

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2007 Session of 2014

INTRODUCED BY BIZZARRO, PASHINSKI, NEILSON, KOTIK, SCHLOSSBERG, KORTZ, KINSEY, YOUNGBLOOD, THOMAS, SONNEY, DeLUCA, COHEN, SWANGER, MCNEILL, READSHAW, SNYDER, FABRIZIO, WHITE, MATZIE, PETRI, MURT, NEUMAN, W. KELLER, HAGGERTY, MUNDY, KULA, DONATUCCI, D. MILLER, FARINA, CARROLL, FRANKEL AND GIBBONS, JANUARY 30, 2014

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 29, 2014

AN ACT

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

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

6 Section 1. Sections 5601(d) and 5604(d) of Title 20 of the
7 Pennsylvania Consolidated Statutes are amended to read:

8 ~~§ 5601. General provisions.~~

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9 * * *

10 ~~(d) Acknowledgment executed by agent. An agent shall have~~
11 ~~no authority to act as agent under the power of attorney unless~~
12 ~~the agent has first executed and affixed to the power of~~
13 ~~attorney an acknowledgment in substantially the following form:~~

14 I, _____, have read the attached power of
15 attorney and am the person identified as the agent for
16 the principal. I hereby acknowledge that in the absence

1 of a specific provision to the contrary in the power of
2 attorney or in 20 Pa.C.S. when I act as agent:

3 I shall exercise the powers for the benefit of the
4 principal.

5 I shall keep the assets of the principal separate
6 from my assets.

7 I shall exercise reasonable caution and prudence.

8 I shall keep a full and accurate record of all
9 actions, receipts and disbursements on behalf of the
10 principal.

11 Failure to comply with the requirements above could
12 result in the filing of criminal charges against me.

13
14

15 (Agent) (Date)

16 * * *

17 ~~§ 5604. Durable powers of attorney.~~

18 * * *

19 (d) ~~Discovery of information and records regarding actions~~
20 ~~of agent.~~

21 (1) ~~If the agency acting pursuant to the act of November~~
22 ~~6, 1987 (P.L.381, No.79), known as the Older Adults~~
23 ~~Protective Services Act, is denied access to records~~
24 ~~necessary for the completion of a proper investigation of a~~
25 ~~report or a client assessment and service plan or the~~
26 ~~delivery of needed services in order to prevent further~~
27 ~~abuse, neglect, exploitation or abandonment of the older~~
28 ~~adult principal reported to be in need of protective~~
29 ~~services, the agency may petition the court of common pleas~~
30 ~~for an order requiring the appropriate access when either of~~

1 ~~the following conditions applies:~~

2 ~~(i) the older adult principal has provided written~~
3 ~~consent for confidential records to be disclosed and the~~
4 ~~agent denies access; [or]~~

5 ~~(ii) the agency can demonstrate that the older adult~~
6 ~~principal has denied or directed the agent to deny access~~
7 ~~to the records because of incompetence, coercion,~~
8 ~~extortion or justifiable fear of future abuse, neglect,~~
9 ~~exploitation or abandonment[.]; or~~

10 ~~(iii) the agency has a reasonable suspicion to~~
11 ~~believe a crime has been committed and can demonstrate~~
12 ~~that the older adult principal is mentally incapacitated.~~

13 ~~(2) This petition may be filed in the county wherein the~~
14 ~~agent resides or has his principal place of business or, if a~~
15 ~~nonresident, in the county wherein the older adult principal~~
16 ~~resides. The court, after reasonable notice to the agent and~~
17 ~~to the older adult principal, may conduct a hearing on the~~
18 ~~petition.~~

19 ~~(3) Upon the failure of the agent to provide the~~
20 ~~requested information, the court may make and enforce such~~
21 ~~further orders.~~

22 ~~(4) A determination to grant or deny an order, whether~~
23 ~~in whole or in part, shall not be considered a finding~~
24 ~~regarding the competence, capacity or impairment of the older~~
25 ~~adult principal, nor shall the granting or denial of an order~~
26 ~~preclude the availability of other remedies involving~~
27 ~~protection of the person or estate of the older adult~~
28 ~~principal or the rights and duties of the agent.~~

29 ~~***~~

30 § 5601. GENERAL PROVISIONS.

