

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1429 Session of 2013

INTRODUCED BY M. K. KELLER, GRELL, AUMENT, BLOOM, CALTAGIRONE, CLYMER, CUTLER, DENLINGER, EVERETT, FLECK, GODSHALL, HESS, KNOWLES, LONGIETTI, MATZIE, METCALFE, MILLARD, R. MILLER, PICKETT, ROCK, SAYLOR, TURZAI, WATSON, GILLESPIE, GIBBONS, CARROLL, KORTZ, HARHAI, SCAVELLO, PYLE, CAUSER, TAYLOR, RAPP, MAHER, GINGRICH, HICKERNELL, MILNE, C. HARRIS, MACKENZIE, REESE, MARSHALL, P. DALEY, STEVENSON, BENNINGHOFF, READSHAW AND WHITE, JUNE 3, 2013

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED, JUNE 10, 2014

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in powers of attorney,
3 further providing for general provisions and for special
4 rules for gifts; providing for agent's duties and for
5 principles of law and equity; further providing for form of
6 power of attorney, for implementation of power of attorney
7 and for liability; providing for liability for refusal to
8 accept power of attorney and for activities through
9 employees; and further providing for validity.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 5601(b), (c), (d), (e), (e.1), (e.2) and
13 (f) of Title 20 of the Pennsylvania Consolidated Statutes are
14 amended to read:

15 § 5601. General provisions.

16 * * *

17 (b) Execution.--

1 (1) A power of attorney shall be dated, and it shall be
2 signed [and dated] by the principal by signature or mark, or
3 by another individual on behalf of and at the direction of
4 the principal IF THE PRINCIPAL IS UNABLE TO SIGN BUT <--
5 SPECIFICALLY DIRECTS ANOTHER INDIVIDUAL TO SIGN THE POWER OF
6 ATTORNEY.

7 (2) If the power of attorney is executed by mark or by
8 another individual, then it shall be witnessed by two
9 individuals, each of whom is 18 years of age or older. A
10 witness shall not be the individual who signed the power of
11 attorney on behalf of and at the direction of the principal.

12 (3) For a power of attorney executed on or after the
13 effective date of this paragraph, the signature or mark of
14 the principal, or the signature or mark of another individual
15 signing a power of attorney on behalf of AND AT THE DIRECTION <--
16 OF the principal, shall be:

17 (i) Acknowledged before a notary public or other
18 individual authorized by law to take acknowledgments. THE <--
19 NOTARY PUBLIC OR OTHER INDIVIDUAL AUTHORIZED BY LAW TO
20 TAKE ACKNOWLEDGMENTS SHALL NOT BE THE AGENT DESIGNATED IN
21 THE POWER OF ATTORNEY.

22 (ii) Witnessed by two individuals, each of whom is
23 at least 18 years of age 18 YEARS OF AGE OR OLDER. A <--
24 witness shall not be the individual who signed the power
25 of attorney on behalf of and at the direction of the
26 principal, THE AGENT DESIGNATED IN THE POWER OF ATTORNEY <--
27 OR THE NOTARY PUBLIC OR OTHER PERSON AUTHORIZED BY LAW TO
28 TAKE ACKNOWLEDGMENTS BEFORE WHOM THE POWER OF ATTORNEY IS
29 ACKNOWLEDGED.

30 (c) Notice.--All powers of attorney shall include the

1 following notice in capital letters at the beginning of the
2 power of attorney. The notice shall be signed by the principal.
3 In the absence of a signed notice, upon a challenge to the
4 authority of an agent to exercise a power under the power of
5 attorney, the agent shall have the burden of demonstrating that
6 the exercise of this authority is proper.

7 NOTICE

8 The purpose of this power of attorney is to give the
9 person you designate (your "agent") broad powers to handle
10 your property, which may include powers to sell or otherwise
11 dispose of any real or personal property without advance
12 notice to you or approval by you.

13 This power of attorney does not impose a duty on your
14 agent to exercise granted powers, but when powers are
15 exercised, your agent must use due care to act for your
16 benefit and in accordance with this power of attorney.

17 Your agent may exercise the powers given here throughout
18 your lifetime, even after you become incapacitated, unless
19 you expressly limit the duration of these powers or you
20 revoke these powers or a court acting on your behalf
21 terminates your agent's authority.

