

## **IC 30-5-9**

### **Chapter 9. Liabilities**

#### **IC 30-5-9-1**

##### **Negligent exercise of power; bad faith**

Sec. 1. (a) An attorney in fact is liable for the negligent exercise of the power of attorney, except for the exercise of the attorney in fact's power under IC 30-5-5-16 or IC 30-5-5-17.

(b) An attorney in fact is liable for the exercise of authority or failure to exercise authority under IC 30-5-5-16 or IC 30-5-5-17 only if the attorney in fact acted in bad faith.

*As added by P.L.149-1991, SEC.2. Amended by P.L.1-2006, SEC.495.*

#### **IC 30-5-9-2**

##### **Attorney in fact benefiting from act; individual or conflicting interests**

Sec. 2. (a) An attorney in fact who acts with due care for the benefit of the principal is not liable or limited only because the attorney in fact:

- (1) also benefits from the act;
- (2) has individual or conflicting interests in relation to the property, care, or affairs of the principal; or
- (3) acts in a different manner with respect to the principal's and the attorney in fact's individual interests.

(b) A gift, bequest, transfer, or transaction is not presumed to be valid or invalid if the gift, bequest, transfer, or transaction:

- (1) is:
  - (A) made by the principal taking action; and
  - (B) not made by an attorney in fact acting for the principal under a power of attorney; and
- (2) benefits the principal's attorney in fact.

*As added by P.L.149-1991, SEC.2. Amended by P.L.238-2005, SEC.52.*

#### **IC 30-5-9-3**

##### **Amended or terminated power of attorney**

Sec. 3. The attorney in fact is not liable for actions taken under an amended or terminated power of attorney if the attorney in fact does not have actual knowledge of the amendment or termination.

*As added by P.L.149-1991, SEC.2.*

#### **IC 30-5-9-4**

##### **Errors of judgment; actions or defaults of other persons**

Sec. 4. The attorney in fact is not liable for a loss due to an error of judgment or for the act or default of another person.

*As added by P.L.149-1991, SEC.2.*

### **IC 30-5-9-5**

#### **Exoneration clauses**

Sec. 5. The principal may provide in the power of attorney that the attorney in fact is liable only if the attorney in fact acts in bad faith. This exoneration is binding on the principal and the principal's successors in interest.

*As added by P.L.149-1991, SEC.2.*

### **IC 30-5-9-6**

#### **Successor attorney in fact not liable for acts of predecessor**

Sec. 6. A successor attorney in fact who is named in a power of attorney to succeed an attorney in fact who fails or ceases to serve is not liable for the actions taken by a previous attorney in fact.

*As added by P.L.149-1991, SEC.2.*

### **IC 30-5-9-7**

#### **Co-attorneys in fact**

Sec. 7. If two (2) or more attorneys in fact are authorized to act on behalf of a principal, an attorney in fact who did not join in or consent to the action of one (1) or more of the co-attorneys in fact is not liable for the action. Failure to object to an action is not consent to the action.

*As added by P.L.149-1991, SEC.2.*

### **IC 30-5-9-8**

#### **Good faith purchasers; persons accepting authority of attorney in fact**

Sec. 8. (a) A good faith purchaser from a person who has obtained an interest in property from an attorney in fact is not liable to the principal, the heirs or assigns of the principal, or the personal representative of the estate of the principal.

(b) A person accepting the authority of an attorney in fact to exercise a power granted under a power of attorney is not liable to the principal, the heirs and assigns of the principal, or the personal representative of the principal if:

- (1) the person has no actual notice of the revocation of the power of attorney before the transaction;
- (2) the person has no actual knowledge of the death of the principal; or
- (3) the person has no actual knowledge that the duration of the power of attorney specified in the power of attorney, if a duration is specified, has not expired.

*As added by P.L.149-1991, SEC.2.*

### **IC 30-5-9-9**

#### **Persons refusing to accept authority of attorney in fact**

Sec. 9. (a) Except as provided in subsection (b), a person who, not more than three (3) business days after receiving a power of attorney, refuses to accept the authority of an attorney in fact to exercise a

power granted under a power of attorney is liable to the principal and to the principal's heirs, assigns, and the personal representative of the estate of the principal in the same manner as the person would be liable had the person refused to accept the authority of the principal to act on the principal's own behalf. In any action brought in court to either force the acceptance of the authority of the attorney in fact or pursue damages as a result of the person's refusal to accept the authority of an attorney in fact, the person found liable for refusing to accept the authority of an attorney in fact shall pay the following:

- (1) Three (3) times the amount of the actual damages.
- (2) The attorney's fees of the person bringing the action to court.
- (3) Prejudgment interest on the actual damages from the date the person refused to accept the authority of the attorney in fact.

(b) A person refusing to accept the authority of an attorney in fact to exercise a power granted under a power of attorney is not liable under subsection (a) if:

- (1) the person has actual notice of the revocation of the power of attorney before the exercise of the power;
- (2) the duration of the power of attorney specified in the power of attorney has expired;
- (3) the person has actual knowledge of the death of the principal;
- (4) the person reasonably believes that the power of attorney is not valid under Indiana law and provides the attorney in fact with a written statement not more than ten (10) business days after the refusal, describing the reason that the power of attorney is not valid under Indiana law; or
- (5) the person reasonably believes that the power of attorney does not grant the attorney in fact with authority to perform the transaction requested and provides the attorney in fact with a written statement not more than ten (10) business days after the refusal, describing the reason the person believes the power of attorney is deficient under Indiana law.

(c) This section does not negate the liability a person would have to the principal or the attorney in fact under another form of power of attorney, under the common law, or otherwise.

*As added by P.L.149-1991, SEC.2. Amended by P.L.252-2001, SEC.36; P.L.165-2002, SEC.10.*

### **IC 30-5-9-10**

#### **Health care providers; persons acting in good faith reliance on direction or decision of attorney in fact**

Sec. 10. A health care provider or other person who acts in good faith reliance on a direction or decision of an attorney in fact that is not clearly contrary to the terms of the power of attorney is protected and released from liability to the same extent as the provider or other person would be protected or released if the provider or other person had dealt directly with the principal as a fully competent person. In addition, the following rules shall be applied to protect and validate

the acts of the attorney in fact and provider or other person:

(1) A health care provider or other person is not subject to civil or criminal liability or discipline for unprofessional conduct for complying with a direction or decision by the attorney in fact, even if death or injury to the principal results.

(2) If the actions of a health care provider who fails to comply with a direction or decision of the attorney in fact are substantially in accord with reasonable medical standards at the time of reference and the provider promptly transfers the principal to another health care provider, the provider is not subject to civil or criminal liability or discipline for failure to comply with the attorney in fact.

(3) If the principal's death results from withholding or withdrawing health care in accordance with the terms of a power of attorney, the death is not a suicide or homicide for any purpose under a statute or rule of law and does not impair or invalidate an insurance, annuity, or other type of contract that is conditioned on the life or death of the principal, a term of the contract notwithstanding.

*As added by P.L.149-1991, SEC.2.*

#### **IC 30-5-9-11**

##### **Liability of an attorney in fact**

Sec. 11. An attorney in fact that violates this article is liable to the principal or the principal's successors in interest for damages and an amount required to reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid as a result of the violation.

*As added by P.L.143-2009, SEC.31.*