

§ 32C-1-117. Agent's liability.

- (a) A violation by an agent of this Chapter is a breach of fiduciary duty.
- (b) To remedy a breach of fiduciary duty that has occurred or may occur involving a power of attorney, the court may do the following:
 - (1) Enjoin an agent from committing a breach of fiduciary duty.
 - (2) Compel an agent to redress a breach of fiduciary duty by paying money, restoring property, or other means.
 - (3) Order an agent to account.
 - (4) Appoint a special fiduciary to take possession of the property subject to the power of attorney and administer that property.
 - (5) Suspend an agent.
 - (6) Remove an agent.
 - (7) Reduce or deny compensation to or reimbursement of an agent.
 - (8) Subject to G.S. 32C-1-119 and other laws governing the rights of third persons dealing in good faith with an agent, void an act of an agent, impose a lien or a constructive trust on property subject to the power of attorney, or trace property wrongfully disposed by an agent and recover the property or its proceeds.
 - (9) Order any other appropriate relief.
- (c) The court may, for good cause shown, relieve an agent from liability for any breach of fiduciary duty under a power of attorney, or wholly or partly excuse an agent who has acted honestly and reasonably from liability for a breach of fiduciary duty under a power of attorney.
- (d) An agent who commits a breach of fiduciary duty under a power of attorney is liable for the following:
 - (1) The amount required to restore the value of the property subject to the power of attorney and distributions from that property to what they would have been had the breach not occurred; and
 - (2) The profit the agent made by reason of the breach.
- (e) Except as otherwise provided in this subsection, if more than one agent is liable for a breach of fiduciary duty under a power of attorney, an agent is entitled to contribution from the other agent or agents. An agent is not entitled to contribution if the agent was substantially more at fault than another agent or if the agent committed the breach of fiduciary duty in bad faith or with reckless indifference to the purposes of the power of attorney or the best interests of the principal. An agent who received a benefit from the breach of fiduciary duty is not entitled to contribution from another agent to the extent of the benefit received.
- (f) An agent is liable for any profit made by the agent arising from dealings with property subject to the power of attorney, even absent a breach of fiduciary duty. Nothing in this section limits an agent's right to compensation under G.S. 32C-1-112.
- (g) Absent a breach of fiduciary duty under a power of attorney, an agent is not liable for a loss or depreciation in the value of property subject to the power of attorney or for not having made a profit.
- (h) In a judicial proceeding involving a claim for breach of fiduciary duty under a power of attorney, the court may award costs and expenses, including reasonable attorneys' fees, as provided in G.S. 6-21(2). (2017-153, s. 1.)