

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1092 Session of
2011

INTRODUCED BY GREENLEAF, ORIE, FONTANA AND LEACH, JUNE 3, 2011

AS AMENDED ON THIRD CONSIDERATION, SEPTEMBER 25, 2012

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in powers of attorney,
3 further providing for general provisions, ~~for form of power~~ ←
4 ~~of attorney and for liability~~ AND FOR SPECIAL RULES FOR ←
5 GIFTS; PROVIDING FOR AGENT'S DUTIES AND FOR PRINCIPLES OF LAW
6 AND EQUITY; FURTHER PROVIDING FOR FORM OF POWER OF ATTORNEY,
7 FOR IMPLEMENTATION OF POWER OF ATTORNEY AND FOR LIABILITY;
8 PROVIDING FOR LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED
9 POWER OF ATTORNEY; AND FURTHER PROVIDING FOR VALIDITY.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 ~~Section 1. Sections 5601(b), (e.1) and (e.2) and 5602(c) of~~ ←
13 ~~Title 20 of the Pennsylvania Consolidated Statutes are amended~~
14 ~~and the sections are amended by adding subsections to read:~~

15 ~~§ 5601. General provisions.~~

16 * * *

17 ~~(b) Execution. A power of attorney shall be dated, and it~~
18 ~~shall be signed [and dated] by the principal by signature or~~
19 ~~mark, or by another individual on behalf of and at the direction~~
20 ~~of the principal if the principal is unable to sign but~~
21 ~~specifically directs another individual to sign the power of~~
22 ~~attorney. [If the power of attorney is executed by mark or by~~

1 another individual, then it] ~~The power of attorney shall be~~
2 ~~witnessed by two individuals, each of whom is 18 years of age or~~
3 ~~older. A witness shall not be an agent appointed in the power of~~
4 ~~attorney or the individual who signed the power of attorney on~~
5 ~~behalf of and at the direction of the principal.~~

6 ~~(b.1) Acknowledgment and affidavits.~~

7 ~~(1) In addition to the requirements under subsection~~

8 ~~(b):~~

9 ~~(i) A power of attorney shall be acknowledged by the~~
10 ~~principal as provided in this subsection.~~

11 ~~(ii) The witnesses to a power of attorney shall~~
12 ~~provide affidavits as provided in this subsection. A~~
13 ~~witness may not be the individual who takes the~~
14 ~~principal's acknowledgment. A separate affidavit may be~~
15 ~~used for each witness whose affidavit is not taken at the~~
16 ~~same time as the principal's acknowledgment.~~

17 ~~(2) The acknowledgment of the principal and the~~
18 ~~affidavits of the witnesses shall be:~~

19 ~~(i) Made before:~~

20 ~~(A) an officer authorized to administer oaths~~
21 ~~under the laws of this Commonwealth or under the laws~~
22 ~~of the state where execution occurs; or~~

23 ~~(B) an attorney at law and certified to such an~~
24 ~~officer as provided in paragraph (3).~~

25 ~~(ii) Evidenced by the officer's certificate, under~~
26 ~~official seal.~~

27 ~~(iii) Attached or annexed to the power of attorney.~~

28 ~~(iv) In substantially the same form and content as~~
29 ~~follows:~~

30 Acknowledgment by Principal

~~Commonwealth of Pennsylvania (or State of _____)~~

~~County of _____~~

~~The principal whose name is signed to the attached or foregoing instrument, having been duly qualified according to law, did hereby acknowledge that he or she signed the instrument as a power of attorney willingly and as a free and voluntary act for the purposes therein expressed.~~

~~Sworn to or affirmed and acknowledged before me by _____, the principal, this _____ day of _____, 20____.~~

~~(Signature of officer or attorney)~~

~~(Seal and official capacity of officer or state of admission of attorney and Supreme Court Identification No. _____)~~

Affidavit by Witnesses

~~Commonwealth of Pennsylvania (or State of _____)~~

~~County of _____~~

~~We (or I) _____ and _____, the witness(es) whose name(s) are (is) signed to the attached or foregoing instrument, being duly qualified according to law, do depose and say that we were (I was) present and saw the principal sign the instrument as a power of attorney willingly and as a free and voluntary act for the purposes therein expressed, that we (or I) signed the power of attorney as witness(es) in the hearing and sight of the principal, and that to the best of our (my) knowledge the principal was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.~~

~~Sworn to or affirmed and subscribed before me by _____ and _____, witness(es), this _____ day of _____, 20____.~~

(Witness)

(Witness)

(Signature of officer or attorney)

(Seal and official capacity of officer or
state of admission of attorney and Supreme Court
Identification No. _____)

(3) The acknowledgment of the principal and the
affidavit of a witness required by this subsection may be
made before a member of the bar of the Supreme Court of
Pennsylvania or of the highest court of the state in which
execution of the power of attorney occurs who certifies to an
officer authorized to administer oaths that the
acknowledgment and affidavits were made before that member of
the bar. In such case, in addition to the acknowledgment and
affidavits required by this subsection, the attorney's
certification shall be evidenced by the officer before whom
it was made substantially as follows:

Commonwealth of Pennsylvania (or State of _____)
County of _____.

On this, the _____ day of _____, 20____, before me _____,
the undersigned officer, personally appeared _____,
known to me or satisfactorily proven to be a member of the bar
of the highest court of (Pennsylvania or the state in which
execution of the power of attorney took place), and certified
that he or she was personally present when the foregoing
acknowledgment and affidavits were made by the principal and
witnesses.

~~In witness whereof, I hereunto set my hand and official seal.~~

~~_____
(Signature, seal and official capacity of
officer)~~

~~* * *~~

~~(e.1) Limitation on applicability in commercial
transaction.~~

~~(1) Subsections (b), (b.1), (c), (d) and (e) do not
apply to a power or a power of attorney contained in an
instrument used in a commercial transaction which simply
authorizes an agency relationship. This paragraph includes
the following:~~

~~(i) A power given to or for the benefit of a
creditor in connection with a loan or other credit
transaction.~~

~~(ii) A power exclusively granted to facilitate
transfer of stock, bonds and other assets.~~

~~(iii) A power contained in the governing document
for a corporation, partnership or limited liability
company or other legal entity by which a director,
partner or member authorizes others to do other things on
behalf of the entity.~~

~~(iv) A warrant of attorney conferring authority to
confess judgment.~~

~~(v) A power given to a dealer as defined by the act
of December 22, 1983 (P.L.306, No.84), known as the Board
of Vehicles Act, when using the power in conjunction with
a sale, purchase or transfer of a vehicle as authorized
by 75 Pa.C.S. § 1119 (relating to application for
certificate of title by agent).~~

~~(2) Powers and powers of attorney exempted by this subsection need not be dated.~~

~~(e.2) Limitation on applicability in health care power of attorney. Subsections (b), (b.1), (c) and (d) do not apply to a power of attorney which exclusively provides for health care decision making.~~

~~* * *~~

~~§ 5602. Form of power of attorney.~~

~~* * *~~

~~(c) Filing of power of attorney. An originally executed [copy of the] power of attorney may be filed with the clerk of the orphans' court division of the court of common pleas in the county in which the principal resides, and if it is acknowledged, it may be recorded in the office for the recording of deeds of the county of the principal's residence and of each county in which real property to be affected by an exercise of the power is located. The clerk of the orphans' court division or any office for the recording of deeds with whom the power has been filed, may, upon request, issue certified copies of the power of attorney. Each such certified copy shall have the same validity and the same force and effect as if it were the original, and it may be filed of record in any other office of this Commonwealth (including, without limitation, the clerk of the orphans' court division or the office for the recording of deeds) as if it were the original.~~

~~(d) Copy of power of attorney. Except for the purpose of filing under subsection (c), a photocopy or electronically transmitted copy of an originally executed power of attorney has the same effect as the original.~~

~~Section 2. Section 5608 of Title 20 is amended to read:~~

1 ~~§ 5608. Liability.~~

2 ~~(a) Third party liability.~~

3 ~~(1) Any person who is given instructions by a person~~
4 ~~claiming to be an agent [in accordance with the terms of a]~~
5 ~~acting under a document appearing to be a valid power of~~
6 ~~attorney shall comply with the instructions if the action~~
7 ~~requested is authorized under the terms of the document.~~

8 ~~(2) Any person who without reasonable cause fails to~~
9 ~~comply with those instructions shall be subject to civil~~
10 ~~liability for any damages resulting from noncompliance.~~

11 ~~(3) Reasonable cause under this subsection shall~~
12 ~~include, but not be limited to, [a] any of the following:~~

13 ~~(i) A reasonable good faith belief that:~~

14 ~~(A) the document presented is void, invalid or~~
15 ~~terminated;~~

16 ~~(B) the agent's apparent authority is void,~~
17 ~~invalid or terminated; or~~

18 ~~(C) the agent is exceeding or improperly~~
19 ~~exercising the agent's apparent authority.~~

