

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 227 Session of
1999

INTRODUCED BY SATHER, SCHULER, YOUNGBLOOD, GEIST, BAKER, HERMAN,
PESCI, DEMPSEY, FAIRCHILD, E. Z. TAYLOR, SAYLOR, TRELLO,
STERN, TIGUE, SEYFERT, HESS, McCALL, SEMMEL, HARHAI AND
CLYMER, FEBRUARY 1, 1999

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 1, 1999

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) If the Department of Aging believes that a principal
13 is unable to properly attend to his affairs, the department
14 may, for the purpose of obtaining information pertinent to
15 the need or propriety of instituting a proceeding
16 terminating, suspending or limiting the authority of an
17 attorney-in-fact, petition the court of common pleas for

1 discovery from the attorney-in-fact of information and
2 records pertaining to actions taken pursuant to powers or
3 authority conferred by a durable power of attorney.

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

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

petition under this section, may, in its discretion, order the attorney-in-fact to pay the department's expenses in obtaining discovery, including reasonable attorney fees.

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

(5) As used in this subsection, the following words and phrases shall have the meanings given to them in this paragraph:

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

"Department of Aging." The Department of Aging of the Commonwealth. The term shall also include, in the case of a principal who is an older adult as defined under the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act, a designee of the Department of Aging pursuant to its regulatory and investigatory duties under that act.

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