

58-656. Duties of attorney in fact; relation of attorney in fact to court-appointed fiduciary; death of principal. (a) An attorney in fact who elects to act under a power of attorney is under a duty to act in the interest of the principal and to avoid conflicts of interest that impair the ability of the attorney in fact so to act. A person who is appointed an attorney in fact under a power of attorney who undertakes to exercise the authority conferred in the power of attorney, has a fiduciary obligation to exercise the powers conferred in the best interests of the principal, and to avoid self-dealing and conflicts of interest, as in the case of a trustee with respect to the trustee's beneficiary or beneficiaries. The attorney in fact shall keep a record of receipts, disbursements and transactions made on behalf of the principal and shall not commingle funds or assets of the principal with the funds or assets of the attorney in fact. In the absence of explicit authorization, the attorney in fact shall exercise a high degree of care in maintaining, without modification, any estate plan which the principal may have in place, including, but not limited to, arrangements made by the principal for disposition of assets at death through beneficiary designations, ownership by joint tenancy or tenancy by the entirety, trust arrangements or by will or codicil. Unless otherwise provided in the power of attorney or in a separate agreement between the principal and attorney in fact, an attorney in fact who elects to act shall exercise the authority granted in a power of attorney with that degree of care that would be observed by a prudent person dealing with the property and conducting the affairs of another, except that all investments made on or after July 1, 2003, shall be in accordance with the provisions of the Kansas uniform prudent investor act, K.S.A. 58-24a01 et seq., and amendments thereto. If the attorney in fact has special skills or was appointed attorney in fact on the basis of representations of special skills or expertise, the attorney in fact has a duty to use those skills in the principal's behalf.

(b) On matters undertaken or to be undertaken in the principal's behalf and to the extent reasonably possible under the circumstances, an attorney in fact has a duty to keep in regular contact with the principal, to communicate with the principal and to obtain and follow the instructions of the principal.

(c) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate or other fiduciary charged with the management of all of the principal's property or all of the principal's property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the durable power of attorney that the principal would have had if the principal were not an adult with an impairment in need of a guardian or conservator or both as defined by subsection (a) of K.S.A. 59-3051, and amendments thereto.

(d) A principal may nominate by a power of attorney, a guardian or conservator, or both, for consideration by the court. If a petition to appoint a guardian or conservator, or both, is filed, the court shall make the appointment in accordance with the principal's most recent nomination in the power of attorney, so long as the individual nominated is a fit and proper person.

(e) An attorney in fact shall exercise authority granted by the principal in accordance with the instrument setting forth the power of attorney, any modification made therein by the principal or the principal's legal representative or a court, and the oral and written instructions of the principal, or the written instructions of the principal's legal representative or a court.

(f) An attorney in fact may be instructed in a power of attorney that the authority granted shall not be exercised until, or shall terminate on, the happening of a future event, condition or contingency, as determined in a manner prescribed in the instrument.

(g) On the death of the principal, the attorney in fact shall follow the instructions of the court, if any, having jurisdiction over the estate of the principal, or any part thereof, and shall communicate with and be accountable to the principal's personal representative, or if none, the principal's successors. The attorney in fact shall promptly deliver to and put in the possession and control of the principal's personal representative or successors, any property of the principal and copies of any records of the attorney in fact relating to transactions undertaken in the principal's behalf that are deemed by the personal representative or the court to be necessary or helpful in the administration of the decedent's estate.

(h) If an attorney in fact has a property or contract interest in the subject of the power of attorney or the authority of the attorney in fact is otherwise coupled with an interest in a person other than the principal, this section does not impose any duties on the attorney in fact that would conflict or be inconsistent with that interest.

History: L. 2003, ch. 58, § 7; L. 2009, ch. 73, § 3; July 1.