

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 665 Session of 2015

INTRODUCED BY M. K. KELLER, GRELL, BLOOM, COHEN, HARHART, A. HARRIS, MATZIE, McNEILL, METCALFE, MILLARD, MOUL, MURT, PICKETT, READSHAW, SAYLOR, WATSON AND DEAN, MARCH 2, 2015

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 14, 2015

AN ACT

1 Amending ~~Title~~ TITLES 20 (Decedents, Estates and Fiduciaries) <--
2 AND 57 (NOTARIES PUBLIC) of the Pennsylvania Consolidated <--
3 Statutes, in powers of attorney, further providing for
4 general provisions; AND, IN REVISED UNIFORM LAW ON NOTARIAL <--
5 ACTS, FURTHER PROVIDING FOR SHORT FORM CERTIFICATES, FOR
6 IMPLEMENTATION OF POWER OF ATTORNEY AND FOR DURABLE POWERS OF
7 ATTORNEY.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 ~~Section 1. Section 5601(b) (3), (e.1) and (e.2) of Title 20 <--
11 of the Pennsylvania Consolidated Statutes are amended to read:~~

12 SECTION 1. SECTIONS 5601(B) (3), (E.1) AND (E.2), 5603(D) AND <--
13 5604(C) (1) OF TITLE 20 OF THE PENNSYLVANIA CONSOLIDATED STATUTES
14 ARE AMENDED TO READ:

15 § 5601. General provisions.

16 \* \* \*

17 (b) Execution.--

18 \* \* \*

19 (3) For a power of attorney executed on or after the

1 effective date of this paragraph, the signature or mark of  
2 the principal, or the signature [or mark] of another <--  
3 individual signing a power of attorney on behalf of and at  
4 the direction of the principal, shall be:

5 (i) Acknowledged before a notary public or other  
6 individual authorized by law to take acknowledgments. The  
7 notary public or other individual authorized by law to  
8 take acknowledgments shall not be the agent designated in  
9 the power of attorney.

10 (ii) Witnessed by two individuals, each of whom is  
11 18 years of age or older. A witness shall not be the  
12 individual who signed the power of attorney on behalf of  
13 and at the direction of the principal, the agent  
14 designated in the power of attorney or the notary public  
15 or other person authorized by law to take acknowledgments  
16 before whom the power of attorney is acknowledged. ~~For~~ <--  
17 ~~acknowledgments by an attorney subject to this~~  
18 ~~subparagraph, the provisions of 57 Pa.C.S. § 316(2.1)~~  
19 ~~(relating to short form certificates) insofar as they~~  
20 ~~relate to an attorney as subscribing witness do not~~  
21 ~~apply.~~ NOTHING IN THIS SECTION SHALL PROHIBIT AN <--

22 ACKNOWLEDGMENT OF A POWER OF ATTORNEY BEFORE A MEMBER OF  
23 THE BAR OF THE PENNSYLVANIA SUPREME COURT IN THE MANNER  
24 AUTHORIZED BY 42 PA.C.S. § 327(A) (RELATING TO OATHS AND  
25 ACKNOWLEDGMENTS) CERTIFIED IN THE MANNER PROVIDED BY 57  
26 PA.C.S. § 316(2.1) (RELATING TO SHORT FORM CERTIFICATES)  
27 PROVIDED THE ATTORNEY TAKING THE ACKNOWLEDGMENT DOES NOT  
28 ACT AS ONE OF THE TWO WITNESSES REQUIRED BY THIS  
29 PARAGRAPH.

30 \* \* \*

1 (e.1) Limitation on applicability [in commercial  
2 transaction] generally.--

3 (1.1) Subsections [(b) (3) (ii)] (b) (3), (c) and (d) and  
4 section 5601.3 (relating to agent's duties) do not apply to:

5 (i) A power contained in an instrument used in a  
6 commercial transaction which authorizes an agency  
7 relationship.

8 (ii) A power to the extent it is coupled with an  
9 interest in the subject of the power, including a power  
10 given to or for the benefit of a creditor in connection  
11 with a loan or other credit transaction.

