

IC 30-5-6

Chapter 6. Duties of the Attorney in Fact

IC 30-5-6-1

Exercise of powers not required

Sec. 1. The attorney in fact is not required to exercise the powers granted under the power of attorney or to assume control of or responsibility for any of the principal's property, care, or affairs, regardless of the principal's physical or mental condition.

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

IC 30-5-6-2

Due care to act for benefit of principal

Sec. 2. Except as otherwise stated in the power of attorney, the attorney in fact shall use due care to act for the benefit of the principal under the terms of the power of attorney.

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

IC 30-5-6-3

Fiduciary capacity; exercise of all powers

Sec. 3. An attorney in fact shall exercise all powers granted under the power of attorney in a fiduciary capacity.

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

IC 30-5-6-4

Records of transactions; accounting

Sec. 4. (a) The attorney in fact shall keep complete records of all transactions entered into by the attorney in fact on behalf of the principal:

- (1) for six (6) years after the date of the transaction; or
- (2) until the records are delivered to the successor attorney in fact;

whichever occurs first.

(b) Except as otherwise:

- (1) stated in the power of attorney; or
- (2) required by subsection (c);

the attorney in fact is not required to render an accounting.

(c) Except as provided in subsection (f), the attorney in fact shall render a written accounting if an accounting is ordered by a court, requested by the principal, a guardian appointed for the principal, a child of the principal, or, upon the death of the principal, the personal representative of the principal's estate, or an heir or legatee of the principal.

(d) Except as provided in subsection (f), an attorney in fact shall deliver an accounting requested under subsection (c) to:

- (1) the principal;
- (2) a guardian appointed for the principal;
- (3) the personal representative of the principal's estate;

- (4) an heir of the principal after the death of the principal;
- (5) a legatee of the principal after the death of the principal; or
- (6) a child of the principal.

(e) Except as provided in subsection (f)(2), an attorney in fact shall deliver an accounting ordered or requested under subsection (c) to the court or the person requesting the accounting not later than sixty (60) days after the date the attorney in fact receives the court order or written request for an accounting.

(f) In the case of a principal who has died, the following apply:

(1) The court may order an accounting under subsection (c) at any time.

(2) In the absence of a court ordered accounting, an attorney in fact is not required to deliver an accounting to a person described in subsection (d)(2) through (d)(6) unless the person requests the accounting not later than nine (9) months after the date of the principal's death.

(3) The delivery deadline set forth in subsection (e) applies to a written request for an accounting that is timely submitted under subdivision (2).

(g) Not more than one (1) accounting is required under this section in each twelve (12) month period unless the court, in its discretion, orders additional accountings.

(h) If an attorney in fact fails to deliver an accounting as required under this section, the person requesting the accounting may initiate an action in mandamus to compel the attorney in fact to render the accounting. The court may award the attorney's fees and court costs incurred under this subsection to the person requesting the accounting if the court finds that the attorney in fact failed to render an accounting as required under this section without just cause.

As added by P.L.149-1991, SEC.2. Amended by P.L.77-1998, SEC.1; P.L.252-2001, SEC.35; P.L.165-2002, SEC.8; P.L.42-2012, SEC.1; P.L.51-2014, SEC.29.

IC 30-5-6-4.1

Judicial review and settlement of an account; attorney in fact

Sec. 4.1. (a) An attorney in fact is entitled to judicial review and settlement of an account of all transactions entered into by the attorney in fact, whether or not:

- (1) the attorney in fact's authority under the power of attorney has been revoked; or
- (2) a request for an accounting is made under section 4(c) of this chapter.

(b) Judicial review and settlement of an account is initiated upon the filing of a petition to settle and allow an account. The petition must be filed with the court exercising probate jurisdiction for the county in which the principal resides. Except as otherwise provided by this section, the procedures under IC 30-4-5-14(b), IC 30-4-5-14(c), IC 30-4-5-14(d), and IC 30-4-5-15 applicable to

judicial settlement of a trustee's account govern:

- (1) the filing of objections; and
- (2) all proceedings;

on the petition.