22 Your agent must [keep your funds separate from your
23 agent's funds.] act in accordance with your reasonable
24 expectations to the extent actually known by your agent and,
25 otherwise, in your best interest, act in good faith and act
26 only within the scope of authority granted by you in the
27 power of attorney.

28 The law permits you, if you choose, to grant broad
29 authority to an agent under power of attorney, including the
30 ability to give away all of your property while you are alive

1 or to substantially change how your property is distributed
2 at your death. Before signing this document, you should seek
3 the advice of an attorney at law to make sure you understand
4 it.

5 A court can take away the powers of your agent if it
6 finds your agent is not acting properly.

7 The powers and duties of an agent under a power of
8 attorney are explained more fully in 20 Pa.C.S. Ch. 56.

9 If there is anything about this form that you do not
10 understand, you should ask a lawyer of your own choosing to
11 explain it to you.

12 I have read or had explained to me this notice and I
13 understand its contents.

14
15 (Principal) (Date)

16 (d) Acknowledgment executed by agent.--An agent shall have
17 no authority to act as agent under the power of attorney unless
18 the agent has first executed and affixed to the power of
19 attorney an acknowledgment in substantially the following form:

20 I, _____, have read the attached power of
21 attorney and am the person identified as the agent for
22 the principal. I hereby acknowledge that [in the absence
23 of a specific provision to the contrary in the power of
24 attorney or in 20 Pa.C.S.] when I act as agent:

25 I shall [exercise the powers for the benefit of the
26 principal] act in accordance with the principal's
27 reasonable expectations to the extent actually known by
28 me and, otherwise, in the principal's best interest, act
29 in good faith and act only within the scope of authority
30 granted to me by the principal in the power of attorney.

1 [I shall keep the assets of the principal separate
2 from my assets.

3 I shall exercise reasonable caution and prudence.

4 I shall keep a full and accurate record of all
5 actions, receipts and disbursements on behalf of the
6 principal.]

7

8 (Agent) (Date)

9 [(e) Fiduciary relationship.--An agent acting under a power
10 of attorney has a fiduciary relationship with the principal. In
11 the absence of a specific provision to the contrary in the power
12 of attorney, the fiduciary relationship includes the duty to:

13 (1) Exercise the powers for the benefit of the
14 principal.

15 (2) Keep separate the assets of the principal from those
16 of an agent.

17 (3) Exercise reasonable caution and prudence.

18 (4) Keep a full and accurate record of all actions,
19 receipts and disbursements on behalf of the principal.]

20 (e.1) Limitation on applicability in commercial
21 transaction.--

22 [(1) Subsections (c), (d) and (e) do not apply to a
23 power or a power of attorney contained in an instrument used
24 in a commercial transaction which simply authorizes an agency
25 relationship. This paragraph includes the following:

26 (i) A power given to or for the benefit of a
27 creditor in connection with a loan or other credit
28 transaction.

29 (ii) A power exclusively granted to facilitate
30 transfer of stock, bonds and other assets.

1 (iii) A power contained in the governing document
2 for a corporation, partnership or limited liability
3 company or other legal entity by which a director,
4 partner or member authorizes others to do other things on
5 behalf of the entity.

6 (iv) A warrant of attorney conferring authority to
7 confess judgment.

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

14 (1.1) Subsections (b)(3)(ii), (c) and (d) do not apply
15 to:

16 (i) A power contained in an instrument used in a
17 commercial transaction which authorizes an agency
18 relationship.

19 (ii) A power to the extent it is coupled with an
20 interest in the subject of the power, including a power
21 given to or for the benefit of a creditor in connection
22 with a loan or other credit transaction.

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

25 (iv) A power contained in the governing document for
26 a corporation, partnership or limited liability company
27 or other legal entity by which a director, partner or
28 member authorizes others to do other things on behalf of
29 the entity or a proxy or other delegation to exercise
30 voting rights or management rights with respect to a

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

22 (f) [Definition.--As used in this chapter, the term "agent"
23 means a person designated by a principal in a power of attorney
24 to act on behalf of that principal.] Definitions.--The following
25 words and phrases when used in this chapter shall have the
26 meanings given to them in this subsection unless the context
27 clearly indicates otherwise:

28 "Agent." A person designated by a principal in a power of
29 attorney to act on behalf of that principal.

30 "Good faith." Honesty in fact.

1 Section 2. Section 5601.2 of Title 20 is repealed:

2 [§ 5601.2. Special rules for gifts.