20 ~~(ii) A good faith report having been made by the~~
21 ~~[third party] person to whom instructions have been given~~
22 ~~by the agent to the local protective services agency~~
23 ~~regarding abuse, neglect, exploitation or abandonment~~
24 ~~pursuant to section 302 of the act of November 6, 1987~~
25 ~~(P.L.381, No.79), known as the Older Adults Protective~~
26 ~~Services Act, or section 302 of the act of October 7,~~
27 ~~2010 (P.L.484, No.70), known as the Adult Protective~~
28 ~~Services Act.~~

29 ~~(b) Third party immunity. Any person who reasonably acts in~~
30 ~~good faith reliance on a document appearing to be a valid power~~

~~of attorney shall incur no liability as a result of acting in
accordance with the instructions of the person claiming to be an
agent.~~

~~Section 3. This act shall apply as follows:~~

~~(1) The amendment of 20 Pa.C.S. § 5601(b) and (b.1)
shall only apply to a power of attorney executed on or after
the effective date of this section.~~

~~(2) The amendment of 20 Pa.C.S. § 5608 shall apply to:~~

~~(i) A power of attorney executed before, on or after
the effective date of this section.~~

~~(ii) An action, by a third party or person to whom
instructions have been given by an agent, occurring
before, on or after the effective date of this section.~~

~~Section 4. This act shall take effect as follows:~~

~~(1) The amendment or addition of 20 Pa.C.S. § 5601(b),
(b.1), (e.1) and (e.2) shall take effect in six months.~~

~~(2) The amendment or addition of 20 Pa.C.S. §§ 5602(c)
and (d) and 5608 shall take effect immediately.~~

~~(3) This section shall take effect immediately.~~

SECTION 1. SECTION 5601(B), (C), (D), (E), (E.1) (1)

INTRODUCTORY PARAGRAPH AND (F) OF TITLE 20 OF THE PENNSYLVANIA
CONSOLIDATED STATUTES ARE AMENDED TO READ:

§ 5601. GENERAL PROVISIONS.

* * *

(B) EXECUTION.--

(1) A POWER OF ATTORNEY SHALL BE DATED AND IT SHALL BE
SIGNED [AND DATED] BY THE PRINCIPAL BY SIGNATURE OR MARK, OR
BY ANOTHER INDIVIDUAL ON BEHALF OF AND AT THE DIRECTION OF
THE PRINCIPAL.

(2) IF THE POWER OF ATTORNEY IS EXECUTED BY MARK OR BY



1 ANOTHER INDIVIDUAL, THEN IT SHALL BE WITNESSED BY TWO
2 INDIVIDUALS, EACH OF WHOM IS 18 YEARS OF AGE OR OLDER. A
3 WITNESS SHALL NOT BE THE INDIVIDUAL WHO SIGNED THE POWER OF
4 ATTORNEY ON BEHALF OF AND AT THE DIRECTION OF THE PRINCIPAL.

5 (3) FOR A POWER OF ATTORNEY EXECUTED ON OR AFTER JANUARY
6 1, 2013, THE SIGNATURE OF THE PRINCIPAL, OR OTHER INDIVIDUAL
7 SIGNING A POWER OF ATTORNEY ON BEHALF OF THE PRINCIPAL, SHALL
8 BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR OTHER INDIVIDUAL
9 AUTHORIZED BY LAW TO TAKE ACKNOWLEDGMENTS.

10 (C) NOTICE.--ALL POWERS OF ATTORNEY SHALL INCLUDE THE
11 FOLLOWING NOTICE IN CAPITAL LETTERS AT THE BEGINNING OF THE
12 POWER OF ATTORNEY. THE NOTICE SHALL BE SIGNED BY THE PRINCIPAL.
13 IN THE ABSENCE OF A SIGNED NOTICE, UPON A CHALLENGE TO THE
14 AUTHORITY OF AN AGENT TO EXERCISE A POWER UNDER THE POWER OF
15 ATTORNEY, THE AGENT SHALL HAVE THE BURDEN OF DEMONSTRATING THAT
16 THE EXERCISE OF THIS AUTHORITY IS PROPER.

17 NOTICE

18 THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE
19 PERSON YOU DESIGNATE (YOUR "AGENT") BROAD POWERS TO HANDLE
20 YOUR PROPERTY, WHICH MAY INCLUDE POWERS TO SELL OR OTHERWISE
21 DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE
22 NOTICE TO YOU OR APPROVAL BY YOU.

23 THIS POWER OF ATTORNEY DOES NOT IMPOSE A DUTY ON YOUR
24 AGENT TO EXERCISE GRANTED POWERS, BUT WHEN POWERS ARE
25 EXERCISED, YOUR AGENT MUST USE DUE CARE TO ACT FOR YOUR
26 BENEFIT AND IN ACCORDANCE WITH THIS POWER OF ATTORNEY.

27 YOUR AGENT MAY EXERCISE THE POWERS GIVEN HERE THROUGHOUT
28 YOUR LIFETIME, EVEN AFTER YOU BECOME INCAPACITATED, UNLESS
29 YOU EXPRESSLY LIMIT THE DURATION OF THESE POWERS OR YOU
30 REVOKE THESE POWERS OR A COURT ACTING ON YOUR BEHALF

1 TERMINATES YOUR AGENT'S AUTHORITY.

2 YOUR AGENT MUST [KEEP YOUR FUNDS SEPARATE FROM YOUR
3 AGENT'S FUNDS] ACT IN ACCORDANCE WITH YOUR REASONABLE
4 EXPECTATIONS TO THE EXTENT ACTUALLY KNOWN BY YOUR AGENT AND,
5 OTHERWISE, IN YOUR BEST INTEREST, ACT IN GOOD FAITH AND ACT
6 ONLY WITHIN THE SCOPE OF AUTHORITY GRANTED BY YOU IN THE
7 POWER OF ATTORNEY.

8 THE LAW PERMITS YOU, IF YOU CHOOSE, TO GRANT BROAD
9 AUTHORITY TO AN AGENT UNDER POWER OF ATTORNEY, INCLUDING THE
10 ABILITY TO GIVE AWAY ALL OF YOUR PROPERTY WHILE YOU ARE ALIVE
11 OR TO SUBSTANTIALLY CHANGE HOW YOUR PROPERTY IS DISTRIBUTED
12 AT YOUR DEATH. BEFORE SIGNING THIS DOCUMENT YOU SHOULD SEEK
13 THE ADVICE OF AN ATTORNEY AT LAW TO MAKE SURE YOU UNDERSTAND
14 IT.

15 A COURT CAN TAKE AWAY THE POWERS OF YOUR AGENT IF IT
16 FINDS YOUR AGENT IS NOT ACTING PROPERLY.

17 THE POWERS AND DUTIES OF AN AGENT UNDER A POWER OF
18 ATTORNEY ARE EXPLAINED MORE FULLY IN 20 PA.C.S. CH. 56.

19 IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT
20 UNDERSTAND, YOU SHOULD ASK A LAWYER OF YOUR OWN CHOOSING TO
21 EXPLAIN IT TO YOU.

22 I HAVE READ OR HAD EXPLAINED TO ME THIS NOTICE AND I I
23 HAVE READ OR HAD EXPLAINED TO ME THIS NOTICE AND I UNDERSTAND
24 ITS CONTENTS.

25

26

27 (PRINCIPAL)

(DATE)

28 (D) ACKNOWLEDGMENT EXECUTED BY AGENT.--AN AGENT SHALL HAVE
29 NO AUTHORITY TO ACT AS AGENT UNDER THE POWER OF ATTORNEY UNLESS

1 THE AGENT HAS FIRST EXECUTED AND AFFIXED TO THE POWER OF
2 ATTORNEY AN ACKNOWLEDGMENT IN SUBSTANTIALLY THE FOLLOWING FORM:

3 I, , HAVE READ THE ATTACHED POWER OF
4 ATTORNEY AND AM THE PERSON IDENTIFIED AS THE AGENT FOR
5 THE PRINCIPAL. I HEREBY ACKNOWLEDGE THAT [IN THE ABSENCE
6 OF A SPECIFIC PROVISION TO THE CONTRARY IN THE POWER OF
7 ATTORNEY OR IN 20 PA.C.S.] WHEN I ACT AS AGENT:

8 I SHALL [EXERCISE THE POWERS FOR THE BENEFIT OF THE
9 PRINCIPAL] ACT IN ACCORDANCE WITH THE PRINCIPAL'S
10 REASONABLE EXPECTATIONS TO THE EXTENT ACTUALLY KNOWN BY
11 ME AND, OTHERWISE, IN THE PRINCIPAL'S BEST INTEREST, ACT
12 IN GOOD FAITH AND ACT ONLY WITHIN THE SCOPE OF AUTHORITY
13 GRANTED TO ME BY THE PRINCIPAL IN THE POWER OF ATTORNEY.