(c) A petition to settle and allow an account must be served upon all the following that are applicable:

- (1) The principal.
- (2) Any guardian appointed for the principal.
- (3) Any successor attorney in fact.
- (4) If the principal is deceased and a personal representative has been appointed:
 - (A) the personal representative;
 - (B) any other fiduciary of the principal, if applicable; and
 - (C) any person beneficially interested in the decedent's estate.
- (5) If the principal is deceased and a personal representative has not been appointed, the principal's heirs at law.
- (6) If the principal is deceased and the principal's will is probated without administration:
 - (A) the personal representative named in the probated will; and
 - (B) all persons or entities beneficially interested in the probated will.
- (7) Any other person that the court directs.

(d) An attorney in fact is discharged from liability as to the transactions disclosed in the accounting if:

- (1) the court reviews and approves the accounting; and
- (2) notice of the court's approval of the accounting is provided to:
 - (A) the principal, if the principal is not deceased; or
 - (B) the principal's representatives, whether or not the principal is deceased.

(e) In the absence of fraud, misrepresentation, inadequate disclosure, or failure to provide proper notice related to the power of attorney transactions, the discharge from liability under subsection (d) is lawful and binding upon all interested persons:

- (1) who would assert an interest on behalf of or through the principal; and
- (2) who are:
 - (A) born or unborn;
 - (B) notified or not notified; or
 - (C) represented or not represented.

(f) The filing fee for a petition to settle and allow an account filed under this section is a legitimate expense of the principal or the principal's estate.

As added by P.L.81-2015, SEC.21.

IC 30-5-6-4.2

Claim against an attorney in fact; right to recover

Sec. 4.2. (a) This section applies to a claim against an attorney in fact by:

- (1) the principal;
- (2) the principal's guardian;
- (3) the principal's personal representative; or
- (4) any person claiming through the principal following death.

(b) Except as provided in subsection (c), any claim against an attorney in fact that has not previously been barred by adjudication under section 4.1 of this chapter, by consent or by limitation, is barred against any person described in subsection (a) who:

(1) receives an accounting of all transactions entered into by the attorney in fact:

- (A) personally, if the person is an adult; or
- (B) through receipt by a parent or guardian, if the person is a minor or person with a disability; and

(2) does not commence a proceeding under IC 30-5-9-11 not later than two (2) years after receiving the accounting;

as to the matters disclosed in the accounting.

(c) The rights to recover from an attorney in fact for fraud, misrepresentation, or inadequate disclosure related to a power of attorney accounting are not barred under this section.

As added by P.L.81-2015, SEC.22.

IC 30-5-6-4.5

Attorney in fact's authority to hire persons; cost incurred to defend actions of attorney in fact

Sec. 4.5. (a) An attorney in fact has the authority to employ persons, including:

- (1) attorneys;
- (2) accountants;
- (3) investment advisers; and
- (4) agents;

to assist the attorney in fact in the performance of the attorney in fact's fiduciary duties. Any reasonable costs incurred with regard to services rendered for the benefit of the principal shall be paid from the principal's asset holdings.

(b) Except as provided in subsection (c), if an accounting is requested as set forth in section 4 of this chapter, or a petition to settle and allow an account is filed under section 4.1 of this chapter, costs incurred by the attorney in fact:

- (1) to defend the actions of the attorney in fact on behalf of the principal with regard to the preparation of the accounting; and
- (2) to defend any other actions of the attorney in fact on behalf of the principal;

shall be paid from the principal's asset holdings.

(c) If a court determines that an attorney in fact:

- (1) breached the attorney in fact's fiduciary duty or obligation

to the principal; or
(2) was engaged in self-dealing activities with the principal's asset holdings;
the court may determine that the attorney in fact is responsible for the payment of the costs incurred under subsection (b).
As added by P.L.165-2002, SEC.9. Amended by P.L.81-2015, SEC.23.

IC 30-5-6-5

Notice to health care providers of power of attorney

Sec. 5. The attorney in fact shall ascertain whether the principal has notified the principal's health care providers that a power of attorney has been executed. If the principal has not notified the principal's health care providers of the existence of a power of attorney, the attorney in fact shall notify the health care providers of the existence of the power of attorney.

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