3 (a) General rule.--A principal may empower an agent to make
4 a gift in a power of attorney only as provided in this section.

5 (b) Limited gifts.--A principal may authorize an agent to
6 make a limited gift as defined under section 5603(a)(2)
7 (relating to implementation of power of attorney) by the
8 inclusion of:

9 (1) the language quoted in section 5602(a)(1) (relating
10 to form of power of attorney); or

11 (2) other language showing a similar intent on the part
12 of the principal to empower the agent to make a limited gift.

13 (c) Unlimited gifts.--A principal may authorize an agent to
14 make any other gift only by specifically providing for and
15 defining the agent's authority in the power of attorney.

16 (d) Nature of gifts.--In the absence of a specific provision
17 to the contrary in the power of attorney:

18 (1) A power to make a limited gift shall be construed to
19 empower the agent to make a gift to each donee either
20 outright or in trust.

21 (2) In the case of any gift to a minor, that gift may be
22 made in trust or in accordance with Chapter 53 (relating to
23 Pennsylvania Uniform Transfers to Minors Act) or section 5155
24 (relating to order of court).

25 (3) In the case of any gift made in trust, the agent may
26 execute a deed of trust for such purpose, designating one or
27 more persons, including the agent, as original or successor
28 trustees, or may make an addition to an existing trust.

29 (4) In making any gift, the agent need not treat the
30 donees equally or proportionately and may entirely exclude

1 one or more permissible donees.

2 (5) The pattern followed on the occasion of any gift
3 need not be followed on the occasion of any other gift.

4 (e) Equity.--An agent and the donee of a gift shall be
5 liable as equity and justice may require to the extent that, as
6 determined by the court, a gift made by the agent is
7 inconsistent with prudent estate planning or financial
8 management for the principal or with the known or probable
9 intent of the principal with respect to disposition of the
10 estate.

11 (f) Third party.--No transfer agent, depository or other
12 third party acting in good faith shall have any responsibility
13 to see to the proper discharge of the agent's duty.]

14 Section 3. Title 20 is amended by adding sections to read:
15 § 5601.3. Agent's duties.

16 (a) General rule.--Notwithstanding any provision in the
17 power of attorney, an agent that has accepted appointment shall:

18 (1) Act in accordance with the principal's reasonable
19 expectations to the extent actually known by the agent and,
20 otherwise, in the principal's best interest.

21 (2) Act in good faith.

22 (3) Act only within the scope of authority granted in
23 the power of attorney.

24 (b) Other duties.--Except as otherwise provided in the power
25 of attorney, an agent that has accepted appointment shall:

26 (1) Act loyally for the principal's benefit.

27 ~~(1.1) Keep the agent's funds separate from the~~ <--
28 ~~principal's funds after the date of execution of the power of~~
29 ~~attorney, unless the funds were not kept separate as of the~~
30 ~~date of the execution of the power of attorney.~~

1 (1.1) KEEP THE AGENT'S FUNDS SEPARATE FROM THE <--
2 PRINCIPAL'S FUNDS UNLESS:

3 (I) THE FUNDS WERE NOT KEPT SEPARATE AS OF THE DATE
4 OF THE EXECUTION OF THE POWER OF ATTORNEY; OR

5 (II) THE PRINCIPAL COMMINGLES THE FUNDS AFTER THE
6 DATE OF THE EXECUTION OF THE POWER OF ATTORNEY AND THE
7 AGENT IS THE PRINCIPAL'S SPOUSE.

8 (2) Act so as not to create a conflict of interest that
9 impairs the agent's ability to act impartially in the
10 principal's best interest.

11 (3) Act with the care, competence and diligence
12 ordinarily exercised by agents in similar circumstances.

13 (4) Keep a record of all receipts, disbursements and
14 transactions made on behalf of the principal.

15 (5) Cooperate with a person who has authority to make
16 health care decisions for the principal to carry out the
17 principal's reasonable expectations to the extent actually
18 known by the agent and, otherwise, act in the principal's
19 best interest.

20 (6) Attempt to preserve the principal's estate plan, to
21 the extent actually known by the agent, if preserving the
22 plan is consistent with the principal's best interest based
23 on all relevant factors, including:

24 (i) The value and nature of the principal's
25 property.

26 (ii) The principal's foreseeable obligations and
27 need for maintenance.

