

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 stated in the power of attorney, the attorney in fact is not required to render an accounting. 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, or, upon the death of the principal, the personal representative of the principal's estate, or an heir or legatee of the principal.

(c) An attorney in fact shall deliver an accounting requested under subsection (b) 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; or
- (5) a legatee of the principal after the death of the principal;

not later than sixty (60) days after the date the attorney in fact receives the written request for an accounting. In the event of the principal's death, an accounting under this subsection must be

requested not later than nine (9) months after the date of the principal's death.

(d) 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.

(e) If an attorney in fact fails to deliver an accounting as required under subsection (c), 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.

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, 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.

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.