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1 * * *

2 (D) ACKNOWLEDGMENT EXECUTED BY AGENT.--AN AGENT SHALL HAVE
3 NO AUTHORITY TO ACT AS AGENT UNDER THE POWER OF ATTORNEY UNLESS
4 THE AGENT HAS FIRST EXECUTED AND AFFIXED TO THE POWER OF
5 ATTORNEY AN ACKNOWLEDGMENT IN SUBSTANTIALLY THE FOLLOWING FORM:

6 I, _____, HAVE READ THE ATTACHED POWER OF
7 ATTORNEY AND AM THE PERSON IDENTIFIED AS THE AGENT FOR
8 THE PRINCIPAL. I UNDERSTAND THAT IF ANY INTENTIONAL ACT
9 OR OMISSION ON MY PART AS THE AGENT CAUSES HARM TO THE
10 PRINCIPAL, I MAY BE SUBJECT TO CRIMINAL PENALTIES. I
11 HEREBY ACKNOWLEDGE THAT IN THE ABSENCE OF A SPECIFIC
12 PROVISION TO THE CONTRARY IN THE POWER OF ATTORNEY OR IN
13 20 PA.C.S. WHEN I ACT AS AGENT:

14 I SHALL EXERCISE THE POWERS FOR THE BENEFIT OF THE
15 PRINCIPAL.

16 I SHALL KEEP THE ASSETS OF THE PRINCIPAL SEPARATE
17 FROM MY ASSETS.

18 I SHALL EXERCISE REASONABLE CAUTION AND PRUDENCE.

19 I SHALL KEEP A FULL AND ACCURATE RECORD OF ALL
20 ACTIONS, RECEIPTS AND DISBURSEMENTS ON BEHALF OF THE
21 PRINCIPAL.

22
23

24 (AGENT) (DATE)

25 * * *

26 § 5604. DURABLE POWERS OF ATTORNEY.

27 * * *

28 (D) DISCOVERY OF INFORMATION AND RECORDS REGARDING ACTIONS
29 OF AGENT.--

30 (1) IF THE AGENCY ACTING PURSUANT TO THE ACT OF NOVEMBER

1 6, 1987 (P.L.381, NO.79), KNOWN AS THE OLDER ADULTS
2 PROTECTIVE SERVICES ACT, IS DENIED ACCESS TO RECORDS
3 NECESSARY FOR THE COMPLETION OF A PROPER INVESTIGATION OF A
4 REPORT OR A CLIENT ASSESSMENT AND SERVICE PLAN OR THE
5 DELIVERY OF NEEDED SERVICES IN ORDER TO PREVENT FURTHER
6 ABUSE, NEGLECT, EXPLOITATION OR ABANDONMENT OF THE OLDER
7 ADULT PRINCIPAL REPORTED TO BE IN NEED OF PROTECTIVE
8 SERVICES, THE AGENCY MAY PETITION THE COURT OF COMMON PLEAS
9 FOR AN ORDER REQUIRING THE APPROPRIATE ACCESS WHEN [EITHER]
10 ANY OF THE FOLLOWING CONDITIONS [APPLIES] ARE MET:

11 (I) THE OLDER ADULT PRINCIPAL HAS PROVIDED WRITTEN
12 CONSENT FOR CONFIDENTIAL RECORDS TO BE DISCLOSED AND THE
13 AGENT DENIES ACCESS; [OR]

14 (II) THE AGENCY CAN DEMONSTRATE THAT THE OLDER ADULT
15 PRINCIPAL HAS DENIED OR DIRECTED THE AGENT TO DENY ACCESS
16 TO THE RECORDS BECAUSE OF INCOMPETENCE, COERCION,
17 EXTORTION OR JUSTIFIABLE FEAR OF FUTURE ABUSE, NEGLECT,
18 EXPLOITATION OR ABANDONMENT[.]; OR

19 (III) THE AGENCY HAS A GOOD FAITH BELIEF THAT A
20 CRIME HAS BEEN COMMITTED AND ALLEGES THAT THE PRINCIPAL
21 LACKS THE CAPACITY TO PROVIDE CONSENT TO THE RELEASE OF
22 CONFIDENTIAL RECORDS.

23 (2) THIS PETITION MAY BE FILED IN THE COUNTY WHEREIN THE
24 AGENT RESIDES OR HAS HIS PRINCIPAL PLACE OF BUSINESS OR, IF A
25 NONRESIDENT, IN THE COUNTY WHEREIN THE OLDER ADULT PRINCIPAL
26 RESIDES. THE COURT, AFTER REASONABLE NOTICE TO THE AGENT AND
27 TO THE OLDER ADULT PRINCIPAL, MAY CONDUCT A HEARING ON THE
28 PETITION.

29 (3) UPON THE FAILURE OF THE AGENT TO PROVIDE THE
30 REQUESTED INFORMATION, THE COURT MAY MAKE AND ENFORCE SUCH

1 FURTHER ORDERS.

2 (4) A DETERMINATION TO GRANT OR DENY AN ORDER, WHETHER
3 IN WHOLE OR IN PART, SHALL NOT BE CONSIDERED A FINDING
4 REGARDING THE COMPETENCE, CAPACITY OR IMPAIRMENT OF THE OLDER
5 ADULT PRINCIPAL, NOR SHALL THE GRANTING OR DENIAL OF AN ORDER
6 PRECLUDE THE AVAILABILITY OF OTHER REMEDIES INVOLVING
7 PROTECTION OF THE PERSON OR ESTATE OF THE OLDER ADULT
8 PRINCIPAL OR THE RIGHTS AND DUTIES OF THE AGENT.

9 * * *

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