

§ 32C-1-114. Agent's duties.

(a) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment, when exercising a power under the power of attorney shall do all of the following:

- (1) 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.
- (2) Act in good faith.
- (3) Act only within the scope of authority granted in the power of attorney.

(b) Except as otherwise provided in the power of attorney, an agent that has accepted appointment has no affirmative duty to exercise the powers or to continue to exercise the powers granted to the agent by the power of attorney, but if the agent exercises any of the granted powers, the agent shall, in the exercise of such powers, do all of the following:

- (1) Act loyally for the principal's benefit.
- (2) 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.
- (3) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances.
- (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal.
- (5) 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.
- (6) 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 the following:
 - 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.
 - d. Eligibility for a benefit, a program, or assistance under a statute or regulation.

(7) Repealed by Session Laws 2018-142, s. 30(a), effective December 14, 2018.

(c) When exercising a power under the power of attorney, 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.

(d) When exercising a power under the power of attorney, an act by an agent that is in good faith for the best interest of the principal is not voidable and the agent 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.

(e) Reserved.

(f) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(g) 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.

(h) 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 or a person designated by the principal in the power of attorney, a guardian of the estate, general guardian, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. (2017-153, s. 1; 2018-142, s. 30(a).)