

ALASKA STATE LEGISLATURE

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 House District 11 ~ Greater Palmer

HB 8 Power of Attorney Uniform Law Version A

Section Analysis January 20, 2015

Section	Action	Comments
Section 1 Pg 1, ln 4	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 9	Corrects the definition of “state” by including <u>the United States Virgin Islands</u>	technical
Section 3 Pg 1, ln 13	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.
Section 4 Pg 2, ln 17	In this bill an Agent is the person granted powers and the finances belong to the Principal 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 10	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 1	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 9	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.
Section 7 Pg 11, ln 10	Sec 13.26.335 Additional optional provisions	Changes the term "attorney-in-fact" to Agent
Section 8 Pg 12, ln 8	Sec 13.26.341 applicability of provisions	Changing the terms for consistency; "mark" and "incapacity"
Section 9 Pg 13, ln 2 Pg 14, ln 3	"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

Section 10 Pg 14, ln 27 Pg 15, ln 26		a separate selection on the POA form.
Section 11 Pg 16, ln 22 Pg 18, ln 5		
Section 12 Pg 19, ln 19	AS 13.26.344(d)	Allows the Agent to use credit and debit cards, and electronic transactions.
Section 13 Pg 23, ln 4	(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) establish the value under a buy-out agreement.
Section 14 Pg 25, ln 18	(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 25, ln 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 26, ln 6	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 under HIPAA rules.
Section 17 Pg 28, ln 28	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 30, 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 31, In 15	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 Agent purposefully paid for unauthorized expenditures from the estate, or consistently made late payments and the late fees were significant, the courts could determine that the Agent did not act in the best interest of the Principal and could impose a mediating action.
Section 20 Pg 32, In 6	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 33, 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 33, In 24	Technical amendment	Inserts the term Agent and updates statutory reference
Section 23 Pg 33, In 31	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 35, In 3	Technical amendment	Inserts the terms Agent, incapacity, and Power of Attorney.
Section 25 Pg 35, In 23	Technical amendment	Removes term Attorney-in-Fact

<p>Section 26 Pg 35, ln 28</p>	<p>AS 13.26 adds new definitions: “benefits from government programs or civil or military service” “good faith” “incapacity” “retirement plan”</p>	
<p>Section 27 Pg 36, ln 30</p>	<p>Adds a new chapter to read: Recognition of Substitute Decision-Making Documents</p>	
	<p>Sec 13.28.010 Validity of substitute decision-making document</p>	<p>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.</p>
	<p>Sec 13.28.020 Meaning and effect of substitute decision-making document</p>	<p>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.</p>
	<p>Sec 13.28.030 Reliance on substitute decision-making document</p>	<p>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.</p>
	<p>Sec 13.28.040 Obligation to accept substitute decision-making document</p>	<p>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.</p>

	Sec 13.28.050 Remedies under other law	Remedies do not abrogate and right or remedy under a law of this state.
	Sec 13.28.060 Uniformity of application and construction	When applying a uniform law, Alaska may edit the language to "fit" Alaska law.
	Sec 13.28.070 Relation to Electronic Signatures in Global and National Commerce Act	This act does not supersede
	Sec 13.28.090 Definitions "Decision maker" "good faith" "health care" "person" "personal care" "property" "record" "substitute decision-making document"	
	Sec 13.28.095 Short Title Uniform Recognition of Substitute Decision-Making Documents Act	
Sec 28 Pg 40, In 8	AS 13.26.338(a) 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. Requirement for a person to accept the POA or could receive a \$1,000 civil penalty plus actual costs.
Sec 29 Pg 40, In 9	applicability	
Sec 30	Effective Date	January 1, 2016