

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, LEDERER AND RUBLEY, NOVEMBER 14, 1995

AS RE-REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, FEBRUARY 1, 1996

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~~

~~(ii) to the need or propriety of terminating,
suspending or limiting the authority of an attorney in-
fact, petition the court of common pleas for discovery
from the attorney in fact of information and records
pertaining to actions taken pursuant to powers or
authority conferred by a power of attorney.~~

(1) IF THE DEPARTMENT OF AGING BELIEVES THAT A PRINCIPAL
IS UNABLE TO PROPERLY ATTEND TO HIS AFFAIRS, THE DEPARTMENT
MAY, FOR THE PURPOSE OF OBTAINING INFORMATION PERTINENT TO
THE NEED OR PROPRIETY OF INSTITUTING A PROCEEDING
TERMINATING, SUSPENDING OR LIMITING THE AUTHORITY OF AN
ATTORNEY-IN-FACT, PETITION THE COURT OF COMMON PLEAS FOR
DISCOVERY FROM THE ATTORNEY-IN-FACT OF INFORMATION AND
RECORDS PERTAINING TO ACTIONS TAKEN PURSUANT TO POWERS OR
AUTHORITY CONFERRED BY A POWER OF ATTORNEY.

(2) This petition may be filed in the county wherein the
attorney-in-fact resides or has his principal place of
business, or, if a nonresident, in the county wherein the
principal resides or a guardian has been appointed for the
principal, in the court which made the appointment. The
court, after reasonable notice to the attorney-in-fact and to
the principal if no guardian has been appointed, otherwise to
the guardian, may conduct a hearing on the petition. The
court, upon hearing on the petition and upon consideration of
the interests of the principal and his estate, may dismiss
the petition AND MAY REQUIRE THE PETITIONING PARTY TO PAY
SANCTIONS, INCLUDING ATTORNEY FEES AND COSTS IF THE COURT
FINDS THAT THE PETITION BROUGHT UNDER THIS SECTION WAS FILED
FOR HARASSING OR OTHER IMPROPER MOTIVES or may enter such
order or orders respecting discovery as it may deem

1 appropriate, including an order that the attorney-in-fact
2 respond to discovery methods as provided in the Pennsylvania
3 Rules of Civil Procedure.

4 (3) Upon the failure of the attorney-in-fact to provide
5 the requested information, the court may make and enforce
6 such further orders respecting discovery as would be proper
7 and may award expenses, including reasonable attorney fees.
8 Upon completion of discovery, the court, if satisfied that
9 prior to filing the petition the petitioner had requested the
10 information or records that are the subject of ordered
11 discovery, and the attorney-in-fact had been informed of the
12 intention of the petitioner to file a petition under this
13 section, may, in its discretion, order the attorney-in-fact
14 to pay the petitioner's expenses in obtaining discovery,
15 including reasonable attorney fees.

16 (4) A determination to grant or deny in whole or in part
17 discovery sought shall not be considered a finding regarding
18 the competence, capacity or impairment of the principal, nor
19 shall the granting or denial of discovery preclude the
20 availability of other remedies involving protection of the
21 person or estate of the principal or the rights and duties of
22 the attorney-in-fact ATTORNEY-IN-FACT. <—

23 (5) Definitions.—As used in this subsection, the <—
24 following words and phrases shall have the meanings given to
25 them in this subsection PARAGRAPH: <—

26 "Principal believed to be unable to properly attend to his
27 affairs." An individual believed in good faith by the
28 petitioner to be a person who is impaired by reason of mental
29 illness, mental deficiency, physical illness or disability,
30 chronic use of drugs, chronic intoxication or other causes to

1 the extent of lacking sufficient understanding or capacity to
2 make or communicate responsible decisions.

3 ~~"Person interested in the welfare of a principal." Members~~ <—
4 ~~of the principal's family, persons who are co agents or co~~
5 ~~attorneys in fact and alternate and successor attorneys in fact~~
6 ~~nominated under the power of attorney and the Department of~~
7 "DEPARTMENT OF AGING." THE DEPARTMENT OF Aging or its designate <—
8 pursuant to its regulatory and investigatory duties under the
9 act of November 6, 1987 (P.L.381, No.79), known as the Older
10 Adults Protective Services Act, if the principal is an older
11 Pennsylvanian.

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