

ALASKA STATE LEGISLATURE



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HB 8 Power of Attorney Uniform Law Version G

Section Analysis January 29, 2016

Section	Action	Comments
Section 1 Pg 1, ln 6	Replaces the current definition of an “agent”	The term attorney-in-fact appears similar but should be distinguished from the term attorney-at-law. An attorney-at-law in the United States is a lawyer — someone licensed to practice law in a particular jurisdiction. The Uniform Power of Attorney Act and this bill employ the term Agent . As an Agent, an attorney-in-fact is a fiduciary for the principal, so the law requires an attorney-in -fact to be completely honest with and loyal to the principal in their dealings with each other. An Agent would be held to the same level of honesty.
Section 2 Pg 1, ln 12	Corrects the definition of “state” by including <u>the United States Virgin Islands</u>	technical
Section 3 Pg 1, ln 15	Adds new definitions for “durable”, “electronic”, “power of attorney”, “principal”, “record” and “sign” as they pertain to this act	It was brought to our attention that a signature or initials could be quite difficult for someone with arthritis. Under this definition, a variety of ways for a person to “ sign ” would be allowed.
In this bill an Agent is the person granted powers and the finances belong to the Principal		
Section 4 Pg 2, ln 18	AS 13.26.326 Agent’s acceptance and liability	In the event the Agent violates a provision in this act, the Agent must restore the value of the property and reimburse any fees/costs paid associated with the liability.

Section 4 Pg 2, ln 28	Agent's duties	Clearly defines the responsibilities of managing the Principle's financial best interests. An Agent acting in good faith will not be held liable if the Principle's plan cannot be preserved.
Section 4 Pg 4, ln 22	AS 13.26.328 Acceptance of Power of Attorney	This section pertains to a third party accepting the responsibilities of an Agent – such as an accounting firm, family lawyer, court appointed person, or others.
Section 4 Pg 6, ln 11	AS 13.26.329 Termination of Power of Attorney; agent's resignation notice	Identifies the circumstances when a Power of Attorney is terminated.
Section 5 Pg 7, ln 3	AS 13.26 amended to recognize a power of attorney executed in another state	A power of attorney executed in another state is valid in Alaska if the POA complied with the issuing jurisdiction's law or requirements of the military.
Section 6 Pg 7, ln 11	AS 13.26.332 Statutory Form Power of Attorney	This section edits the actual form recognized by the State of Alaska. The most substantive change to the form is requiring the Principle to mark a box for each category. This action will provide the opportunity for the principle to award POA in whole or part to an Agent(s). The form also provides optional grant of specific authority to: Create, amend, revoke, or terminate a trust; make a gift; create or change beneficiaries; or revoke a transfer on death deed; change rights of survivorship; delegate authority; and waive the principal's right to be a beneficiary. These are commonly referred to as "Hot Powers".

Section 7 Pg 11, ln 21	Appointed signer of the Power of Attorney Form	If the Principal is not physically capable of signing the POA Form, he/she may appoint someone to sign on their behalf. The additional language instructs a notary to record the personal identification of the appointed singer. The appointed signer cannot be the Agent.
Section 7 Pg 12, ln 11	Sec 13.26.335 Additional optional provisions	Changes the term "attorney-in-fact" to Agent
Section 8 Pg 13, ln 7 Pg 13, ln 15 Pg 13, ln 19	Sec 13.26.341 applicability of provisions	Changing the terms for consistency; "mark" and "incapacity" Subsection (5) clarifies that if the principal fails to mark either the "yes" or "no" box, or marked both boxes, the agent would not be granted that power.
Section 9 Pg 14, ln 1 Pg 15, ln 2 Section 10 Pg 15, ln 26 Pg 16, ln 25 Section 11 Pg 17, ln 21 Pg 19, ln 4	"revoke, create or modify a trust"	Removes the option to "revoke, create or modify a trust" in this section. Revoke, Create or Modify a Trust is now a separate selection on the POA form.
Section 12 Pg 20, ln 18	AS 13.26.344(d)(8)	Allows the Agent to use credit and debit cards, and electronic transactions.
Section 13 Pg 24, ln 3	(10-14) adds additional responsibilities and clarification responsibilities of the Agent to manage the affairs of the Principal's business(es)	(10) allows the Agent to operate, buy, sell, etc. the Principal's interest in a business (11) allows the Agent to put additional capital into a business (12) allows the Agent to participate in reorganization of a business (13) sell or liquidate the business (14) establishes the value under a buy-out agreement.

