

Effective 9/1/2024

75A-2-114 Agent's duties.

- (1) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:
 - (a) act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;
 - (b) act in good faith;
 - (c) act only within the scope of authority granted in the power of attorney; and
 - (d) comply with the terms of the power of attorney.
- (2)
 - (a) Except as otherwise provided in the power of attorney or other provision of this chapter, an agent that has accepted appointment shall have no further obligation to act under the power of attorney.
 - (b) However, with respect to any action taken by the agent under the power of attorney, the agent shall:
 - (i) act loyally for the principal's benefit;
 - (ii) 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;
 - (iii) act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;
 - (iv) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
 - (v) cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest; and
 - (vi) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:
 - (A) the value and nature of the principal's property;
 - (B) the principal's foreseeable obligations and need for maintenance;
 - (C) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and
 - (D) eligibility for a benefit, a program, or assistance under a statute, rule, or regulation.
- (3) An agent that 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 that acts with care, competence, and diligence for the best interest of the principal 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 shall be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.
- (6) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.
- (7) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

- (8)
- (a) 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, a governmental agency having authority to protect the welfare of the principal, an interested person, as defined in Section 75-1-201, after the principal's incapacity, or upon the death of the principal, by the personal representative or successor in interest of the principal's estate.
 - (b) If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

Renumbered and Amended by Chapter 364, 2024 General Session