14 [I SHALL KEEP THE ASSETS OF THE PRINCIPAL SEPARATE
15 FROM MY ASSETS.

16 I SHALL EXERCISE REASONABLE CAUTION AND PRUDENCE.

17 I SHALL KEEP A FULL AND ACCURATE RECORD OF ALL
18 ACTIONS, RECEIPTS AND DISBURSEMENTS ON BEHALF OF THE
19 PRINCIPAL.]

20

21

22 (Agent) (Date)

23 [(E) FIDUCIARY RELATIONSHIP.--AN AGENT ACTING UNDER A POWER
24 OF ATTORNEY HAS A FIDUCIARY RELATIONSHIP WITH THE PRINCIPAL. IN
25 THE ABSENCE OF A SPECIFIC PROVISION TO THE CONTRARY IN THE POWER
26 OF ATTORNEY, THE FIDUCIARY RELATIONSHIP INCLUDES THE DUTY TO:

27 (1) EXERCISE THE POWERS FOR THE BENEFIT OF THE
28 PRINCIPAL.

29 (2) KEEP SEPARATE THE ASSETS OF THE PRINCIPAL FROM THOSE

1 OF AN AGENT.

2 (3) EXERCISE REASONABLE CAUTION AND PRUDENCE.

3 (4) KEEP A FULL AND ACCURATE RECORD OF ALL ACTIONS,
4 RECEIPTS AND DISBURSEMENTS ON BEHALF OF THE PRINCIPAL.]

5 (E.1) LIMITATION ON APPLICABILITY IN COMMERCIAL
6 TRANSACTION.--

7 (1) SUBSECTIONS [(C), (D) AND (E)] (B) (2) AND (3), (C)
8 AND (D) AND SECTION 5601.3 (RELATING TO AGENTS' DUTIES) DO
9 NOT APPLY TO A POWER OR A POWER OF ATTORNEY CONTAINED IN AN
10 INSTRUMENT USED IN A COMMERCIAL TRANSACTION WHICH SIMPLY
11 AUTHORIZES AN AGENCY RELATIONSHIP. THIS PARAGRAPH INCLUDES
12 THE FOLLOWING:

13 * * *

14 (F) [DEFINITION.--AS USED IN THIS CHAPTER, THE TERM "AGENT"
15 MEANS A PERSON DESIGNATED BY A PRINCIPAL IN A POWER OF ATTORNEY
16 TO ACT ON BEHALF OF THAT PRINCIPAL.] DEFINITIONS.--THE FOLLOWING
17 WORDS AND PHRASES WHEN USED IN THIS CHAPTER SHALL HAVE THE
18 MEANINGS GIVEN TO THEM IN THIS SUBSECTION UNLESS THE CONTEXT
19 CLEARLY INDICATES OTHERWISE:

20 "AGENT." A PERSON DESIGNATED BY A PRINCIPAL IN A POWER OF
21 ATTORNEY TO ACT ON BEHALF OF THAT PRINCIPAL.

22 "GOOD FAITH." HONESTY IN FACT.

23 SECTION 2. SECTION 5601.2 OF TITLE 20 IS REPEALED:

24 [§ 5601.2. SPECIAL RULES FOR GIFTS.

25 (A) GENERAL RULE.--A PRINCIPAL MAY EMPOWER AN AGENT TO MAKE
26 A GIFT IN A POWER OF ATTORNEY ONLY AS PROVIDED IN THIS SECTION.

27 (B) LIMITED GIFTS.--A PRINCIPAL MAY AUTHORIZE AN AGENT TO
28 MAKE A LIMITED GIFT AS DEFINED UNDER SECTION 5603(A) (2)
29 (RELATING TO IMPLEMENTATION OF POWER OF ATTORNEY) BY THE
30 INCLUSION OF:

1 (1) THE LANGUAGE QUOTED IN SECTION 5602(A)(1) (RELATING
2 TO FORM OF POWER OF ATTORNEY); OR

3 (2) OTHER LANGUAGE SHOWING A SIMILAR INTENT ON THE PART
4 OF THE PRINCIPAL TO EMPOWER THE AGENT TO MAKE A LIMITED GIFT.

5 (C) UNLIMITED GIFTS.--A PRINCIPAL MAY AUTHORIZE AN AGENT TO
6 MAKE ANY OTHER GIFT ONLY BY SPECIFICALLY PROVIDING FOR AND
7 DEFINING THE AGENT'S AUTHORITY IN THE POWER OF ATTORNEY.

8 (D) NATURE OF GIFTS.--IN THE ABSENCE OF A SPECIFIC PROVISION
9 TO THE CONTRARY IN THE POWER OF ATTORNEY:

10 (1) A POWER TO MAKE A LIMITED GIFT SHALL BE CONSTRUED TO
11 EMPOWER THE AGENT TO MAKE A GIFT TO EACH DONEE EITHER
12 OUTRIGHT OR IN TRUST.

13 (2) IN THE CASE OF ANY GIFT TO A MINOR, THAT GIFT MAY BE
14 MADE IN TRUST OR IN ACCORDANCE WITH CHAPTER 53 (RELATING TO
15 PENNSYLVANIA UNIFORM TRANSFERS TO MINORS ACT) OR SECTION 5155
16 (RELATING TO ORDER OF COURT).

17 (3) IN THE CASE OF ANY GIFT MADE IN TRUST, THE AGENT MAY
18 EXECUTE A DEED OF TRUST FOR SUCH PURPOSE, DESIGNATING ONE OR
19 MORE PERSONS, INCLUDING THE AGENT, AS ORIGINAL OR SUCCESSOR
20 TRUSTEES, OR MAY MAKE AN ADDITION TO AN EXISTING TRUST.

21 (4) IN MAKING ANY GIFT, THE AGENT NEED NOT TREAT THE
22 DONEES EQUALLY OR PROPORTIONATELY AND MAY ENTIRELY EXCLUDE
23 ONE OR MORE PERMISSIBLE DONEES.

24 (5) THE PATTERN FOLLOWED ON THE OCCASION OF ANY GIFT
25 NEED NOT BE FOLLOWED ON THE OCCASION OF ANY OTHER GIFT.

26 (E) EQUITY.--AN AGENT AND THE DONEE OF A GIFT SHALL BE
27 LIABLE AS EQUITY AND JUSTICE MAY REQUIRE TO THE EXTENT THAT, AS
28 DETERMINED BY THE COURT, A GIFT MADE BY THE AGENT IS
29 INCONSISTENT WITH PRUDENT ESTATE PLANNING OR FINANCIAL
30 MANAGEMENT FOR THE PRINCIPAL OR WITH THE KNOWN OR PROBABLE

1 INTENT OF THE PRINCIPAL WITH RESPECT TO DISPOSITION OF THE
2 ESTATE.

3 (F) THIRD PARTY.--NO TRANSFER AGENT, DEPOSITORY OR OTHER
4 THIRD PARTY ACTING IN GOOD FAITH SHALL HAVE ANY RESPONSIBILITY
5 TO SEE TO THE PROPER DISCHARGE OF THE AGENT'S DUTY.]

6 SECTION 3. TITLE 20 IS AMENDED BY ADDING SECTIONS TO READ:
7 § 5601.3. AGENT'S DUTIES.

8 (A) GENERAL RULE.--NOTWITHSTANDING ANY PROVISION IN THE
9 POWER OF ATTORNEY, AN AGENT THAT HAS ACCEPTED APPOINTMENT SHALL:

10 (1) ACT IN ACCORDANCE WITH THE PRINCIPAL'S REASONABLE
11 EXPECTATIONS TO THE EXTENT ACTUALLY KNOWN BY THE AGENT AND,
12 OTHERWISE, IN THE PRINCIPAL'S BEST INTEREST.

13 (2) ACT IN GOOD FAITH.

14 (3) ACT ONLY WITHIN THE SCOPE OF AUTHORITY GRANTED IN
15 THE POWER OF ATTORNEY.

16 (B) OTHER DUTIES.--EXCEPT AS OTHERWISE PROVIDED IN THE POWER
17 OF ATTORNEY, AN AGENT THAT HAS ACCEPTED APPOINTMENT SHALL:

18 (1) ACT LOYALLY FOR THE PRINCIPAL'S BENEFIT.

19 (2) ACT SO AS NOT TO CREATE A CONFLICT OF INTEREST THAT
20 IMPAIRS THE AGENT'S ABILITY TO ACT IMPARTIALLY IN THE
21 PRINCIPAL'S BEST INTEREST.

22 (3) ACT WITH THE CARE, COMPETENCE AND DILIGENCE
23 ORDINARILY EXERCISED BY AGENTS IN SIMILAR CIRCUMSTANCES.

24 (4) KEEP A RECORD OF ALL RECEIPTS, DISBURSEMENTS AND
25 TRANSACTIONS MADE ON BEHALF OF THE PRINCIPAL.