12 (iii) A power exclusively granted to facilitate  
13 transfer of stock, bonds and other assets.

14 (iv) [A power contained in the governing document  
15 for a corporation, partnership or limited liability  
16 company or other legal entity by which a director,  
17 partner or member authorizes others to do other things on  
18 behalf of the entity or a proxy or other delegation to  
19 exercise voting rights or management rights with respect  
20 to a legal entity.] A power:

21 (A) contained in the governing document for a  
22 corporation, partnership or limited liability company  
23 or other legal entity;

24 (B) authorized by the law that governs the  
25 internal affairs of a legal entity;

26 (C) by which a director, shareholder, partner,  
27 member or manager authorizes others to do things on  
28 behalf of the entity; or

29 (D) contained in a proxy or other delegation to  
30 exercise voting rights or management rights with

1           respect to legal entity.

2           (v) A warrant of attorney conferring authority to  
3 confess judgment.

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

10           (vii) A power created on a form prescribed by a  
11 Commonwealth agency, political subdivision or an  
12 authority or instrumentality of the Commonwealth or a  
13 political subdivision.

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

16           (3) POWERS OF ATTORNEY EXEMPTED BY THIS SUBSECTION WHICH <--  
17 ARE RECORDED IN THE OFFICE FOR THE RECORDER OF DEEDS UNDER  
18 SECTION 5602(C) SHALL BE ACKNOWLEDGED BEFORE RECORDING.

19           (e.2) Limitation on applicability in health care and mental  
20 health care powers of attorney.--Subsections (b) (3) (i), (c) and  
21 (d) and section 5601.3 [(relating to agent's duties)] do not  
22 apply to a power of attorney which exclusively provides for  
23 health care decision making or mental health care decision  
24 making.

25           \* \* \*

26           ~~Section 2. The amendment of 20 Pa.C.S. § 5601(b) (3), (e.1) <--~~  
27 ~~and (e.2) shall be retroactive to January 1, 2015.~~

28 § 5603. IMPLEMENTATION OF POWER OF ATTORNEY. <--

29           \* \* \*

30           (D) POWER TO CLAIM AN ELECTIVE SHARE.--A POWER "TO CLAIM AN

1 ELECTIVE SHARE OF THE ESTATE OF MY DECEASED SPOUSE" SHALL MEAN  
2 THAT THE AGENT MAY ELECT TO TAKE AGAINST THE WILL AND  
3 CONVEYANCES OF THE PRINCIPAL'S DECEASED SPOUSE, DISCLAIM ANY  
4 INTEREST IN PROPERTY WHICH THE PRINCIPAL IS REQUIRED TO DISCLAIM  
5 AS A RESULT OF SUCH ELECTION, RETAIN ANY PROPERTY WHICH THE  
6 PRINCIPAL HAS THE RIGHT TO ELECT TO RETAIN, FILE PETITIONS  
7 PERTAINING TO THE ELECTION, INCLUDING PETITIONS TO EXTEND THE  
8 TIME FOR ELECTING AND PETITIONS FOR ORDERS, DECREES AND  
9 JUDGMENTS IN ACCORDANCE WITH SECTION 2211(C) AND (D) (RELATING  
10 TO DETERMINATION OF EFFECT OF ELECTION; ENFORCEMENT), AND TAKE  
11 ALL OTHER ACTIONS WHICH THE AGENT DEEMS APPROPRIATE IN ORDER TO  
12 EFFECTUATE THE ELECTION: PROVIDED, HOWEVER, THAT THE ELECTION  
13 SHALL BE MADE ONLY UPON THE APPROVAL OF THE COURT HAVING  
14 JURISDICTION OF THE PRINCIPAL'S ESTATE IN ACCORDANCE WITH  
15 SECTION 2206 (RELATING TO RIGHT OF ELECTION PERSONAL TO  
16 SURVIVING SPOUSE) IN THE CASE OF A PRINCIPAL WHO HAS BEEN  
17 ADJUDICATED AN INCAPACITATED PERSON, OR UPON THE APPROVAL OF THE  
18 COURT HAVING JURISDICTION OF THE DECEASED SPOUSE'S ESTATE IN THE  
19 CASE OF A PRINCIPAL WHO [HAS NOT BEEN ADJUDICATED] IS NOT AN  
20 INCAPACITATED PERSON.

