§ 5-1505. Standard of care; fiduciary duties; compelling disclosure of record. 1. Standard of care. In dealing with property of the principal, an agent shall observe the standard of care that would be observed by a prudent person dealing with property of another.

2. Fiduciary duties. (a) An agent acting under a power of attorney has a fiduciary relationship with the principal. The fiduciary duties include but are not limited to each of the following obligations:

(1) To act according to any instructions from the principal or, where there are no instructions, in the best interest of the principal, and to avoid conflicts of interest.

(2) To keep the principal's property separate and distinct from any other property owned or controlled by the agent, except for property that is jointly owned by the principal and agent at the time of the execution of the power of attorney, and property that becomes jointly owned after the execution of the power of attorney as the result of the agent's acquisition of an interest in the principal's property by reason of the agent's exercise of authority granted in the modifications section of a statutory short form power of attorney or in a non-statutory power of attorney. The agent may not make gifts of the principal's property to himself or herself without specific authorization in a power of attorney.

(3) To keep a record of all receipts, disbursements, and transactions entered into by the agent on behalf of the principal and to make such record and power of attorney available to the principal or to third parties at the request of the principal. The agent shall make such record and a copy of the power of attorney available within fifteen days of a written request by any of the following:

(i) a monitor;

(ii) a co-agent or successor agent acting under the power of attorney;

(iii) a government entity, or official thereof, investigating a report that the principal may be in need of protective or other services, or investigating a report of abuse or neglect;

(iv) a court evaluator appointed pursuant to section 81.09 of the mental hygiene law;

(v) a guardian ad litem appointed pursuant to section seventeen hundred fifty-four of the surrogate's court procedure act;

(vi) the guardian or conservator of the estate of the principal, if such record has not already been provided to the court evaluator or guardian ad litem; or

(vii) the personal representative of the estate of a deceased principal if such record has not already been provided to the guardian or conservator of the estate of the principal.

The failure of the agent to make the record available pursuant to this paragraph may result in a special proceeding under subdivision one of section 5-1510 of this title.

(b) The agent may be subject to liability for conduct or omissions which violate any fiduciary duty.

(c) The agent is not liable to third parties for any act pursuant to a power of attorney if the act was authorized at the time and the act did not violate subdivision one or two of this section.

3. Resignation. (a) An agent who has signed the power of attorney may resign by giving written notice to the principal and the agent's co-agent, successor agent or the monitor, if one has been named, or the principal's guardian if one has been appointed. If no co-agent, successor agent, monitor or guardian is known to the agent and the principal is incapacitated or the agent has notice of any facts indicating the principal's incapacity, the agent may give written notice to a government entity having authority to protect the welfare of the principal, or may petition the court to approve the resignation.

(b) The principal may provide for alternative means for an agent's resignation in the power of attorney.