26 (5) COOPERATE WITH A PERSON WHO HAS AUTHORITY TO MAKE
27 HEALTH-CARE DECISIONS FOR THE PRINCIPAL TO CARRY OUT THE
28 PRINCIPAL'S REASONABLE EXPECTATIONS TO THE EXTENT ACTUALLY
29 KNOWN BY THE AGENT AND, OTHERWISE, ACT IN THE PRINCIPAL'S
30 BEST INTEREST.

1 (6) ATTEMPT TO PRESERVE THE PRINCIPAL'S ESTATE PLAN, TO
2 THE EXTENT ACTUALLY KNOWN BY THE AGENT, IF PRESERVING THE
3 PLAN IS CONSISTENT WITH THE PRINCIPAL'S BEST INTEREST BASED
4 ON ALL RELEVANT FACTORS, INCLUDING:

5 (I) THE VALUE AND NATURE OF THE PRINCIPAL'S
6 PROPERTY.

7 (II) THE PRINCIPAL'S FORESEEABLE OBLIGATIONS AND
8 NEED FOR MAINTENANCE.

9 (III) MINIMIZATION OF TAXES, INCLUDING INCOME,
10 ESTATE, INHERITANCE, GENERATION-SKIPPING TRANSFER AND
11 GIFT TAXES.

12 (IV) ELIGIBILITY FOR A BENEFIT, PROGRAM OR
13 ASSISTANCE UNDER A STATUTE OR REGULATION.

14 (C) NONLIABILITY OF AGENT.--

15 (1) AN AGENT THAT ACTS IN GOOD FAITH SHALL NOT BE LIABLE
16 TO A BENEFICIARY OF THE PRINCIPAL'S ESTATE PLAN FOR FAILURE
17 TO PRESERVE THE PLAN.

18 (2) AN AGENT THAT ACTS WITH CARE, COMPETENCE AND
19 DILIGENCE FOR THE BEST INTEREST OF THE PRINCIPAL SHALL NOT BE
20 LIABLE SOLELY BECAUSE THE AGENT ALSO BENEFITS FROM THE ACT OR
21 HAS AN INDIVIDUAL OR CONFLICTING INTEREST IN RELATION TO THE
22 PROPERTY OR AFFAIRS OF THE PRINCIPAL.

23 (3) IF AN AGENT IS SELECTED BY THE PRINCIPAL BECAUSE OF
24 SPECIAL SKILLS OR EXPERTISE POSSESSED BY THE AGENT OR IN
25 RELIANCE ON THE AGENT'S REPRESENTATION THAT THE AGENT HAS
26 SPECIAL SKILLS OR EXPERTISE, THE SPECIAL SKILLS OR EXPERTISE
27 MUST BE CONSIDERED IN DETERMINING WHETHER THE AGENT HAS ACTED
28 WITH CARE, COMPETENCE AND DILIGENCE UNDER THE CIRCUMSTANCES.

29 (4) ABSENT A BREACH OF DUTY TO THE PRINCIPAL, AN AGENT
30 SHALL NOT BE LIABLE IF THE VALUE OF THE PRINCIPAL'S PROPERTY

1 DECLINES.

2 (5) AN AGENT THAT EXERCISES AUTHORITY TO DELEGATE TO
3 ANOTHER PERSON THE AUTHORITY GRANTED BY THE PRINCIPAL OR THAT
4 ENGAGES ANOTHER PERSON ON BEHALF OF THE PRINCIPAL SHALL NOT
5 BE LIABLE FOR AN ACT, ERROR OF JUDGMENT OR DEFAULT OF THAT
6 PERSON IF THE AGENT EXERCISES CARE, COMPETENCE AND DILIGENCE
7 IN SELECTING AND MONITORING THE PERSON.

8 (D) DISCLOSURE OF RECEIPTS, DISBURSEMENTS OR TRANSACTIONS.--

9 (1) EXCEPT AS OTHERWISE PROVIDED IN THE POWER OF
10 ATTORNEY, AN AGENT SHALL NOT BE REQUIRED TO DISCLOSE
11 RECEIPTS, DISBURSEMENTS OR TRANSACTIONS CONDUCTED ON BEHALF
12 OF THE PRINCIPAL UNLESS ORDERED BY A COURT OR REQUESTED BY
13 THE PRINCIPAL, A GUARDIAN, CONSERVATOR, ANOTHER FIDUCIARY
14 ACTING FOR THE PRINCIPAL, GOVERNMENTAL AGENCY HAVING
15 AUTHORITY TO PROTECT THE WELFARE OF THE PRINCIPAL OR, UPON
16 THE DEATH OF THE PRINCIPAL, THE PERSONAL REPRESENTATIVE OR
17 SUCCESSOR IN INTEREST OF THE PRINCIPAL'S ESTATE.

18 (2) WITHIN 30 DAYS OF THE REQUEST, THE AGENT SHALL
19 EITHER COMPLY WITH THE REQUEST OR PROVIDE A WRITING OR OTHER
20 RECORD SUBSTANTIATING THE REASON ADDITIONAL TIME IS NEEDED,
21 IN WHICH CASE THE AGENT SHALL COMPLY WITH THE REQUEST WITHIN
22 AN ADDITIONAL 30 DAYS.

23 § 5601.4. AUTHORITY THAT REQUIRES SPECIFIC AND GENERAL GRANT OF
24 AUTHORITY.

25 (A) GENERAL RULE.--AN AGENT UNDER A POWER OF ATTORNEY MAY DO
26 THE FOLLOWING ON BEHALF OF THE PRINCIPAL OR WITH THE PRINCIPAL'S
27 PROPERTY ONLY IF THE POWER OF ATTORNEY EXPRESSLY GRANTS THE
28 AGENT THE AUTHORITY AND EXERCISE OF THE AUTHORITY IS NOT
29 OTHERWISE PROHIBITED BY ANOTHER AGREEMENT OR INSTRUMENT TO WHICH
30 THE AUTHORITY OR PROPERTY IS SUBJECT:

1 (1) CREATE, AMEND, REVOKE OR TERMINATE AN INTER VIVOS
2 TRUST OTHER THAN AS PERMITTED UNDER SECTION 5602(A)(2), (3)
3 AND (7) (RELATING TO FORM OF POWER OF ATTORNEY).

4 (2) MAKE A GIFT.

5 (3) CREATE OR CHANGE RIGHTS OF SURVIVORSHIP.

6 (4) CREATE OR CHANGE A BENEFICIARY DESIGNATION.

7 (5) DELEGATE AUTHORITY GRANTED UNDER THE POWER OF
8 ATTORNEY.

9 (6) WAIVE THE PRINCIPAL'S RIGHT TO BE A BENEFICIARY OF A
10 JOINT AND SURVIVOR ANNUITY, INCLUDING A SURVIVOR BENEFIT
11 UNDER A RETIREMENT PLAN.

12 (7) EXERCISE FIDUCIARY POWERS THAT THE PRINCIPAL HAS
13 AUTHORITY TO DELEGATE.

14 (8) DISCLAIM PROPERTY, INCLUDING A POWER OF APPOINTMENT.

15 (B) LIMITATION.--NOTWITHSTANDING A GRANT OF AUTHORITY TO DO
16 AN ACT DESCRIBED IN SUBSECTION (A), UNLESS THE POWER OF ATTORNEY
17 OTHERWISE PROVIDES, AN AGENT THAT IS NOT AN ANCESTOR, SPOUSE OR
18 DESCENDANT OF THE PRINCIPAL MAY NOT EXERCISE AUTHORITY UNDER A
19 POWER OF ATTORNEY TO CREATE IN THE AGENT, OR IN AN INDIVIDUAL TO
20 WHOM THE AGENT OWES A LEGAL OBLIGATION OF SUPPORT, AN INTEREST
21 IN THE PRINCIPAL'S PROPERTY, WHETHER BY GIFT, RIGHT OF
22 SURVIVORSHIP, BENEFICIARY DESIGNATION, DISCLAIMER OR OTHERWISE.

23 (C) SCOPE OF AUTHORITY.--SUBJECT TO SUBSECTIONS (A), (B),
24 (D), AND (E), IF A POWER OF ATTORNEY GRANTS TO AN AGENT
25 AUTHORITY TO DO ALL ACTS THAT A PRINCIPAL IS AUTHORIZED TO
26 PERFORM, THE AGENT HAS THE GENERAL AUTHORITY DESCRIBED IN
27 SECTION 5602(A).

28 (D) GIFTS.--UNLESS THE POWER OF ATTORNEY OTHERWISE PROVIDES,
29 A GRANT OF AUTHORITY TO MAKE A GIFT IS SUBJECT TO SECTION
30 5603(A.1) (RELATING TO IMPLEMENTATION OF POWER OF ATTORNEY).

