



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4879

by Rep. Ryan Spain

SYNOPSIS AS INTRODUCED:

755 ILCS 45/2-7

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

Amends the Illinois Power of Attorney Act. Provides that if the agent fails to provide his or her record of all receipts, disbursements, and significant actions taken under the authority of the agency within 21 days after a request by specified persons, a representative of the Office of the State Long Term Care Ombudsman (rather than the State Long Term Care Ombudsman) may petition the court for an order requiring the agent to produce his or her record of receipts, disbursements, and significant actions. Provides that if the court finds that the agent's failure to provide his or her record in a timely manner to a representative of the Office of the State Long Term Care Ombudsman was without good cause, the court may assess reasonable costs and attorney's fees against the agent, and order such other relief as is appropriate.

LRB100 18307 JLS 33512 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 Section 2-7 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 Adult Protective Services Act, acting
18 in the course of an assessment of a complaint of elder
19 abuse 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;

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

5 (6) a representative of the Office of State Guardian or
6 public guardian for the county in which the principal
7 resides acting in the course of investigating whether to
8 file a petition for guardianship of the principal under
9 Section 11a-4 or 11a-8 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 adult abuse
13 provider agency, the State Guardian, the public guardian, or a
14 representative of the Office of the State Long Term Care
15 Ombudsman may petition the court for an order requiring the
16 agent to produce his or her record of receipts, disbursements,
17 and significant actions. If the court finds that the agent's
18 failure to provide his or her record in a timely manner to the
19 adult abuse provider agency, the State Guardian, the public
20 guardian, or a representative of the Office of the State Long
21 Term Care Ombudsman was without good cause, the court may
22 assess reasonable costs and attorney's fees against the agent,
23 and order such other relief as is appropriate.

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

1 power of attorney or as required under subsection (c).

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

10 (Source: P.A. 98-49, eff. 7-1-13; 98-562, eff. 8-27-13; 98-756,
11 eff. 7-16-14.)