21 \* \* \*

22 § 5604. DURABLE POWERS OF ATTORNEY.

23 \* \* \*

24 (C) RELATION OF AGENT TO COURT-APPOINTED GUARDIAN.--

25 (1) IF, FOLLOWING EXECUTION OF A DURABLE POWER OF  
26 ATTORNEY, THE PRINCIPAL [IS ADJUDICATED] BECOMES AN  
27 INCAPACITATED PERSON AND A GUARDIAN IS APPOINTED FOR HIS  
28 ESTATE, THE AGENT IS ACCOUNTABLE TO THE GUARDIAN AS WELL AS  
29 TO THE PRINCIPAL. THE GUARDIAN SHALL HAVE THE SAME POWER TO  
30 REVOKE OR AMEND THE POWER OF ATTORNEY THAT THE PRINCIPAL

1           WOULD HAVE HAD IF HE WERE NOT AN INCAPACITATED PERSON.

2                   \* \* \*

3           SECTION 2.   SECTION 316(2.1) OF TITLE 57 IS AMENDED TO READ:

4   § 316.   SHORT FORM CERTIFICATES.

5           THE FOLLOWING SHORT FORM CERTIFICATES OF NOTARIAL ACTS ARE  
6 SUFFICIENT FOR THE PURPOSES INDICATED IF COMPLETED WITH THE  
7 INFORMATION REQUIRED BY SECTION 315(A) AND (B) (RELATING TO  
8 CERTIFICATE OF NOTARIAL ACT) :

9                   \* \* \*

10           (2.1)   FOR AN ACKNOWLEDGMENT BY AN ATTORNEY AT LAW  
11 PURSUANT TO 42 PA.C.S. § 327 (RELATING TO OATHS AND  
12 ACKNOWLEDGMENTS) :.....

13           STATE OF.....

14           COUNTY OF.....

15           THIS RECORD WAS ACKNOWLEDGED BEFORE ME ON

16           (Date).....

17           BY (NAME OF ATTORNEY).....

18           SUPREME COURT IDENTIFICATION NUMBER.....

19           AS A MEMBER OF THE BAR OF THE PENNSYLVANIA SUPREME COURT

20           [AND A SUBSCRIBING WITNESS TO THIS RECORD AND] CERTIFIED

21           THAT HE/SHE WAS PERSONALLY PRESENT WHEN (NAME(S) OF

22           INDIVIDUAL(S)) EXECUTED THE RECORD AND THAT (NAME(S) OF

23           INDIVIDUAL(S)) EXECUTED THE RECORD FOR THE PURPOSES

24           CONTAINED THEREIN.

25           SIGNATURE OF NOTARIAL OFFICER.....

26           STAMP

27           .....

28           TITLE OF OFFICE.....

29           MY COMMISSION EXPIRES:.....

30                   \* \* \*

1 SECTION 3. THIS ACT APPLIES AS FOLLOWS:

2 (1) THE AMENDMENT OF 20 PA.C.S. §§ 5601(B)(3), (E.1) AND  
3 (E.2), 5603(D) AND 5604(C)(1) SHALL BE RETROACTIVE TO JANUARY  
4 1, 2015.

5 (2) THE AMENDMENT OF 57 PA.C.S. § 316(2.1) SHALL APPLY  
6 TO A FORM USED FOR AN ACKNOWLEDGMENT TAKEN BY A MEMBER OF THE  
7 BAR OF THE PENNSYLVANIA SUPREME COURT PURSUANT TO 42 PA.C.S.  
8 § 327(A) RETROACTIVELY TO JANUARY 1, 2015.

9 Section ~~3~~ 4. This act shall take effect immediately.

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