1 (E) SIMILAR OR OVERLAPPING SUBJECTS.--SUBJECT TO SUBSECTIONS
2 (A), (B) AND (D), IF THE SUBJECTS OVER WHICH AUTHORITY IS
3 GRANTED IN A POWER OF ATTORNEY ARE SIMILAR OR OVERLAP, THE
4 BROADEST AUTHORITY CONTROLS.

5 (F) PROPERTY.--AUTHORITY GRANTED IN A POWER OF ATTORNEY IS
6 EXERCISABLE WITH RESPECT TO PROPERTY THAT THE PRINCIPAL HAS WHEN
7 THE POWER OF ATTORNEY IS EXECUTED OR ACQUIRES LATER, WHETHER OR
8 NOT THE PROPERTY IS LOCATED IN THIS STATE AND WHETHER OR NOT THE
9 AUTHORITY IS EXERCISED OR THE POWER OF ATTORNEY IS EXECUTED IN
10 THIS STATE.

11 (G) LEGAL EFFECT OF AGENT'S ACTIONS.--AN ACT PERFORMED BY AN
12 AGENT PURSUANT TO A POWER OF ATTORNEY HAS THE SAME EFFECT AND
13 INURES TO THE BENEFIT OF AND BINDS THE PRINCIPAL AND THE
14 PRINCIPAL'S SUCCESSORS IN INTEREST AS IF THE PRINCIPAL HAD
15 PERFORMED THE ACT.

16 SECTION 4. SECTION 5602(A)(5) AND (17) OF TITLE 20 ARE
17 AMENDED TO READ:

18 § 5602. FORM OF POWER OF ATTORNEY.

19 (A) SPECIFICATION OF POWERS.--A PRINCIPAL MAY, BY INCLUSION
20 OF THE LANGUAGE QUOTED IN ANY OF THE FOLLOWING PARAGRAPHS OR BY
21 INCLUSION OF OTHER LANGUAGE SHOWING A SIMILAR INTENT ON THE PART
22 OF THE PRINCIPAL, EMPOWER AN AGENT TO DO ANY OR ALL OF THE
23 FOLLOWING, EACH OF WHICH IS DEFINED IN SECTION 5603 (RELATING TO
24 IMPLEMENTATION OF POWER OF ATTORNEY):

25 * * *

26 [(5) "TO DISCLAIM ANY INTEREST IN PROPERTY."]

27 * * *

28 (17) "TO ENGAGE IN INSURANCE AND ANNUITY TRANSACTIONS."

29 * * *

30 SECTION 5. SECTION 5603(A), (E), (P) AND (Q) OF TITLE 20 ARE

1 AMENDED AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO
2 READ:

3 § 5603. IMPLEMENTATION OF POWER OF ATTORNEY.

4 [(A) POWER TO MAKE LIMITED GIFTS.--

5 (2) A POWER "TO MAKE LIMITED GIFTS" SHALL MEAN THAT THE
6 AGENT MAY MAKE ONLY GIFTS FOR OR ON BEHALF OF THE PRINCIPAL
7 WHICH ARE LIMITED AS FOLLOWS:

8 (I) THE CLASS OF PERMISSIBLE DONEES UNDER THIS
9 PARAGRAPH SHALL CONSIST SOLELY OF THE PRINCIPAL'S SPOUSE,
10 ISSUE AND A SPOUSE OF THE PRINCIPAL'S ISSUE (INCLUDING
11 THE AGENT IF A MEMBER OF ANY SUCH CLASS), OR ANY OF THEM.

12 (II) DURING EACH CALENDAR YEAR, THE GIFTS MADE TO
13 ANY PERMISSIBLE DONEE, PURSUANT TO SUCH POWER, SHALL HAVE
14 AN AGGREGATE VALUE NOT IN EXCESS OF, AND SHALL BE MADE IN
15 SUCH MANNER AS TO QUALIFY IN THEIR ENTIRETY FOR, THE
16 ANNUAL EXCLUSION FROM THE FEDERAL GIFT TAX PERMITTED
17 UNDER SECTION 2503(B) OF THE INTERNAL REVENUE CODE OF
18 1986 (PUBLIC LAW 99-514, 26 U.S.C. § 1 ET SEQ.) FOR THE
19 PRINCIPAL AND, IF APPLICABLE, THE PRINCIPAL'S SPOUSE.

20 (IV) IN ADDITION TO THE GIFTS AUTHORIZED BY
21 SUBPARAGRAPHS (I) AND (II), A GIFT MADE PURSUANT TO SUCH
22 POWER MAY BE FOR THE TUITION OR MEDICAL CARE OF ANY
23 PERMISSIBLE DONEE TO THE EXTENT THAT THE GIFT IS EXCLUDED
24 FROM THE FEDERAL GIFT TAX UNDER SECTION 2503(E) OF THE
25 INTERNAL REVENUE CODE OF 1986 AS A QUALIFIED TRANSFER.

26 (V) THE AGENT MAY CONSENT, PURSUANT TO SECTION
27 2513(A) OF THE INTERNAL REVENUE CODE OF 1986, TO THE
28 SPLITTING OF GIFTS MADE BY THE PRINCIPAL'S SPOUSE TO THE
29 PRINCIPAL'S ISSUE OR A SPOUSE OF THE PRINCIPAL'S ISSUE IN
30 ANY AMOUNT AND TO THE SPLITTING OF GIFTS MADE BY THE

1 PRINCIPAL'S SPOUSE TO ANY OTHER PERSON IN AMOUNTS NOT
2 EXCEEDING THE AGGREGATE ANNUAL GIFT TAX EXCLUSIONS FOR
3 BOTH SPOUSES UNDER SECTION 2503(B) OF THE INTERNAL
4 REVENUE CODE OF 1986.]

5 (A.1) POWER TO MAKE LIMITED GIFTS.--

6 (1) UNLESS THE POWER OF ATTORNEY OTHERWISE PROVIDES,
7 LANGUAGE IN A POWER OF ATTORNEY GRANTING GENERAL AUTHORITY
8 WITH RESPECT TO GIFTS AUTHORIZES THE AGENT ONLY TO:

9 (I) MAKE OUTRIGHT TO OR FOR THE BENEFIT OF A PERSON,
10 A GIFT OF ANY OF THE PRINCIPAL'S PROPERTY, INCLUDING BY
11 THE EXERCISE OF A PRESENTLY EXERCISABLE GENERAL POWER OF
12 APPOINTMENT HELD BY THE PRINCIPAL:

13 (A) IN AN AMOUNT PER DONEE NOT TO EXCEED THE
14 ANNUAL DOLLAR LIMITS OF THE FEDERAL GIFT TAX
15 EXCLUSION UNDER SECTION 2503(B) OF THE INTERNAL
16 REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. §
17 2503(B)), WITHOUT REGARD TO WHETHER THE FEDERAL GIFT
18 TAX EXCLUSION APPLIES TO THE GIFT; OR

19 (B) IF THE PRINCIPAL'S SPOUSE AGREES TO CONSENT
20 TO A SPLIT GIFT PURSUANT TO SECTION 2513 OF THE
21 INTERNAL REVENUE CODE OF 1986, IN AN AMOUNT PER DONEE
22 NOT TO EXCEED TWICE THE ANNUAL FEDERAL GIFT TAX
23 EXCLUSION LIMIT.

24 (II) CONSENT, PURSUANT TO SECTION 2513 OF THE
25 INTERNAL REVENUE CODE OF 1986, TO THE SPLITTING OF A GIFT
26 MADE BY THE PRINCIPAL'S SPOUSE IN AN AMOUNT PER DONEE NOT
27 TO EXCEED THE AGGREGATE ANNUAL GIFT TAX EXCLUSIONS FOR
28 BOTH SPOUSES.

29 (2) AN AGENT MAY MAKE A GIFT OF THE PRINCIPAL'S PROPERTY
30 ONLY AS THE AGENT DETERMINES IS CONSISTENT WITH THE

1 PRINCIPAL'S OBJECTIVES IF ACTUALLY KNOWN BY THE AGENT AND, IF
2 UNKNOWN, AS THE AGENT DETERMINES IS CONSISTENT WITH THE
3 PRINCIPAL'S BEST INTEREST BASED ON ALL RELEVANT FACTORS,
4 INCLUDING:

5 (I) THE VALUE AND NATURE OF THE PRINCIPAL'S
6 PROPERTY.

7 (II) THE PRINCIPAL'S FORESEEABLE OBLIGATIONS AND
8 NEED FOR MAINTENANCE.

9 (III) MINIMIZATION OF TAXES, INCLUDING INCOME,
10 ESTATE, INHERITANCE, GENERATION-SKIPPING TRANSFER AND
11 GIFT TAXES.

12 (IV) ELIGIBILITY FOR A BENEFIT, PROGRAM OR
13 ASSISTANCE UNDER A STATUTE OR REGULATION.

14 (V) THE PRINCIPAL'S PERSONAL HISTORY OF MAKING OR
15 JOINING IN MAKING GIFTS.