28 (iii) Minimization of taxes, including income,
29 estate, inheritance, generation-skipping transfer and
30 gift taxes.

1 (iv) Eligibility for a benefit, program or
2 assistance under a statute or regulation.

3 (c) Nonliability of agent.--

4 (1) An agent that acts in good faith shall not be liable
5 to a beneficiary of the principal's estate plan for failure
6 to preserve the plan.

7 (2) An agent that acts with care, competence and
8 diligence for the best interest of the principal shall not be
9 liable solely because the agent also benefits from the act or
10 has an individual or conflicting interest in relation to the
11 property or affairs of the principal.

12 (3) If an agent is selected by the principal because of
13 special skills or expertise possessed by the agent or in
14 reliance on the agent's representation that the agent has
15 special skills or expertise, the special skills or expertise
16 must be considered in determining whether the agent has acted
17 with care, competence and diligence under the circumstances.

18 (4) Absent a breach of duty to the principal, an agent
19 shall not be liable if the value of the principal's property
20 declines.

21 (5) An agent that exercises authority to delegate to
22 another person the authority granted by the principal or that
23 engages another person on behalf of the principal shall not
24 be liable for an act, error of judgment or default of that
25 person if the agent exercises care, competence and diligence
26 in selecting and monitoring the person.

27 (d) Disclosure of receipts, disbursements or transactions.--

28 (1) Except as otherwise provided in the power of
29 attorney, an agent shall not be required to disclose
30 receipts, disbursements or transactions conducted on behalf

1 of the principal unless ordered by a court or requested by
2 the principal, a guardian, conservator, another fiduciary
3 acting for the principal, governmental agency having
4 authority to protect the welfare of the principal or, upon
5 the death of the principal, the personal representative or
6 successor in interest of the principal's estate.

7 (2) Within 30 days of the request, the agent shall
8 either comply with the request or provide a writing or other
9 record substantiating the reason additional time is needed,
10 in which case the agent shall comply with the request within
11 an additional 30 days.

12 § 5601.4. Authority that requires specific and general grant of
13 authority.

14 (a) General rule.--An agent under a power of attorney may do
15 the following on behalf of the principal or with the principal's
16 property only if the power of attorney expressly grants the
17 agent the authority and exercise of the authority is not
18 otherwise prohibited by another agreement or instrument to which
19 the authority or property is subject:

20 (1) Create, amend, revoke or terminate an inter vivos
21 trust other than as permitted under section 5602(a)(2), (3)
22 and (7) (relating to form of power of attorney).

23 (2) Make a gift.

24 (3) Create or change rights of survivorship.

25 (4) Create or change a beneficiary designation.

26 (5) Delegate authority granted under the power of
27 attorney.

28 (6) Waive the principal's right to be a beneficiary of a
29 joint and survivor annuity, including a survivor benefit
30 under a retirement plan.

1 (7) Exercise fiduciary powers that the principal has
2 authority to delegate.

3 (8) Disclaim property, including a power of appointment.

4 (b) Limitation.--Notwithstanding a grant of authority to do
5 an act described in subsection (a), unless the power of attorney
6 otherwise provides, an agent that is not an ancestor, spouse or
7 descendant of the principal may not exercise authority under a
8 power of attorney to create in the agent, or in an individual to
9 whom the agent owes a legal obligation of support, an interest
10 in the principal's property, whether by gift, right of
11 survivorship, beneficiary designation, disclaimer or otherwise.

12 (c) Scope of authority.--Subject to subsections (a), (b),
13 (d), and (e), if a power of attorney grants to an agent
14 authority to do all acts that a principal is authorized to
15 perform, the agent has ~~the general authority described in~~ ALL OF <--
16 THE POWERS WHICH MAY BE INCORPORATED BY REFERENCE PURSUANT TO
17 section 5602(a).

18 (d) Gifts.--Unless the power of attorney otherwise provides,
19 a grant of authority to make a gift is subject to section
20 5603(a.1) (relating to implementation of power of attorney).

21 (e) Similar or overlapping subjects.--Subject to subsections
22 (a), (b) and (d), if the subjects over which authority is
23 granted in a power of attorney are similar or overlap, the
24 broadest authority controls.

25 (f) Property.--Authority granted in a power of attorney is
26 exercisable with respect to property that the principal has when
27 the power of attorney is executed or acquires later, whether or
28 not the property is located in this State and whether or not the
29 authority is exercised or the power of attorney is executed in
30 this State.

