

The Duty to Account of a Power of Attorney

Article By:

Paul W. Norris

While most people who are appointed Powers of Attorney understand their general duty to act only within the best interests of the person for whom they are serving as a Power of Attorney, and to not undertake transactions which solely benefit themselves, most of them do not understand their duty to account which is required by statute. It is important that a Power of Attorney carefully account when utilizing a Power of Attorney to undertake financial transactions, as this issue could come back to bite them if they do not properly account.

In general, the law provides that a Power of Attorney owes a fiduciary duty to the principal to act solely within their best interests. In addition, the statute provides that the Power of Attorney shall maintain “accurate books and records” of all financial transactions. The use of the word “shall” in the statute indicates that this is not an option, but instead, a mandatory requirement which must be undertaken by an individual when utilizing a Power of Attorney. The phrase accurate books and records indicates that not only should relevant receipts be maintained, but in addition, a detailed transactional history of all transactions undertaken by the Power of Attorney must also be maintained. Such records should include copies of checks, receipts, and other documents which evidence the transactions undertaken by the Power of Attorney. Further, there must be an accounting as to all transactions pursuant to which the dollar value of the transactions can be reconciled.

Should a Power of Attorney fail to maintain accurate books and records of all financial transactions, this could be used against them in a subsequent proceeding should an abuse of the Power of Attorney be alleged. In such a subsequent proceeding, if the Power of Attorney is unable to account in light of the statutory duty which requires them to do so, a Court may find that the Power of Attorney has breached his/her fiduciary duty. As a result, he/she could be found liable to the principal or other parties for the full value of the unsubstantiated transactions. This could be disastrous to a person who acted as a Power of Attorney, however, failed to maintain accurate books and records. This may result in substantial liability to either the Estate of the principal who may have passed away, the principal himself, or other interested parties.

As such, the duty of account of a Power of Attorney is essential and cannot be taken lightly.

COPYRIGHT © 2024, STARK & STARK

Source URL: <https://natlawreview.com/article/duty-to-account-power-attorney>