



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1280

Introduced 2/5/2013, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

755 ILCS 45/2-7
755 ILCS 45/2-10

from Ch. 110 1/2, par. 802-7
from Ch. 110 1/2, par. 802-10

Amends the Illinois Power of Attorney Act. Provides that an agent shall provide a copy of certain records required to be kept when requested to do so by a representative of the public guardian for the county in which the principal resides acting in the course of investigating whether to file a petition for guardianship. Adds public guardians to the list of entities which may be awarded fees, costs, and other relief for failure to provide a requested record or after a finding that the agent's action has caused substantial harm to the principal's person or property. Adds public guardians to the definition of "interested person".

LRB098 08941 HEP 39073 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Power of Attorney Act is amended by
5 changing Sections 2-7 and 2-10 as follows:

6 (755 ILCS 45/2-7) (from Ch. 110 1/2, par. 802-7)

7 Sec. 2-7. Duty - standard of care - record-keeping -
8 exoneration.

9 (a) The agent shall be under no duty to exercise the powers
10 granted by the agency or to assume control of or responsibility
11 for any of the principal's property, care or affairs,
12 regardless of the principal's physical or mental condition.
13 Whenever a power is exercised, the agent shall act in good
14 faith for the benefit of the principal using due care,
15 competence, and diligence in accordance with the terms of the
16 agency and shall be liable for negligent exercise. An agent who
17 acts with due care for the benefit of the principal shall not
18 be liable or limited merely because the agent also benefits
19 from the act, has individual or conflicting interests in
20 relation to the property, care or affairs of the principal or
21 acts in a different manner with respect to the agency and the
22 agent's individual interests. The agent shall not be affected
23 by any amendment or termination of the agency until the agent

1 has actual knowledge thereof. The agent shall not be liable for
2 any loss due to error of judgment nor for the act or default of
3 any other person.

4 (b) An agent that has accepted appointment must act in
5 accordance with the principal's expectations to the extent
6 actually known to the agent and otherwise in the principal's
7 best interests.

8 (c) An agent shall keep a record of all receipts,
9 disbursements, and significant actions taken under the
10 authority of the agency and shall provide a copy of this record
11 when requested to do so by:

12 (1) the principal, a guardian, another fiduciary
13 acting on behalf of the principal, and, after the death of
14 the principal, the personal representative or successors
15 in interest of the principal's estate;

16 (2) a representative of a provider agency, as defined
17 in Section 2 of the Elder Abuse and Neglect Act, acting in
18 the course of an assessment of a complaint of elder abuse
19 or neglect under that Act;

20 (3) a representative of the Office of the State Long
21 Term Care Ombudsman, acting in the course of an
22 investigation of a complaint of financial exploitation of a
23 nursing home resident under Section 4.04 of the Illinois
24 Act on the Aging;

25 (4) a representative of the Office of Inspector General
26 for the Department of Human Services, acting in the course

1 of an assessment of a complaint of financial exploitation
2 of an adult with disabilities pursuant to Section 35 of the
3 Abuse of Adults with Disabilities Intervention Act; ~~or~~

4 (5) a court under Section 2-10 of this Act; or -

5 (6) a representative of the public guardian for the
6 county in which the principal resides acting in the course
7 of investigating whether to file a petition for
8 guardianship of the principal under Section 11a-4 or 11a-8
9 of the Probate Act of 1975.

10 (d) If the agent fails to provide his or her record of all
11 receipts, disbursements, and significant actions within 21
12 days after a request under subsection (c), the elder abuse
13 provider agency, the public guardian, or the State Long Term
14 Care Ombudsman may petition the court for an order requiring
15 the agent to produce his or her record of receipts,
16 disbursements, and significant actions. If the court finds that
17 the agent's failure to provide his or her record in a timely
18 manner to the elder abuse provider agency, the public guardian,
19 or the State Long Term Care Ombudsman was without good cause,
20 the court may assess reasonable costs and attorney's fees
21 against the agent, and order such other relief as is
22 appropriate.

