions of these powers may not give you all the information you need. A lawyer can help you understand the consequences of completing a Power of Attorney for Finances and Property.

c. **Decide who you want to be your agent and successor agent.** Is there someone you trust well enough to appoint as your agent and someone else as successor agent? A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. Keep in mind that the person you choose will have the power to manage your finances at a time when you

are no longer able to make your own decisions or oversee your agent's actions. Discuss your financial plans and wishes with your potential agent to determine whether he or she is willing to manage, and is capable of managing, your finances and property. Questions to consider when choosing an agent and successor agent include:

- Can he or she be trusted to safeguard your property? Will he or she invest wisely? Will he or she resist pressure from others to make gifts to them? Can he or she be trusted not to make gifts or loans to himself or herself?

- Will your potential agent follow your wishes and plans? For example, will he or she continue supporting your favorite charities? Will he or she follow your wishes by making sure any contract he or she signs will provide your preferred type of care or management?

- Does your potential agent have experience dealing with finances? Is this individual prudent with his or her own funds, or is he or she a poor money manager? Will he or she be able to read a contract and be sure you are getting a fair deal?

- Is your potential agent assertive? Will he or she be able to ensure that you are being treated fairly? Will he or she ask enough questions to make sure you are getting what your money is paying for?

- Is your potential agent geographically close? If he or she does not live near you, is your potential agent willing and able to travel in order to negotiate a contract or attend meetings?

The importance of trustworthiness cannot be overemphasized. This state form can be a beneficial tool that helps ensure that your property continues to be well managed even if you are later incapacitated. ***But in the wrong hands, the document can be dangerous!*** If you do not have anyone you would feel comfortable trusting, you should not complete this state form. Instead, if the need arises, a conservatorship or guardianship can be pursued.

STEP 2: COMPLETING THE FORM

a. **Include your name.** In the first blank on page two of the state form, *print* your name, including middle name, after the word "I."

b. **Include your agent's name, address, and phone number.** In the next blank on page two, *print* the full name, address, and phone number of the person you want to appoint as your primary agent. If you are appointing co-agents, include this information for both parties. Below your primary agent, *print* the name, address, and phone number of the person you want to appoint as the successor or "back-up" agent. The successor agent will take over only if the primary agent is ever unable or unwilling to serve as your agent. The state form has room to appoint two successor agents.

c. **Choose which powers you want your agent to have.** On page two, you will see the Subject powers that your agent may exercise. General Authority is automatically granted in the language of the document. You need to choose which Subject powers you want your agent to have.

Carefully consider whether you want your agent to have the powers listed. **Read the Subject authorities attached as the Appendix to the end of the state form, entitled "Power of Attorney for Finances and Property Statutory Authority Definitions."** It is *very* important that you understand the broad scope of legal authority you are granting by simply initialing next to the Subject title. If you want your agent to have a power, write your initials in the line before the named power. If you do not want your agent to have a power, cross out the power.

NOTE: The state form does not require you to cross out the powers you do not want to authorize; the state form simply presumes you will not initial next to powers you do not want to grant. *However, it is better to carefully cross out the powers you do not delegate. Otherwise, someone could later fraudulently add your initials on the lines you left blank.*

If you make a mistake in initialing or crossing out, you should get another state form and start over. Do not use white out.

You will be asked to make a decision with respect to the following Subject Authorities:

- 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

d. Include special instructions, if any. This blank section on page three is for any special instructions about managing your property that you want to give your agent. Think carefully about the various types of property you have and how you want them managed. For example, there may be a certain bank, investment company or other financial institution you want your agent to work with or to avoid. You may want your agent to make certain types of investments. You may have strong feelings about holding onto certain property to keep it "in the family." You may want your agent to make gifts or provide a regular accounting to someone else. You may not want your agent entitled to compensation.

More instructions may make it easier for your agent to follow your wishes, but too many instructions may not leave your agent with the flexibility he or she needs to properly manage your affairs. Carefully review the language you use to create special instructions and take time to consider the potential implications of each special instruction. If you find yourself including several complex special instructions, you may want to seek an attorney's assistance as that may be a sign that the state form is not right for you.

1. **Decide whether you want your agent to be compensated for his or her duties under the state form.** The law states that your agent is entitled to compensation that is reasonable under the circumstances. If you do not add Special Instructions on this topic, your agent may take reasonable compensation out of your income or assets. Your agent may have to pay income tax on any compensation.

