

UNIFORM POWER OF ATTORNEY ACT (EXCERPT)
Act 187 of 2023

556.214 Agent's duties; liability; breach of fiduciary duty.

Sec. 114.

(1) Notwithstanding provisions to the contrary in the power of attorney, an agent that has accepted appointment shall do all of the following:

(a) Act in accordance with reasonable expectations of the principal that are actually known to the agent and, to the extent the expectations are not actually known, act in the principal's best interest.

(b) Act in good faith.

(c) Act only within the scope of authority granted by the principal.

(d) Keep reasonable records of receipts, disbursements, and transactions made by the agent on behalf of the principal.

(2) Except as otherwise provided in the power of attorney, an agent who has accepted appointment shall do all of the following:

(a) Act loyally for the principal's benefit.

(b) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest.

(c) Act with the care, competence, and diligence that a prudent person would in dealing with the property of another.

(d) Cooperate with a person that has authority to make health care decisions for the principal to carry out reasonable expectations of the principal concerning health care that are actually known to the agent and, to the extent the expectations are not actually known, to act in the principal's best interest.

(e) Attempt to preserve the principal's estate plan to the extent that plan is actually known to the agent and preserving the plan is consistent with the principal's best interest based on relevant factors including all of the following:

(i) The value and nature of the principal's property.

(ii) The principal's foreseeable obligations and need for maintenance.

(iii) The desirability of minimizing taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.

(iv) Eligibility for a benefit, a program, or assistance under a statute or regulation.

(3) An agent who acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(4) An agent who acts for the best interest of the principal with the care, competence, and diligence that a prudent person would in dealing with the property of another is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(5) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence.

(6) A decline in the value of the principal's property is not in itself sufficient to establish a breach of fiduciary duty.

(7) An agent serving under a power of attorney that does not have knowledge of a breach or imminent breach of fiduciary duty by another agent who is or was serving under that power does not have a duty to investigate the conduct of any coagent or predecessor agent to rule out the possibility of any breach.

(8) An agent who exercises authority to delegate to another person the authority granted by the principal or who engages another person on behalf of the principal is not liable for an act, error of judgment, or default of the person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(9) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, or adult protective services, or, on the death of the principal, by the personal representative or successor in interest of the principal's estate. If a person that is authorized by the power of attorney or by this subsection to request a disclosure described in this subsection makes a request, the agent shall comply with the request within 30 days or provide a record substantiating why additional time is needed. If additional time is needed, the agent shall comply with the request within an additional 30 days.

History: 2023, Act 187, Eff. July 1, 2024