16 (3) AS USED IN THIS SUBSECTION, THE PHRASE "A GIFT FOR
17 THE BENEFIT OF A PERSON" INCLUDES A GIFT TO A TRUST, AN
18 ACCOUNT UNDER CHAPTER 53 (RELATING TO PENNSYLVANIA UNIFORM
19 TRANSFERS TO MINORS ACT) AND A TUITION SAVINGS ACCOUNT OR
20 PREPAID TUITION PLAN AS DEFINED UNDER SECTION 529 OF THE
21 INTERNAL REVENUE CODE OF 1986.

22 * * *

23 [(E) POWER TO DISCLAIM ANY INTEREST IN PROPERTY.--A POWER
24 "TO DISCLAIM ANY INTEREST IN PROPERTY" SHALL MEAN THAT THE AGENT
25 MAY RELEASE OR DISCLAIM ANY INTEREST IN PROPERTY ON BEHALF OF
26 THE PRINCIPAL IN ACCORDANCE WITH CHAPTER 62 (RELATING TO
27 DISCLAIMERS) OR SECTION 6103 (RELATING TO RELEASE OR DISCLAIMER
28 OF POWERS OR INTERESTS), PROVIDED THAT ANY DISCLAIMER UNDER
29 CHAPTER 62 SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF SECTION
30 6202 (RELATING TO DISCLAIMERS BY FIDUCIARIES OR AGENTS) IN THE

1 CASE OF A PRINCIPAL WHO SHALL HAVE BEEN ADJUDICATED AN
2 INCAPACITATED PERSON AT THE TIME OF THE EXECUTION OF THE
3 DISCLAIMER.]

4 * * *

5 (P) POWER TO ENGAGE IN INSURANCE AND ANNUITY TRANSACTIONS.--
6 A POWER TO "ENGAGE IN INSURANCE AND ANNUITY TRANSACTIONS" SHALL
7 MEAN THAT THE AGENT MAY:

8 (1) PURCHASE, CONTINUE, RENEW, CONVERT OR TERMINATE ANY
9 TYPE OF INSURANCE (INCLUDING, BUT NOT LIMITED TO, LIFE,
10 ACCIDENT, HEALTH, DISABILITY OR LIABILITY INSURANCE) OR
11 ANNUITY AND PAY PREMIUMS AND COLLECT BENEFITS AND PROCEEDS
12 UNDER INSURANCE POLICIES AND ANNUITY CONTRACTS.

13 (2) EXERCISE NONFORFEITURE PROVISIONS UNDER INSURANCE
14 POLICIES AND ANNUITY CONTRACTS.

15 (3) IN GENERAL, EXERCISE ALL POWERS WITH RESPECT TO
16 INSURANCE AND ANNUITIES THAT THE PRINCIPAL COULD IF PRESENT;
17 [HOWEVER, THE AGENT CANNOT DESIGNATE HIMSELF BENEFICIARY OF A
18 LIFE INSURANCE POLICY UNLESS THE AGENT IS THE SPOUSE, CHILD,
19 GRANDCHILD, PARENT, BROTHER OR SISTER OF THE PRINCIPAL. AN
20 AGENT AND A BENEFICIARY OF A LIFE INSURANCE POLICY SHALL BE
21 LIABLE AS EQUITY AND JUSTICE MAY REQUIRE TO THE EXTENT THAT,
22 AS DETERMINED BY THE COURT, A BENEFICIARY DESIGNATION MADE BY
23 THE AGENT IS INCONSISTENT WITH THE KNOWN OR PROBABLE INTENT
24 OF THE PRINCIPAL] PROVIDED, HOWEVER, THAT THE AGENT SHALL
25 HAVE NO POWER TO CREATE OR CHANGE A BENEFICIARY DESIGNATION
26 UNLESS AUTHORIZED IN ACCORDANCE WITH SECTION 5601.4 (RELATING
27 TO AUTHORITY THAT REQUIRES SPECIFIC AND GENERAL GRANT OF
28 AUTHORITY).

29 (Q) POWER TO ENGAGE IN RETIREMENT PLAN TRANSACTIONS.--A
30 POWER TO "ENGAGE IN RETIREMENT PLAN TRANSACTIONS" SHALL MEAN

1 THAT THE AGENT MAY CONTRIBUTE TO, WITHDRAW FROM AND DEPOSIT
2 FUNDS IN ANY TYPE OF RETIREMENT PLAN (INCLUDING, BUT NOT LIMITED
3 TO, ANY TAX QUALIFIED OR NONQUALIFIED PENSION, PROFIT SHARING,
4 STOCK BONUS, EMPLOYEE SAVINGS AND RETIREMENT PLAN, DEFERRED
5 COMPENSATION PLAN OR INDIVIDUAL RETIREMENT ACCOUNT), SELECT AND
6 CHANGE PAYMENT OPTIONS FOR THE PRINCIPAL, MAKE ROLL-OVER
7 CONTRIBUTIONS FROM ANY RETIREMENT PLAN TO OTHER RETIREMENT PLANS
8 AND, IN GENERAL, EXERCISE ALL POWERS WITH RESPECT TO RETIREMENT
9 PLANS THAT THE PRINCIPAL COULD IF PRESENT[. HOWEVER, THE AGENT
10 CANNOT DESIGNATE HIMSELF BENEFICIARY OF A RETIREMENT PLAN UNLESS
11 THE AGENT IS THE SPOUSE, CHILD, GRANDCHILD, PARENT, BROTHER OR
12 SISTER OF THE PRINCIPAL. AN AGENT AND A BENEFICIARY OF A
13 RETIREMENT PLAN SHALL BE LIABLE AS EQUITY AND JUSTICE MAY
14 REQUIRE TO THE EXTENT THAT, AS DETERMINED BY THE COURT, A
15 BENEFICIARY DESIGNATION MADE BY THE AGENT IS INCONSISTENT WITH
16 THE KNOWN OR PROBABLE INTENT OF THE PRINCIPAL] PROVIDED,
17 HOWEVER, THAT THE AGENT SHALL HAVE NO POWER TO CREATE OR CHANGE
18 A BENEFICIARY DESIGNATION UNLESS AUTHORIZED IN ACCORDANCE WITH
19 SECTION 5601.4.

20 * * *

21 SECTION 6. SECTION 5608 OF TITLE 20 IS AMENDED TO READ:

22 § 5608. [LIABILITY] ACCEPTANCE OF AND RELIANCE UPON POWER OF
23 ATTORNEY.

24 [(A) THIRD PARTY LIABILITY.--ANY PERSON WHO IS GIVEN
25 INSTRUCTIONS BY AN AGENT IN ACCORDANCE WITH THE TERMS OF A POWER
26 OF ATTORNEY SHALL COMPLY WITH THE INSTRUCTIONS. ANY PERSON WHO
27 WITHOUT REASONABLE CAUSE FAILS TO COMPLY WITH THOSE INSTRUCTIONS
28 SHALL BE SUBJECT TO CIVIL LIABILITY FOR ANY DAMAGES RESULTING
29 FROM NONCOMPLIANCE. REASONABLE CAUSE UNDER THIS SUBSECTION SHALL
30 INCLUDE, BUT NOT BE LIMITED TO, A GOOD FAITH REPORT HAVING BEEN

1 MADE BY THE THIRD PARTY TO THE LOCAL PROTECTIVE SERVICES AGENCY
2 REGARDING ABUSE, NEGLECT, EXPLOITATION OR ABANDONMENT PURSUANT
3 TO SECTION 302 OF THE ACT OF NOVEMBER 6, 1987 (P.L.381, NO.79),
4 KNOWN AS THE OLDER ADULTS PROTECTIVE SERVICES ACT.

5 (B) THIRD PARTY IMMUNITY.--ANY PERSON WHO ACTS IN GOOD FAITH
6 RELIANCE ON A POWER OF ATTORNEY SHALL INCUR NO LIABILITY AS A
7 RESULT OF ACTING IN ACCORDANCE WITH THE INSTRUCTIONS OF THE
8 AGENT.]

9 (C) GENUINENESS.--A PERSON WHO IN GOOD FAITH ACCEPTS A POWER
10 OF ATTORNEY WITHOUT ACTUAL KNOWLEDGE THAT A SIGNATURE OR MARK OF
11 ANY OF THE FOLLOWING ARE NOT GENUINE MAY, WITHOUT LIABILITY,
12 RELY UPON THE GENUINENESS OF THE SIGNATURE OR MARK OF:

13 (1) THE PRINCIPAL.

14 (2) A PERSON DIRECTED BY THE PRINCIPAL ON THE
15 PRINCIPAL'S BEHALF AND IN THE PRINCIPAL'S CONSCIOUS PRESENCE
16 TO SIGN THE POWER OF ATTORNEY.

17 (3) A WITNESS.