Section 14 Pg 26, In 17	(13) exercise investment powers available under a contract of insurance or annuity	Identifies an additional function of managing the Principal's insurance or annuity.
Section 15 Pg 26, In 24	AS 13.26.344(h) Repealed section with respect to gifts and replaced with instructions regarding retirement plans.	Provides the Agent with all powers to effectively manage the Principal's retirement plan(s).
Section 16 Pg 27, In 7 Pg 29, In 21	AS 13.26.344 (j) amends section regarding personal relationships	May or May not include gifts. Requires the Agent to maintain the customary standard of living of the spouse, children, and other dependents of the principal. Includes court ordered financial support Acts as the Principal's personal representative for financial matters under HIPAA rules.
Section 17 Pg 29, In 29 Pg 30, In 5 Pg 30, In 30	AS 13.26.344 (k) amends section regarding government or military service	Includes civil service. Includes allowance and reimbursement for transportation of the individuals. Also allows the Agent to enroll in, apply for, select, reject, change, amend or discontinue a program.
Section 18 Pg 31, In 7	AS 13.26.344 adds a new subsection: (q) specific authority with respect to gift transactions	This is an optional designation on the POA Form where a Principal can designate the Agent to have the powers to designate gifts.
Section 19 Pg 32, In 28	AS 13.26.347 is amended to relieve an Agent of liability for breach of duty unless is was committed dishonestly	For example: if the Agent makes a late payment on behalf of the Principal, the Agent would not be held liable for that action. IF the power of attorney is changed in a manner that is inconsistent with the rest of the principal's desires; or the agent acted dishonestly, the power of attorney could be treated as invalid.
Section 20 Pg 33, In 7	AS 13.26.350 amends this section replacing the term "disability or incompetence" to "incapacity".	The definition of "incapacity" is on page 36 of this act.

Section 21 Pg 34, In 2	AS 13.26.353 (a) repealed and reenacted: establishing the incapacity of an individual.	Clarifies the grounds for determining incapacity of an individual and includes additional provisions such as if the Principal is missing, detained, unable to return to the United States.
Section 22 Pg 34, In 24	Technical amendment	Inserts the term Agent and updates statutory reference
Section 23 Pg 34, In 31 Pg 35, In 1 Pg 35, In 22	AS 13.26 adds new sections: Sec. 13.26.354 Judicial relief Sec 13.26.355 Relationship to other laws	Judicial relief allows specified individuals to petition the court regarding the Agent’s conduct. This act does not supersede any other law applicable to a financial institution or other entity; allows for electronic signatures.
Section 24 Pg 36, In 3	Technical amendment	Inserts the terms Agent, incapacity, and Power of Attorney.
Section 25 Pg 36, In 23 Ln 31	AS 13.26 adds new section: Sec. 13.26.357. Execution of power of attorney Clarifies that the principal is physically unable to sign the document	A power of attorney in this state is valid if the principal signs the form or directs another to sign on his/her behalf; the signature is acknowledged by a notary. For the purposes of this section, a notary may consider the signature of the principal if another person was directed to sign.
Section 26 Pg 37, In 5	Technical change	Removes term “Attorney in Fact”
Section 27 Pg 37, In 10	AS 13.26 adds new definitions: “benefits from government programs or civil or military service” “good faith” “incapacity” “retirement plan”	

Section 28 Pg 38, In 11	Adds a new chapter to read: Recognition of Substitute Decision-Making Documents	
Pg 38, In 12	Sec 13.28.010 Validity of substitute decision-making document	Requires that the State of Alaska deem decision-making documents valid for a Principal as long as the documents were executed in compliance with the law from the jurisdiction from which they come. A photocopy or electronically transmitted copy of an original has the same effect as the original.
Section 28 Pg 38, In 28	Sec 13.28.020 Meaning and effect of substitute decision-making document	The meaning and effect of the document and the authority of the decision maker are determined by the law of the jurisdiction where the document was executed.
Section 28 Pg 39, In 2	Sec 13.28.030 Reliance on substitute decision-making document	A person in good faith accepts the document without the knowledge that the document is genuine, valid and in effect. A person may request that the document be translated and may obtain an opinion of counsel regarding the document.
Section 28 Pg 39, In 18	Sec 13.28.040 Obligation to accept substitute decision-making document	Defines circumstances where a person should or may not accept a document. If the document is deemed to be genuine, a person who refuses to accept a document is subject to court action.
Section 28 Pg 40, In 14	Sec 13.28.050 Remedies under other law	Remedies do not abrogate and right or remedy under a law of this state.
Section 28 Pg 40, In 17	Sec 13.28.060 Uniformity of application and construction	When applying a uniform law, Alaska may edit the language to “fit” Alaska law.
Section 28 Pg 40, In 20	Sec 13.28.070 Relation to Electronic Signatures in Global and National Commerce Act	This act does not supersede

Section 28 Pg 40, In 25	Sec 13.28.090 Definitions "Decision maker" "good faith" "health care" "person" "personal care" "property" "record" "substitute decision-making document"	
Section 28 Pg 41, In 17	Sec 13.28.095 Short Title Uniform Recognition of Substitute Decision-Making Documents Act	
Section 29 Pg 41, In 19	AS 13.26.338(a) repealed AS 13.26.344(n) repealed AS 13.26.353(c) repealed	Principal no longer draws a line through the sections that he/she DOES NOT want the Agent to manage. Principal gives the agent full and unqualified authority to delegate power Requirement for a person to accept the POA or could receive a \$1,000 civil penalty plus actual costs.
Section 30 Pg 41, In 22	applicability	Does not nullify any power of attorney formed prior to the effective date of this act.
Section 31	Effective Date	January 1, 2017