

VIRGINIA ACTS OF ASSEMBLY - 2026 SESSION

CHAPTER 398

An Act to amend and reenact § 64.2-1612 of the Code of Virginia, relating to Uniform Power of Attorney Act; agent's duty of disclosure.

[H 510]

Approved April 8, 2026

Be it enacted by the General Assembly of Virginia:

1. That § 64.2-1612 of the Code of Virginia is amended and reenacted as follows:

§ 64.2-1612. Agent's duties.

- A. Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:
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; and
 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 shall:
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; and
 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:
 - 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; and
 - d. Eligibility for a benefit, a program, or assistance under a statute or regulation.
- C. 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. An agent that acts with care, competence, and diligence for the best interest of the principal 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. If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise shall be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.
- 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; however, nothing herein is intended to abrogate any duty of the agent under the Uniform Prudent Investor Act (§ 64.2-780 et seq.).
- H. Except as otherwise provided in the power of attorney, an agent shall disclose receipts, disbursements, or transactions conducted on behalf of the principal if requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.
- I. Except as otherwise provided in the power of attorney, an agent shall, on reasonable request made by a person listed in subdivisions A 3 through A 9 of § 64.2-1614 who has a good faith belief that the principal suffers an incapacity or, if deceased, suffered incapacity at the time the agent acted, disclose to such person the extent to which he has chosen to act and the actions taken on behalf of the principal within the five years prior to either (i) the date of the request or (ii) the date of the death of the principal, if the principal is deceased at the time such request is made, and shall permit reasonable inspection of records pertaining to

such actions by such person. In all cases where the principal is deceased at the time such request is made, such request shall be made within one year after the date of the death of the principal. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

J. A provision in a power of attorney relieving an agent from the duties of disclosure required by this section shall be valid only if the principal signed or initialed, or a disinterested individual directed by the principal signed or initialed in the principal's conscious presence on the principal's behalf, an express statement in the power of attorney that the principal understands the provision and that the provision reflects the principal's wishes regardless of whether such provision is in the principal's best interests if the principal later becomes incapacitated. The principal shall acknowledge his signature before a notary public or other individual authorized by law to take acknowledgements for any such provision executed subsequent to the execution of an initial power of attorney. The provisions of this subsection shall apply to a power of attorney created on or after July 1, 2026.