18 (4) A NOTARY PUBLIC OR OTHER PERSON AUTHORIZED BY LAW TO
19 TAKE ACKNOWLEDGMENTS.

20 (D) IMMUNITY.--A PERSON WHO IN GOOD FAITH ACCEPTS A POWER OF
21 ATTORNEY WITHOUT ACTUAL KNOWLEDGE OF ANY OF THE FOLLOWING MAY,
22 WITHOUT LIABILITY, RELY UPON THE POWER OF ATTORNEY AS IF THE
23 POWER OF ATTORNEY AND AGENT'S AUTHORITY WERE GENUINE, VALID AND
24 STILL IN EFFECT AND THE AGENT HAD NOT EXCEEDED AND HAD PROPERLY
25 EXERCISED THE AUTHORITY THAT:

26 (1) THE POWER OF ATTORNEY IS VOID, INVALID OR
27 TERMINATED.

28 (2) THE PURPORTED AGENT'S AUTHORITY IS VOID, INVALID OR
29 TERMINATED.

30 (3) THE AGENT IS EXCEEDING OR IMPROPERLY EXERCISING THE

1 AGENT'S AUTHORITY.

2 (E) REQUEST FOR INFORMATION.--A PERSON WHO IS ASKED TO
3 ACCEPT A POWER OF ATTORNEY MAY REQUEST AND, WITHOUT LIABILITY,
4 RELY UPON WITHOUT FURTHER INVESTIGATION:

5 (1) AN AGENT'S CERTIFICATION UNDER PENALTY OF PERJURY OF
6 ANY FACTUAL MATTER CONCERNING THE PRINCIPAL, AGENT OR POWER
7 OF ATTORNEY OR AN AFFIDAVIT UNDER SECTION 5606 (RELATING TO
8 PROOF OF CONTINUANCE OF POWERS OF ATTORNEY BY AFFIDAVIT).

9 (2) AN ENGLISH TRANSLATION OF THE POWER OF ATTORNEY, IF
10 THE POWER OF ATTORNEY CONTAINS, IN WHOLE OR IN PART, LANGUAGE
11 OTHER THAN ENGLISH.

12 (3) AN OPINION OF COUNSEL RELATING TO WHETHER THE AGENT
13 IS ACTING WITHIN THE SCOPE OF THE AUTHORITY GRANTED BY THE
14 POWER OF ATTORNEY, IF THE PERSON MAKING THE REQUEST PROVIDES
15 IN A WRITING OR OTHER RECORD THE REASON FOR THE REQUEST.

16 (F) ADDITIONAL REQUEST FOR INFORMATION.--A PERSON WHO HAS
17 ACCEPTED A POWER OF ATTORNEY, WHETHER OR NOT THE PERSON HAS A
18 CERTIFICATION OR OPINION OF COUNSEL UNDER SUBSECTION (E) OR AN
19 AFFIDAVIT UNDER SECTION 5606, AND HAS ACTED UPON IT BY ALLOWING
20 THE AGENT TO EXERCISE AUTHORITY GRANTED UNDER THE POWER OF
21 ATTORNEY, SHALL NOT BE PRECLUDED FROM REQUESTING AT LATER TIMES
22 A CERTIFICATION OR OPINION OF COUNSEL UNDER THIS SUBSECTION,
23 SUBSECTION (E) OR AN AFFIDAVIT UNDER SECTION 5606 WITH REGARD TO
24 ANY FURTHER EXERCISE OF AUTHORITY BY THE AGENT UNDER THE POWER
25 OF ATTORNEY.

26 (G) ENGLISH TRANSLATION.--AN ENGLISH TRANSLATION OR AN
27 OPINION OF COUNSEL REQUESTED UNDER THIS SECTION SHALL BE AT THE
28 PRINCIPAL'S EXPENSE, UNLESS THE REQUEST IS MADE MORE THAN SEVEN
29 BUSINESS DAYS AFTER THE POWER OF ATTORNEY IS PRESENTED FOR
30 ACCEPTANCE.

1 (H) ACTIVITIES THROUGH EMPLOYEES.--

2 (1) FOR PURPOSES OF THIS SECTION, A PERSON WHO CONDUCTS
3 ACTIVITIES THROUGH EMPLOYEES SHALL BE CONSIDERED TO BE
4 WITHOUT ACTUAL KNOWLEDGE OF A FACT RELATING TO A POWER OF
5 ATTORNEY, A PRINCIPAL OR AN AGENT, IF THE EMPLOYEE CONDUCTING
6 THE TRANSACTION INVOLVING THE POWER OF ATTORNEY IS WITHOUT
7 KNOWLEDGE OF THE FACT.

8 (2) AN EMPLOYEE HAS KNOWLEDGE OF A FACT IF THE EMPLOYEE
9 HAS ACTUAL KNOWLEDGE OF THE FACT OR ACTS WITH CONSCIOUS
10 DISREGARD OR WILLFUL IGNORANCE REGARDING THE EXISTENCE OF THE
11 FACT.

12 (I) LIMITATIONS.--EXCEPT AS OTHERWISE PROVIDED BY LAW,
13 NOTHING IN THIS SECTION SHALL IN ITSELF:

14 (1) VALIDATE A FORGED INSTRUMENT CONVEYING AN INTEREST
15 IN REAL PROPERTY;

16 (2) PROVIDE THAT THE RECORDING OF A FORGED INSTRUMENT
17 GIVES CONSTRUCTIVE NOTICE OF A CONVEYANCE OF AN INTEREST IN
18 REAL PROPERTY; OR

19 (3) LIMIT THE LIABILITY OF INSURER, INDEMNITOR OR
20 GUARANTOR OF CONTRACTUAL OBLIGATIONS TO INDEMNIFY, HOLD
21 HARMLESS OR DEFEND A PERSON WHO ACCEPTS OR RELIES UPON A
22 POWER OF ATTORNEY.

23 SECTION 7. TITLE 20 IS AMENDED BY ADDING A SECTION TO READ:
24 § 5608.1. LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED POWER OF
25 ATTORNEY.

26 (A) ACCEPTANCE REQUIRED.--EXCEPT AS PROVIDED UNDER
27 SUBSECTIONS (B) AND (D):

28 (1) A PERSON SHALL EITHER:

29 (I) ACCEPT A POWER OF ATTORNEY; OR

30 (II) REQUEST ONE OF THE FOLLOWING:

1 (A) AFFIDAVIT UNDER SECTION 5606 (RELATING TO
2 PROOF OF CONTINUANCE OF POWERS OF ATTORNEY BY
3 AFFIDAVIT); OR

4 (B) A CERTIFICATION, TRANSLATION OR AN OPINION
5 OF COUNSEL UNDER SECTION 5608(E) (RELATING TO
6 ACCEPTANCE OF AND RELIANCE UPON POWER OF ATTORNEY);
7 NOT LATER THAN SEVEN BUSINESS DAYS AFTER PRESENTATION OF THE
8 POWER OF ATTORNEY FOR ACCEPTANCE.

9 (2) IF A PERSON REQUESTS A CERTIFICATION, A TRANSLATION,
10 AN AFFIDAVIT UNDER SECTION 5606 OR AN OPINION OF COUNSEL
11 UNDER SECTION 5608(E), THE PERSON SHALL ACCEPT THE POWER OF
12 ATTORNEY NOT LATER THAN FIVE BUSINESS DAYS AFTER RECEIPT OF
13 THE CERTIFICATION, TRANSLATION, AFFIDAVIT OR OPINION OF
14 COUNSEL OR, UNLESS THE INFORMATION PROVIDED BY THE
15 CERTIFICATION, TRANSLATION, AFFIDAVIT OR OPINION OF COUNSEL
16 PROVIDES A SUBSTANTIAL BASIS FOR MAKING A FURTHER REQUEST
17 UNDER SECTION 5606 OR 5608(E).

18 (3) A PERSON MAY NOT REQUIRE AN ADDITIONAL OR DIFFERENT
19 FORM OF POWER OF ATTORNEY FOR AUTHORITY GRANTED IN THE POWER
20 OF ATTORNEY PRESENTED.

21 (B) ACCEPTANCE NOT REQUIRED.--A PERSON MAY NOT BE REQUIRED
22 TO ACCEPT AN ACKNOWLEDGED POWER OF ATTORNEY, IF ANY OF THE
23 FOLLOWING APPLIES:

24 (1) THE PERSON IS NOT OTHERWISE REQUIRED TO ENGAGE IN A
25 TRANSACTION WITH THE PRINCIPAL IN THE SAME CIRCUMSTANCES.

