

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Power of Attorney Act is amended by changing Section 2-10 as follows:

(755 ILCS 45/2-10) (from Ch. 110 1/2, par. 802-10)

Sec. 2-10. Agency-court relationship.

(a) Upon petition by any interested person, notice to the agent, principal, and ~~(including the agent), with such notice to~~ interested persons as the court directs and a finding by the court that the principal lacks either the capacity to control or the capacity to revoke the agency, the court may construe a power of attorney, review the agent's conduct, and grant appropriate relief including compensatory damages.

(b) If the court finds that the agent is not acting for the benefit of the principal in accordance with the terms of the agency or that the agent's action or inaction, including restricting or not allowing an interested person to have reasonable visitation with the principal, has caused or threatens substantial harm to the principal's person or property in a manner not authorized or intended by the principal, the court may order a guardian of the principal's person or estate to exercise any powers of the principal under

the agency, including the power to revoke the agency, or may enter such other orders without appointment of a guardian as the court deems necessary to provide for the best interests of the principal.

(c) If the court finds that the agency requires interpretation, the court may construe the agency and instruct the agent, but the court may not amend the agency.

(d) If the court finds that the agent has not acted for the benefit of the principal in accordance with the terms of the agency and the Illinois Power of Attorney Act, or that the agent's action caused or threatened substantial harm to the principal's person or property in a manner not authorized or intended by the principal, then the agent shall not be authorized to pay or be reimbursed from the estate of the principal the attorneys' fees and costs of the agent in defending a proceeding brought pursuant to this Section.

(e) Upon a finding that the agent's action has caused substantial harm to the principal's person or property, the court may assess against the agent reasonable costs and attorney's fees to a prevailing party who is a provider agency as defined in Section 2 of the Adult Protective Services Act, a representative of the Office of the State Long Term Care Ombudsman, the State Guardian, a public guardian, or a governmental agency having regulatory authority to protect the welfare of the principal.

(f) As used in this Section, the term "interested person"

includes (1) the principal or the agent; (2) a guardian of the person, guardian of the estate, or other fiduciary charged with management of the principal's property; (3) the principal's spouse, parent, or descendant; (4) a person who would be a presumptive heir-at-law of the principal; (5) a person named as a beneficiary to receive any property, benefit, or contractual right upon the principal's death, or as a beneficiary of a trust created by or for the principal; (6) a provider agency as defined in Section 2 of the Adult Protective Services Act, a representative of the Office of the State Long Term Care Ombudsman, the State Guardian, a public guardian, or a governmental agency having regulatory authority to protect the welfare of the principal; and (7) the principal's caregiver or another person who demonstrates sufficient interest in the principal's welfare.

(g) Absent court order directing a guardian to exercise powers of the principal under the agency, a guardian will have no power, duty or liability with respect to any property subject to the agency or any personal or health care matters covered by the agency. If an agent seeks guardianship of the principal pursuant to the Probate Act of 1975, the petition for guardianship must delineate the specific powers to be granted to the guardian that are not already included in the power of attorney. The petition for temporary, limited, or plenary guardianship of the principal under the Probate Act of 1975 may include a prayer for relief to suspend a power of

attorney or to revoke a power of attorney in accordance with subsection (b).

(h) Proceedings under this Section shall be commenced in the county where the guardian was appointed or, if no Illinois guardian is acting, then in the county where the agent or principal resides or where the principal owns real property.

(i) This Section shall not be construed to limit any other remedies available.

(Source: P.A. 102-72, eff. 1-1-22.)