   Think carefully about whether you want your agent to compensate himself or herself from your assets and income for performing duties as your agent. Are you asking a great deal of your agent? Do you believe your agent might not do the job adequately without compensation? Will compensation encourage your agent to spend more time on your finances than necessary, just to run up a bill? Is the individual you are asking to serve as your agent requesting compensation? Can your agent be trusted to only pay himself or herself a fair rate of compensation? If you decide you do not want your agent to be entitled to compensation or want to impose further restrictions upon it, you must expressly state so in the Special Instructions.

   Note that the law does not explain how "compensation that is reasonable under the circumstances" is to be calculated, so you may want to add a Special Instruction as to how compensation is to be determined. Also remember that there is no mandatory accounting unless you require it in the special instructions (see #2, below). Without an accounting, any overpayments or excessive payments to your agent as "compensation" will be difficult to catch if you are unable to personally keep an eye on your agent's actions due to incapacity or otherwise and no one else receives an accounting.

2. **Decide whether your agent should provide an accounting.** Your agent is not required to give a regular accounting to you and/or other people. An "accounting" is a listing of all income received during the accounting period and all expenditures made. Requiring an accounting of your agent can protect you because your agent will know that another individual (or individuals) will be reviewing his or her actions as your agent. Accounting provisions also help reduce the potential for family conflict; if you inform your family that you included an accounting provision, your family then knows someone is closely monitoring the agent's actions. Also, your agent will likely feel more comfortable with his or her own activities on your behalf if someone else is consistently reviewing his or her actions.

   Managing your finances and property, especially without compensation, may be a lot of work, and requiring accountings will mean more work for your agent. *It is recommended that you require an accounting on a regular basis*, but it is your decision.

   If you choose to require an accounting, specify how frequently you want your agent to submit the accounting (monthly, quarterly, annually) and to whom. Provide the name and address of at least one other individual whom you want to receive a copy of the accounting. Pick someone you believe would take action if he or she found problems in the accounting. Possible actions include calling the agent and asking further questions, insisting on repayment of any funds wrongly spent, or hiring an attorney to consider legal action against the agent. Consider

another family member, a close friend, your accountant, or your lawyer. You can designate more than one person to receive the accounting if you wish.

e. **Decide whether you want to nominate someone to serve as your guardian, if needed.** This section on page three permits you to suggest an individual to serve as guardian of your person (to make personal, health care treatment and residential care decisions) and guardian of your estate (to make financial decisions). *Print* the individual's name, address, and phone number. Although this state form will likely help you avoid the need for a guardianship of the estate, this section allows you to have input if it is ever determined that you need a guardian. You may nominate the same individual you selected as your agent under this Power of Attorney for one or both positions, or you may nominate someone else.

STEP 3: SIGNING AND WITNESSING THE FORM

a. **Sign and date the document in front of a notary.** The place for you to sign and date the state form is on the top of page four, but do *not* sign and date the document until you are in front of a notary public.

   Notaries public are generally available at banks, law firms, and probate offices. A notary public will acknowledge your signature as genuine. While notarization of your signature on your Power of Attorney for Finances and Property is optional, it is *strongly* encouraged for anyone executing this form because if your document is not notarized, individuals and entities asked to accept it are able to refuse for any reason. Because of the potential for forgeries, it is a reasonable likelihood that many individuals will refuse to accept a Power of Attorney for Finances and Property document where the principal's signature has not been acknowledged by a notary. If your signature has been notarized, persons may only refuse to accept your Power of Attorney for Finances and Property if they are acting in good faith (e.g., the person knows the agent's authority has been terminated; the person knows the agent does not have authority to perform the act requested; the agent is asking the person to engage in an illegal transaction; etc.).

   Once before a notary public, you should then sign and date the state form and print your name, address and phone number below. Then the notary should notarize your signature.

b. **Complete the "This document prepared by" section.** If you completed this state form yourself, you should sign your own name here, in the last line on page four. If a friend or other person helped you fill out the state form, he or she should sign in this last blank.

c. **Have your agent sign the "IMPORTANT INFORMATION FOR AGENT" document to confirm acceptance of his or her duties and liabilities as your agent.** At the bottom of page six, your agent may sign this form. This is not mandatory but strongly recommended so that your agent is informed as to his or her legal responsibilities. Your agent's signature does not have to be witnessed or notarized. You do not have to be present when your agent signs the form. You may mail your agent the form and ask him or her to sign his or her name, date it, and return the document to you.

