

## **IS AN ATTORNEY IN FACT UNDER A POWER OF ATTORNEY REQUIRED TO PROVIDE AN ACCOUNTING TO A RELATIVE UPON REQUEST?**

You might be in a place asking do I need to provide an accounting as the attorney in fact (“agent”) for the principal if a person requests one. Or, perhaps you are on the other side asking can I make the agent provide me with an accounting.

The Ohio Revised Code Section 1337 is that statute on point related to powers of attorney. First, there is no set standard for what “an accounting” must include. The statute describes it as the “disclosure of receipts, disbursements, or transactions”<sup>1</sup> and “review the agent’s conduct.”<sup>2</sup> Second, under the agent’s duties, the agent is not required to provide an accounting when the principal is alive except when:

1. The power of attorney provides for it;
2. Ordered by a court;
3. Requested by the principal;
4. Requested by a guardian, conservator, another fiduciary acting for the principal; or
5. Requested by a governmental agency having authority to protect the welfare of the principal.<sup>3</sup>

Third, under the agent’s duties, the prior agent is not required to provide an accounting after the principal died except when:

1. The power of attorney provides for it;
2. Ordered by a court; or
3. Requested by the personal representative or successor in interest of the principal's estate.<sup>4</sup>

Next, the statute provides that certain categories of people may “petition a court to construe a power of attorney or review the agent’s conduct and grant appropriate relief[.]”<sup>5</sup> The people include, but are not limited to:

1. A person authorized to make health-care decisions for the principal;
2. The principal’s spouse;
3. The principal’s parent;
4. The principal’s descendent;
5. An individual who would qualify as a presumptive heir of the principal;
6. A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death;
7. A beneficiary of a trust created by or for the principal that has a financial interest in the

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<sup>1</sup> O.R.C. Section 1337.34(H).

<sup>2</sup> O.R.C. Section 1337.36(A).

<sup>3</sup> O.R.C. Section 1337.34(H).

<sup>4</sup> O.R.C. Section 1337.34(H).

<sup>5</sup> O.R.C. Section 1337.36(A).

principal's estate.<sup>6</sup>

Should the Court be guided by evidence or issue a *carte blanche* order every time a petition is filed? One court in Ohio ruled on this very issue that an accounting must be provided. The Court stated:

The Court finds at least some of the information requested by Plaintiffs is “fair game” in terms of reviewing an agent’s conduct under the Power of Attorney Act and also under traditional discovery rules. It is simply unreasonable and a colossal waste of resources to wait until trial for the Court to order an accounting under R.C. 1337.36.<sup>7</sup>

The Court’s decision seems to go against legal principles. Permitting discovery into the confidential financial affairs of a principal based solely on unfounded suspicion would undermine the protections codified in O.R.C. Section 1337.34 and set a dangerous precedent.

If a plaintiff wants to know whether the agent took personal possession of the principal’s assets or used the principal’s assets for personal benefit, then the plaintiff can use traditional discovery by way of interrogatories, document production requests, or deposition. However, asking the court to allow a plaintiff to obtain confidential information regarding the principal’s assets without any evidence of wrongdoing should not be proper.

Ordering that a plaintiff can obtain confidential financial information regarding a principal merely by suing an agent would open the door to any interested party bypassing O.R.C. Section 1337.34(H) and O.R.C Section 1337.36. Just because a statute provides a pathway to obtain confidential information does not mean that everyone is entitled to walk that path. Even assuming a plaintiff is allowed to walk the path, the plaintiff should have some evidence of wrongdoing before asking a court to order the disclosure of confidential information.

Ruling that the discovery is allowed under these circumstances could pressure agents to provide confidential information concerning their principals to avoid being sued.

Rulings by courts in other states involving similar statutory language are informative and logically persuasive. In Maryland, a court denied the request for an accounting when the complaint failed “to allege any misuse or abuse of power”<sup>8</sup> In Virginia, a court denied a request for an accounting and called the request a “fishing expedition.”<sup>9</sup> A “fishing expedition” is a common term in the legal world used to describe attempts to obtain information without knowing if it exists.

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<sup>6</sup> O.R.C. Section 1337.36(A). If an action is filed, then the principal can dismiss the action unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

<sup>7</sup> Montgomery County Probate Court, Case No. 2024 MSC 00221, April 22, 2025 Decision.

<sup>8</sup> *In re Jacobson*, 256 Md.App. 369, 286 A.3d 600 (2022).

<sup>9</sup> *Williams v. Boggess*, 80 Va.App. 569, 899 S.E.2d 636 (2024).

Is there a conflict between the Ohio statute on powers of attorney and the Ohio Civil Rules that provide for the discovery of information in a lawsuit? Even assuming for the sake of argument that there is, then the statute controls.<sup>10</sup>

What should an agent do if requested to provide an accounting and what are your rights to request an accounting? Contact us to discuss your matter.

**Disclaimer: This article is provided for informational purposes only and does not constitute legal advice. Reading this article does not create an attorney-client relationship. The information presented may not reflect the most current legal developments and may not apply to your specific situation. You should consult with an attorney regarding your individual legal needs.**

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<sup>10</sup> “This constitutional provision recognizes that where conflicts arise between the Civil Rules and the statutory law, the rule will control the statute on matters of procedure and the statute will control the rule on matters of substantive law.” *Ferguson v. State*, 151 Ohio St.3d 265, 2017-Ohio-7844, 87 N.E.3d 1250, ¶ 20