23 (e) An agent is not required to disclose receipts,
24 disbursements, or other significant actions conducted on
25 behalf of the principal except as otherwise provided in the
26 power of attorney or as required under subsection (c).

1 (f) An agent that violates this Act is liable to the
2 principal or the principal's successors in interest for the
3 amount required (i) to restore the value of the principal's
4 property to what it would have been had the violation not
5 occurred, and (ii) to reimburse the principal or the
6 principal's successors in interest for the attorney's fees and
7 costs paid on the agent's behalf. This subsection does not
8 limit any other applicable legal or equitable remedies.

9 (Source: P.A. 96-1195, eff. 7-1-11.)

10 (755 ILCS 45/2-10) (from Ch. 110 1/2, par. 802-10)

11 Sec. 2-10. Agency-court relationship.

12 (a) Upon petition by any interested person (including the
13 agent), with such notice to interested persons as the court
14 directs and a finding by the court that the principal lacks
15 either the capacity to control or the capacity to revoke the
16 agency, the court may construe a power of attorney, review the
17 agent's conduct, and grant appropriate relief including
18 compensatory damages.

19 (b) If the court finds that the agent is not acting for the
20 benefit of the principal in accordance with the terms of the
21 agency or that the agent's action or inaction has caused or
22 threatens substantial harm to the principal's person or
23 property in a manner not authorized or intended by the
24 principal, the court may order a guardian of the principal's
25 person or estate to exercise any powers of the principal under

1 the agency, including the power to revoke the agency, or may
2 enter such other orders without appointment of a guardian as
3 the court deems necessary to provide for the best interests of
4 the principal.

5 (c) If the court finds that the agency requires
6 interpretation, the court may construe the agency and instruct
7 the agent, but the court may not amend the agency.

8 (d) If the court finds that the agent has not acted for the
9 benefit of the principal in accordance with the terms of the
10 agency and the Illinois Power of Attorney Act, or that the
11 agent's action caused or threatened substantial harm to the
12 principal's person or property in a manner not authorized or
13 intended by the principal, then the agent shall not be
14 authorized to pay or be reimbursed from the estate of the
15 principal the attorneys' fees and costs of the agent in
16 defending a proceeding brought pursuant to this Section.

17 (e) Upon a finding that the agent's action has caused
18 substantial harm to the principal's person or property, the
19 court may assess against the agent reasonable costs and
20 attorney's fees to a prevailing party who is a provider agency
21 as defined in Section 2 of the Elder Abuse and Neglect Act, a
22 representative of the Office of the State Long Term Care
23 Ombudsman, a public guardian, or a governmental agency having
24 regulatory authority to protect the welfare of the principal.

25 (f) As used in this Section, the term "interested person"
26 includes (1) the principal or the agent; (2) a guardian of the

1 person, guardian of the estate, or other fiduciary charged with
2 management of the principal's property; (3) the principal's
3 spouse, parent, or descendant; (4) a person who would be a
4 presumptive heir-at-law of the principal; (5) a person named as
5 a beneficiary to receive any property, benefit, or contractual
6 right upon the principal's death, or as a beneficiary of a
7 trust created by or for the principal; (6) a provider agency as
8 defined in Section 2 of the Elder Abuse and Neglect Act, a
9 representative of the Office of the State Long Term Care
10 Ombudsman, a public guardian, or a governmental agency having
11 regulatory authority to protect the welfare of the principal;
12 and (7) the principal's caregiver or another person who
13 demonstrates sufficient interest in the principal's welfare.

14 (g) Absent court order directing a guardian to exercise
15 powers of the principal under the agency, a guardian will have
16 no power, duty or liability with respect to any property
17 subject to the agency or any personal or health care matters
18 covered by the agency.

19 (h) Proceedings under this Section shall be commenced in
20 the county where the guardian was appointed or, if no Illinois
21 guardian is acting, then in the county where the agent or
22 principal resides or where the principal owns real property.

23 (i) This Section shall not be construed to limit any other
24 remedies available.

25 (Source: P.A. 96-1195, eff. 7-1-11.)