

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1092 Session of 2011

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

REFERRED TO JUDICIARY, JUNE 3, 2011

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.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Sections 5601(b), (e.1) and (e.2) and 5602(c) of
8 Title 20 of the Pennsylvania Consolidated Statutes are amended
9 and the sections are amended by adding subsections to read:

10 § 5601. General provisions.

11 * * *

12 (b) Execution.--A power of attorney shall be dated, and it
13 shall be signed [and dated] by the principal by signature or
14 mark, or by another individual on behalf of and at the direction
15 of the principal if the principal is unable to sign but
16 specifically directs another individual to sign the power of
17 attorney. [If the power of attorney is executed by mark or by
18 another individual, then it] The power of attorney shall be
19 witnessed by two individuals, each of whom is 18 years of age or

1 older. A witness shall not be an agent appointed in the power of
2 attorney or the individual who signed the power of attorney on
3 behalf of and at the direction of the principal.

4 (b.1) Acknowledgment and affidavits.--

5 (1) In addition to the requirements under subsection

6 (b):

7 (i) A power of attorney shall be acknowledged by the
8 principal as provided in this subsection.

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

15 (2) The acknowledgment of the principal and the
16 affidavits of the witnesses shall be:

17 (i) Made before:

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

21 (B) an attorney at law and certified to such an
22 officer as provided in paragraph (3).

23 (ii) Evidenced by the officer's certificate, under
24 official seal.

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

26 (iv) In substantially the same form and content as
27 follows:

28 Acknowledgment by Principal

29 Commonwealth of Pennsylvania (or State of)

30 County of

(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.

1 (Signature, seal and official capacity of
2 officer)

3 * * *

4 (e.1) Limitation on applicability in commercial
5 transaction.--

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

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

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

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

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

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

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

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

5 * * *

6 § 5602. Form of power of attorney.

7 * * *

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

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

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

29 § 5608. Liability.

30 (a) Third party liability.--

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

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

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

11 (i) A reasonable good faith belief that:

12 (A) the document presented is void, invalid or
13 terminated;

14 (B) the agent's apparent authority is void,
15 invalid or terminated; or

16 (C) the agent is exceeding or improperly
17 exercising the agent's apparent authority.

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

27 (b) Third party immunity.--Any person who reasonably acts in
28 good faith reliance on a document appearing to be a valid power
29 of attorney shall incur no liability as a result of acting in
30 accordance with the instructions of the person claiming to be an

1 agent.

2 Section 3. This act shall apply as follows:

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

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

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

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

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

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

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

17 (3) This section shall take effect immediately.