STEP 4: AFTER COMPLETING THE DOCUMENT

Make several photocopies of your completed state form. Under the statute, a photocopy or electronically transmitted copy of the original is as valid as the original. Take or send copies of the document to individuals or institutions with which you have financial dealings (e.g., your bank, stockbroker, mortgage company, insurance company, etc.). Also make sure you give a copy to your agent and alternate agent/s. Put another copy in a safe place at home, such as a fireproof box. If you have a lawyer who has done work for you in the past, you may want to ask him or her to retain a copy as well. While you may want to keep a copy in your safe deposit box at the bank, this is not always a smart idea - you may be the only person who has access to the box, and therefore no one else can get to it when it is needed. Additionally, if the need for your document arises on a weekend, evening or bank holiday, no one, not even you, will have access to it.

Finally, you should either give copies to close, trustworthy family members or at least inform them of your decision to complete this state form. Tell them whom you have selected as your agent and where at home you have a copy of the document if you are comfortable doing so. Be sure to keep a list of all the individuals to whom you have given a copy of the document. This will be important if you ever revoke (cancel) the document.

Note: Page seven of the state form is the "Agent's Certification as to the Validity of Power of Attorney for Finances and Property and Agent's Authority." This document is used by the agent to certify facts concerning your Power of Attorney for Finances and Property whenever necessary when performing duties as your agent. It is intended for future use and need not be completed immediately. Your agent may be asked to complete several of these certifications throughout the time he or she serves as your agent, so he or she should keep a few blank copies on hand.

REVOCATION

If you later change your mind about any provisions in your state form, or if you decide you no longer want a Power of Attorney for Finances and Property at all, you should revoke the document.

The best way to revoke your document is to type a new document, entitled "REVOCATION OF MY POWER OF ATTORNEY FOR FINANCES AND PROPERTY." Include your name and address, the date on which you had originally completed the document, and the agent's name. State clearly that you are revoking the document and that the named agent has no more power over your affairs and therefore should not be granted access to any of your income or assets, may no longer make any decisions regarding them, and should not be given access to any information about your financial matters.

State that this revocation is to take immediate effect. Then date and sign the revocation, preferably in the presence of a notary public (though not required). If you are unable to sign, direct someone in your presence to sign for you. Make sure to send a copy of the revocation to everyone who has a copy of the original document. A sample revocation packet is available at www.cwag.org.

You must inform third parties and the agent that the document was revoked. If third parties are not aware of the revocation, they cannot be held responsible for continuing to rely upon the Power of Attorney for Finances and Property as valid and for allowing your former agent to manage your affairs.

Executing a new Power of Attorney for Finances and Property does not automatically revoke the old one; you must either include language in your new Power of Attorney for Finances and Property that expressly revokes a former one or execute a statement of revocation for the old document. It is strongly suggested that you revoke all prior Power of Attorney for Finances and Property documents to avoid confusion and potential discrepancies between versions. If you want to complete a new Power of Attorney for Finances and Property, obtain another copy of the state form and follow all the steps in this packet.

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WISCONSIN STATUTORY FORM
POWER OF ATTORNEY FOR FINANCES AND PROPERTY
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 for Finances and Property Act in Chapter 244 of the Wisconsin 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 or revoke the Power of Attorney or the agent resigns or is unable to act for you.

Recording Area ↑

Name and Return Address

Parcel Identification Number (if any)

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 co-agent in the special instructions. Co-agents 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 2nd successor agent.

This Power of Attorney becomes effective immediately unless you state otherwise in the special instructions. This Power of Attorney does not revoke any Power of Attorney executed previously unless you so provide in the special instructions.

If you revoke this Power of Attorney, you should notify your agent and any other person to whom you have given a copy. If your agent is your spouse or domestic partner and your marriage is annulled or you are divorced or legally separated or the domestic partnership is terminated after signing this document, the document is invalid.

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 2nd successor agent:

Name of 2nd 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 (see Appendix) in the Uniform Power of Attorney for Finances and Property Act in chapter 244 of the Wisconsin statutes:

(INITIAL each subject you want to include in the agent's general authority.)

	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

LIMITATION ON AGENT'S AUTHORITY

An agent who is not my spouse or domestic partner 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 in the following space

EFFECTIVE DATE

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

NOMINATION OF GUARDIAN (OPTIONAL)

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

Name of nominee for guardian 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 FOR FINANCES AND PROPERTY

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

SIGNATURE AND ACKNOWLEDGMENT

Your signature _____ Date _____

Your name printed _____

Your address: _____

Your telephone number: _____

State of: _____ County of: _____

This document was acknowledged before me on

Date _____ by name of principal _____

(Seal, if any)

Signature of notary _____

Name of notary (typed or printed) _____

My commission expires: _____

This document 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 do all the following:

(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.

(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 the Power of Attorney state otherwise, you must also do all the following:

(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.

(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 all the following:

(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.

(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.

