

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2197 Session of
1995

INTRODUCED BY FARMER, E. Z. TAYLOR, PETTIT, FARGO, MARSICO,
FAIRCHILD, SEMMEL, WALKO, D. W. SNYDER, THOMAS, SATHER,
STEELMAN, TIGUE AND LEDERER, NOVEMBER 14, 1995

REFERRED TO COMMITTEE ON JUDICIARY, NOVEMBER 14, 1995

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 durable powers of attorney.

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

6 Section 1. Section 5604 of Title 20 of the Pennsylvania
7 Consolidated Statutes is amended by adding a subsection to read:
8 § 5604. Durable powers of attorney.

9 * * *

10 (d) Discovery of information and records regarding actions
11 of attorney-in-fact.--

12 (1) Any person interested in the welfare of a principal
13 believed to be unable to properly attend to his affairs may,
14 for the purpose of obtaining information pertinent:

15 (i) to the need or propriety of instituting a
16 proceeding under Chapter 55 (relating to incapacitated
17 persons); or

18 (ii) to the need or propriety of terminating,

1 suspending or limiting the authority of an attorney-in-
2 fact, petition the court of common pleas for discovery
3 from the attorney-in-fact of information and records
4 pertaining to actions taken pursuant to powers or
5 authority conferred by a power of attorney.

6 (2) This petition may be filed in the county wherein the
7 attorney-in-fact resides or has his principal place of
8 business, or, if a nonresident, in the county wherein the
9 principal resides or a guardian has been appointed for the
10 principal, in the court which made the appointment. The
11 court, after reasonable notice to the attorney-in-fact and to
12 the principal if no guardian has been appointed, otherwise to
13 the guardian, may conduct a hearing on the petition. The
14 court, upon hearing on the petition and upon consideration of
15 the interests of the principal and his estate, may dismiss
16 the petition or may enter such order or orders respecting
17 discovery as it may deem appropriate, including an order that
18 the attorney-in-fact respond to discovery methods as provided
19 in the Pennsylvania Rules of Civil Procedure.

20 (3) Upon the failure of the attorney-in-fact to provide
21 the requested information, the court may make and enforce
22 such further orders respecting discovery as would be proper
23 and may award expenses, including reasonable attorney fees.
24 Upon completion of discovery, the court, if satisfied that
25 prior to filing the petition the petitioner had requested the
26 information or records that are the subject of ordered
27 discovery, and the attorney-in-fact had been informed of the
28 intention of the petitioner to file a petition under this
29 section, may, in its discretion, order the attorney-in-fact
30 to pay the petitioner's expenses in obtaining discovery,

1 including reasonable attorney fees.

2 (4) A determination to grant or deny in whole or in part
3 discovery sought shall not be considered a finding regarding
4 the competence, capacity or impairment of the principal, nor
5 shall the granting or denial of discovery preclude the
6 availability of other remedies involving protection of the
7 person or estate of the principal or the rights and duties of
8 the attorney-in-act.

9 (5) Definitions.--As used in this subsection, the
10 following words and phrases shall have the meanings given to
11 them in this subsection:

12 "Principal believed to be unable to properly attend to his
13 affairs." An individual believed in good faith by the
14 petitioner to be a person who is impaired by reason of mental
15 illness, mental deficiency, physical illness or disability,
16 chronic use of drugs, chronic intoxication or other causes to
17 the extent of lacking sufficient understanding or capacity to
18 make or communicate responsible decisions.

19 "Person interested in the welfare of a principal." Members
20 of the principal's family, persons who are co-agents or co-
21 attorneys-in-fact and alternate and successor attorneys-in-fact
22 nominated under the power of attorney and the Department of
23 Aging or its designate pursuant to its regulatory and
24 investigatory duties under the act of November 6, 1987 (P.L.381,
25 No.79), known as the Older Adults Protective Services Act, if
26 the principal is an older Pennsylvanian.

27 Section 2. This act shall take effect in 60 days.