26 (2) ENGAGING IN A TRANSACTION WITH THE AGENT OR THE
27 PRINCIPAL IN THE SAME CIRCUMSTANCES WOULD BE INCONSISTENT
28 WITH ANY PROVISIONS OF THIS CHAPTER, INCLUDING:

29 (I) THE FAILURE OF THE POWER OF ATTORNEY TO BE
30 EXECUTED IN THE MANNER REQUIRED UNDER SECTION 5601(B)

1 (RELATING TO GENERAL PROVISIONS); AND

2 (II) CIRCUMSTANCES IN WHICH AN AGENT HAS NO
3 AUTHORITY TO ACT BECAUSE OF THE ABSENCE OF AN
4 ACKNOWLEDGMENT AS PROVIDED UNDER SECTION 5601(D), EXCEPT
5 AS PROVIDED UNDER SECTION 5601(E.1) OR (E.2).

6 (3) ENGAGING IN A TRANSACTION WITH THE AGENT IN THE SAME
7 CIRCUMSTANCES WOULD BE INCONSISTENT WITH ANY OTHER LAW OR
8 REGULATION.

9 (4) THE PERSON HAS ACTUAL KNOWLEDGE OF THE TERMINATION
10 OF THE AGENT'S AUTHORITY OR OF THE POWER OF ATTORNEY BEFORE
11 EXERCISE OF THE POWER.

12 (5) A REQUEST FOR A CERTIFICATION, A TRANSLATION, AN
13 AFFIDAVIT UNDER SECTION 5606 OR AN OPINION OF COUNSEL UNDER
14 SECTION 5608(E) IS REFUSED, INCLUDING A CERTIFICATION, AN
15 AFFIDAVIT OR AN OPINION OF COUNSEL REQUESTED TO DEMONSTRATE
16 THAT THE EXERCISE OF AUTHORITY PURSUANT TO A POWER OF
17 ATTORNEY IS PROPER WITHOUT THE NOTICE PROVIDED FOR UNDER
18 SECTION 5601(C), EXCEPT AS PROVIDED UNDER SECTION 5601(E.1)
19 OR (E.2).

20 (6) THE PERSON IN GOOD FAITH BELIEVES THAT THE POWER OF
21 ATTORNEY IS NOT VALID OR THE AGENT DOES NOT HAVE THE
22 AUTHORITY TO PERFORM THE ACT REQUESTED, WHETHER OR NOT A
23 CERTIFICATION, A TRANSLATION, AN AFFIDAVIT UNDER SECTION 5606
24 OR OPINION OF COUNSEL UNDER SECTION 5608(E) HAS BEEN
25 REQUESTED OR PROVIDED.

26 (7) THE PERSON MAKES A REPORT TO THE LOCAL PROTECTIVE
27 SERVICES AGENCY UNDER SECTION 302 OF THE ACT OF NOVEMBER 6,
28 1987 (P.L.381, NO.79), KNOWN AS THE OLDER ADULTS PROTECTIVE
29 SERVICES ACT, STATING A GOOD FAITH BELIEF THAT THE PRINCIPAL
30 MAY BE SUBJECT TO PHYSICAL OR FINANCIAL ABUSE, NEGLECT,

1 EXPLOITATION OR ABANDONMENT BY THE AGENT OR SOMEONE ACTING
2 FOR OR WITH THE AGENT.

3 (8) THE PERSON HAS ACTUAL KNOWLEDGE THAT ANOTHER PERSON
4 HAS MADE A REPORT TO THE LOCAL PROTECTIVE SERVICES AGENCY
5 UNDER SECTION 302 OF THE OLDER ADULTS PROTECTIVE SERVICES
6 ACT, STATING A GOOD FAITH BELIEF THAT THE PRINCIPAL MAY BE
7 SUBJECT TO PHYSICAL OR FINANCIAL ABUSE, NEGLECT, EXPLOITATION
8 OR ABANDONMENT BY THE AGENT OR SOMEONE ACTING FOR OR WITH THE
9 AGENT.

10 (C) VIOLATION.--A PERSON WHO REFUSES, IN VIOLATION OF THIS
11 SECTION, TO ACCEPT A POWER OF ATTORNEY SHALL BE SUBJECT TO CIVIL
12 LIABILITY FOR PECUNIARY HARM TO THE ECONOMIC INTERESTS OF THE
13 PRINCIPAL PROXIMATELY CAUSED BY THE PERSON'S REFUSAL TO COMPLY
14 WITH THE INSTRUCTIONS OF THE AGENT DESIGNATED IN THE POWER OF
15 ATTORNEY.

16 (D) NONAPPLICABILITY.--THE REQUIREMENTS OF THIS SECTION
17 SHALL NOT APPLY TO:

18 (1) A POWER OF ATTORNEY SUBJECT TO THE LAWS OF ANOTHER
19 STATE OR JURISDICTION; OR

20 (2) A POWER OF ATTORNEY PRESCRIBED BY A GOVERNMENT OR
21 GOVERNMENTAL SUBDIVISION, AGENCY OR INSTRUMENTALITY FOR A
22 GOVERNMENTAL PURPOSE.

23 (E) ACTIVITIES THROUGH EMPLOYEES.--

24 (1) FOR PURPOSES OF THIS SECTION, A PERSON WHO CONDUCTS
25 ACTIVITIES THROUGH EMPLOYEES SHALL BE CONSIDERED TO BE
26 WITHOUT ACTUAL KNOWLEDGE OF A FACT RELATING TO A POWER OF
27 ATTORNEY, A PRINCIPAL OR AN AGENT, IF THE EMPLOYEE CONDUCTING
28 THE TRANSACTION INVOLVING THE POWER OF ATTORNEY IS WITHOUT
29 KNOWLEDGE OF THE FACT.

30 (2) AN EMPLOYEE HAS KNOWLEDGE OF A FACT IF THE EMPLOYEE

1 HAS ACTUAL KNOWLEDGE OF THE FACT OR ACTS WITH CONSCIOUS
2 DISREGARD OR WILLFUL IGNORANCE REGARDING THE EXISTENCE OF THE
3 FACT.

4 SECTION 8. SECTION 5611 OF TITLE 20 IS AMENDED TO READ:

5 § 5611. VALIDITY.

6 A POWER OF ATTORNEY EXECUTED IN [ANOTHER STATE OR
7 JURISDICTION AND IN CONFORMITY WITH THE LAWS OF THAT STATE OR
8 JURISDICTION SHALL BE CONSIDERED VALID IN THIS COMMONWEALTH,
9 EXCEPT TO THE EXTENT THAT THE POWER OF ATTORNEY EXECUTED IN
10 ANOTHER STATE OR JURISDICTION WOULD ALLOW AN AGENT TO MAKE A
11 DECISION INCONSISTENT WITH THE LAWS OF THIS COMMONWEALTH.] OR
12 UNDER THE LAWS OF ANOTHER STATE OR JURISDICTION SHALL BE VALID
13 IN THIS COMMONWEALTH IF, WHEN THE POWER OF ATTORNEY WAS
14 EXECUTED, THE EXECUTION COMPLIED WITH:

15 (1) THE LAW OF THE JURISDICTION INDICATED IN THE POWER
16 OF ATTORNEY AND, IN THE ABSENCE OF AN INDICATION OF
17 JURISDICTION, THE LAW OF THE JURISDICTION IN WHICH THE POWER
18 OF ATTORNEY WAS EXECUTED; OR

19 (2) THE REQUIREMENTS FOR A MILITARY POWER OF ATTORNEY
20 UNDER 10 U.S.C. § 1044(B) (RELATING TO LEGAL ASSISTANCE).

21 SECTION 9. TITLE 20 IS AMENDED BY ADDING A SECTION READ:

22 § 5612. PRINCIPLES OF LAW AND EQUITY.

23 UNLESS DISPLACED BY A PROVISION OF THIS CHAPTER, THE
24 PRINCIPLES OF LAW AND EQUITY SUPPLEMENT THIS CHAPTER.

25 SECTION 10. THE FOLLOWING SHALL APPLY:

26 (1) THE AMENDMENT OR ADDITION OF 20 PA.C.S. §§ 5601(F),
27 5608, 5608.1 AND 5611 SHALL APPLY TO A POWER OF ATTORNEY
28 EXECUTED AT ANY TIME.

29 (2) THE AMENDMENT OF 20 PA.C.S. §§ 5601(F) AND 5608
30 SHALL APPLY RETROACTIVELY TO ACTS PERFORMED AFTER DECEMBER

1 15, 1992.

2 (3) IN INTERPRETING AND APPLYING THE AMENDMENT OR
3 ADDITION OF 20 PA.C.S. §§ 5601(F), 5608, 5608.1 AND 5611, A
4 COURT SHALL GIVE DUE CONSIDERATION OF THE INTENT OF THE
5 GENERAL ASSEMBLY TO REVERSE THE INTERPRETATION OF 20 PA.C.S.
6 § 5608 AS SET FORTH IN *TERESA M. VINE, V. COMMONWEALTH OF*
7 *PENNSYLVANIA, STATE EMPLOYEES' RETIREMENT BOARD*, 9 A.3D
8 1150 (PA. 2010).

9 SECTION 11. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.