(6) If you are the principal's domestic partner and your domestic partnership is terminated, 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 for Finances and Property Act in Chapter 244 of the Wisconsin Statutes. If you violate the Uniform Power of Attorney for Finances and Property Act in Chapter 244 of the Wisconsin 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.

OPTIONAL SIGNATURE OF AGENT

I have read and accept the duties and liabilities of the agent as specified in this Power of Attorney.

Agent's signature _____ Date _____

Attached:

(1) Agent's certification as to the validity of Power of Attorney for Finances and Property and agent's authority (Optional).
(2) Appendix: Power of Attorney for Finances and Property Statutory Authority Definitions (Optional).

The following optional form may be used by an agent to certify facts concerning a power of attorney for finances and property:

AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY FOR FINANCES AND PROPERTY AND AGENT'S AUTHORITY

State of: _____

County of: _____

I, _____ (name of agent), certify under penalty of perjury that

_____ (name of principal) granted me authority as an agent or

successor agent in a power of attorney dated _____ .

I further certify that to my knowledge:

(1) The principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney, and the power of attorney and my authority to act under the power of attorney have not terminated.

(2) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred.

(3) If I was named as a successor agent, the prior agent is no longer able or willing to serve.

(4) _____

(insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

Agent's signature _____ Date _____

Agent's name printed _____

Agent's address: _____

Agent's telephone number: _____

State of: _____ County of: _____

This document was acknowledged before me on

Date _____ by (name of agent) _____

(Seal, if any)

Signature of notary _____

Name of notary (typed or printed) _____

My commission expires: _____

This document prepared by: _____

APPENDIX
Power of Attorney for Finances and Property
Statutory Authority Definitions

244.44 Real property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to do all of the following:

(1) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property.

(2) Sell; exchange; convey with or without covenants, representations, or warranties; quit claim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property.

(3) Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.

(4) Release, assign, satisfy, or enforce by any lawful means a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property which exists or is asserted.

(5) Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including by doing any of the following:

(a) Insuring against liability or casualty or other loss.

(b) Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise.

(c) Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments.

(d) Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property.

(6) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right.

(7) Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including by doing any of the following:

(a) Selling or otherwise disposing of the stocks, bonds, or property.

(b) Exercising or selling an option, right of conversion, or similar right with respect to the stocks, bonds, or property.

(c) Exercising any voting rights in person or by proxy.

(8) Change the form of title of an interest in or right incident to real property.

(9) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

244.45 Tangible personal property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to do all of the following:

(1) Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property.

(2) Sell; exchange; convey with or without covenants, representations, or warranties; quit claim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property.

(3) Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.

(4) Release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property.

(5) Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including by doing any of the following:

(a) Insuring against liability or casualty or other loss.

(b) Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise.

(c) Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments.

(d) Moving the property from place to place.

(e) Storing the property for hire or under a gratuitous bailment.

(f) Using and making repairs, alterations, or improvements to the property.

(6) Change the form of title of an interest in tangible personal property.

244.46 Stocks and bonds. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to do all of the following:

(1) Buy, sell, and exchange stocks and bonds.

(2) Establish, continue, modify, or terminate an account with respect to stocks and bonds.

(3) Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal.

(4) Receive certificates and other evidences of ownership with respect to stocks and bonds.

(5) Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

(6) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds.

(7) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds.

244.47 Commodities and options. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to do all of the following:

(1) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange.

(2) Establish, continue, modify, and terminate option accounts.

244.48 Banks and other financial institutions. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to do all of the following:

(1) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal.

(2) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent.

(3) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault.

(4) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution.

(5) Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them.

(6) Enter a safe deposit box or vault and withdraw or add to the contents.

(7) Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.

(8) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order; transfer money, receive the cash or other proceeds of those transactions; and accept a draft drawn by a person upon the principal and pay it when due.

(9) Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument.

(10) Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit.

(11) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

244.49 Operation of entity or business. Subject to the terms of a document or an agreement governing an entity or business or an entity or business ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to do all of the following:

(1) Operate, buy, sell, enlarge, reduce, or terminate an ownership interest.

(2) Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have.

(3) Enforce the terms of an ownership agreement.

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest.

(5) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds.

(6) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds.

(7) With respect to an entity or business owned solely by the principal, do all of the following:

(a) Continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney.

(b) Determine all of the following:

1. The location of its operation.

2. The nature and extent of its business.

3. The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation.

4. The amount and types of insurance carried.

5. The mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors.

(c) Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business.

(d) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business.

(8) Put additional capital into an entity or business in which the principal has an interest.

(9) Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business.

(10) Sell or liquidate all or part of an entity or business.

(11) Establish the value of an entity or business under a buy-out agreement to which the principal is a party.

(12) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments.

(13) Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

244.50 Insurance and annuities. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to do all of the following:

(1) Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract.

(2) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse or domestic partner, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment.

(3) Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent.

(4) Apply for and receive a loan secured by a contract of insurance or annuity.

(5) Surrender and receive the cash surrender value on a contract of insurance or annuity.

(6) Exercise an election.

(7) Exercise investment powers available under a contract of insurance or annuity.

(8) Change the manner of paying premiums on a contract of insurance or annuity.

(9) Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section.

(10) Apply for and procure a benefit or assistance under a statute, rule, or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal.

(11) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity.

(12) Select the form and timing of the payment of proceeds from a contract of insurance or annuity.

(13) Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

244.51 Estates, trusts, and other beneficial interests.

(1) In this section, "estates, trusts, and other beneficial interests" means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be, entitled to a share or payment.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to do all of the following:

(a) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or beneficial interest.

(b) Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of an estate, trust, or beneficial interest, by litigation or otherwise.

(c) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal.

(d) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal.

(e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary.

(f) Conserve, invest, disburse, or use anything received for an authorized purpose.

(g) Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor.

(h) Sign a waiver or consent in a probate matter.

(i) Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or beneficial interest.

244.52 Claims and litigation. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to do all of the following:

(1) Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief.

(2) Bring an action to determine adverse claims or intervene or otherwise participate in litigation.

(3) Seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use any available procedure to effect or satisfy a judgment, order, or decree.

(4) Make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation.

(5) Submit to alternative dispute resolution, settle, and propose or accept a compromise.

(6) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.

(7) Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value.

(8) Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation.

(9) Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

244.53 Personal and family maintenance. (1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to do all of the following:

(a) Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse or the principal's domestic partner, and the following individuals, whether living when the power of attorney is executed or later born:

1. The principal's children.

2. Other individuals legally entitled to be supported by the principal.

3. The individuals whom the principal has customarily supported or indicated the intent to support.

(b) Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party.

(c) Provide living quarters for the individuals described in par. (a) by doing any of the following:

1. Purchasing, leasing, or entering into a contract.

2. Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals.

(d) Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in par. (a).

(e) Pay expenses for necessary health care and custodial care on behalf of the individuals described in par. (a).

(f) Act as the principal's personal representative under 42 USC 1320d, the Health Insurance Portability and Accountability Act, and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal.

(g) Continue any provision made by the principal for motor vehicles or other means of transportation, including registering, licensing, insuring, and replacing the vehicles, for the individuals described in par. (a).

(h) Maintain credit and debit accounts for the convenience of the individuals described in par. (a) and open new accounts.

(i) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations.

(2) Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this chapter.

244.54 Benefits from governmental programs or civil or military service. (1) In this section, "benefits from governmental programs or civil or military service" means any benefit, program or assistance provided under a statute, rule, or regulation, including social security, Medicare, and Medicaid.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to do all of the following:

(a) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in s. 244.53 (1) (a), and for shipment of their household effects.

(b) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose.

(c) Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program.

(d) Prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute, rule, or regulation.

(e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute, rule, or regulation.

(f) Receive the financial proceeds of a claim described in par. (d) and conserve, invest, disburse, or use for a lawful purpose anything so received.

244.55 Retirement plans. (1) In this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including the following plans or accounts:

(a) An individual retirement account under section 408 of the Internal Revenue Code.

(b) A Roth individual retirement account under section 408A of the Internal Revenue Code.

(c) A deemed individual retirement account under section 408 (q) of the Internal Revenue Code.

(d) An annuity or mutual fund custodial account under section 403 (b) of the Internal Revenue Code.

(e) A pension, profit-sharing, stock bonus, or other retirement plan qualified under section 401 (a) of the Internal Revenue Code.

(f) A plan under section 457 (b) of the Internal Revenue Code.

(g) A nonqualified deferred compensation plan under section 409A of the Internal Revenue Code.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to do all of the following:

(a) Select the form and timing of payments under a retirement plan and withdraw benefits from a plan.

(b) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another.

(c) Establish a retirement plan in the principal's name.

(d) Make contributions to a retirement plan.

(e) Exercise investment powers available under a retirement plan.

(f) Borrow from, sell assets to, or purchase assets from a retirement plan.

244.56 Taxes. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to do all of the following:

(1) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under 2032A of the Internal Revenue Code, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years.

(2) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority.

(3) Exercise any election available to the principal under federal, state, local, or foreign tax law.

(4) Act for the principal in all tax matters for all periods before the Internal Revenue Service, or other taxing authority.