1 (g) Legal effect of agent's actions.--An act performed by an
2 agent pursuant to a power of attorney has the same effect and
3 inures to the benefit of and binds the principal and the
4 principal's successors in interest as if the principal had
5 performed the act.

6 ~~Section 4. Section 5602(a)(5) and (17) of Title 20 are~~ <--
7 ~~amended to read:~~

8 SECTION 4. SECTIONS 5602(A)(5) AND (17) AND (C) AND 5603(A), <--
9 (E), (K)(4), (P), (Q) AND (V) OF TITLE 20 ARE AMENDED AND THE
10 SECTIONS ARE AMENDED BY ADDING SUBSECTIONS TO READ:

11 § 5602. Form of power of attorney.

12 (a) Specification of powers.--A principal may, by inclusion
13 of the language quoted in any of the following paragraphs or by
14 inclusion of other language showing a similar intent on the part
15 of the principal, empower an agent to do any or all of the
16 following, each of which is defined in section 5603 (relating to
17 implementation of power of attorney):

18 * * *

19 [(5) "To disclaim any interest in property."]

20 * * *

21 (17) "To engage in insurance and annuity transactions."

22 * * *

23 (A.1) MODIFICATION OF AUTHORITY.--A PRINCIPAL MAY MODIFY THE <--
24 AUTHORITY OF AN AGENT THAT IS INCORPORATED BY REFERENCE AS
25 DESCRIBED IN SUBSECTION (A).

26 * * *

27 (C) FILING AND RECORDING OF POWER OF ATTORNEY.--AN
28 ORIGINALLY EXECUTED [COPY OF THE] POWER OF ATTORNEY MAY BE FILED
29 WITH THE CLERK OF THE ORPHANS' COURT DIVISION OF THE COURT OF
30 COMMON PLEAS IN THE COUNTY IN WHICH THE PRINCIPAL RESIDES, AND

1 IF IT IS ACKNOWLEDGED, IT MAY BE RECORDED IN THE OFFICE FOR THE
2 RECORDING OF DEEDS OF THE COUNTY OF THE PRINCIPAL'S RESIDENCE
3 AND OF EACH COUNTY IN WHICH REAL PROPERTY TO BE AFFECTED BY AN
4 EXERCISE OF THE POWER IS LOCATED. A POWER OF ATTORNEY EXECUTED
5 IN ELECTRONIC FORM MAY BE RECORDED IN THE SAME MANNER AS A
6 DOCUMENT SUBJECT TO THE ACT OF JULY 5, 2012 (P.L.935, NO.100),
7 KNOWN AS THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT. THE
8 CLERK OF THE ORPHANS' COURT DIVISION OR ANY OFFICE FOR THE
9 RECORDING OF DEEDS WITH WHOM THE POWER HAS BEEN FILED, MAY, UPON
10 REQUEST, ISSUE CERTIFIED COPIES OF THE POWER OF ATTORNEY. EACH
11 SUCH CERTIFIED COPY SHALL HAVE THE SAME VALIDITY AND THE SAME
12 FORCE AND EFFECT AS IF IT WERE THE ORIGINAL, AND IT MAY BE FILED
13 OF RECORD IN ANY OTHER OFFICE OF THIS COMMONWEALTH (INCLUDING,
14 WITHOUT LIMITATION, THE CLERK OF THE ORPHANS' COURT DIVISION OR
15 THE OFFICE FOR THE RECORDING OF DEEDS) AS IF IT WERE THE
16 ORIGINAL.

17 (D) COPY OF POWER OF ATTORNEY.--EXCEPT FOR THE PURPOSE OF
18 FILING OR RECORDING UNDER SUBSECTION (C), A PHOTOCOPY OR
19 ELECTRONICALLY TRANSMITTED COPY OF AN ORIGINALLY EXECUTED POWER
20 OF ATTORNEY HAS THE SAME EFFECT AS THE ORIGINAL.

21 ~~Section 5. Section 5603(a), (e), (p) and (q) (K)(4), (P), <--~~
22 ~~(Q) AND (V) of Title 20 are amended and the section is amended~~
23 ~~by adding a subsection to read:~~

24 § 5603. Implementation of power of attorney.

25 [(a) Power to make limited gifts.--

26 (2) A power "to make limited gifts" shall mean that the
27 agent may make only gifts for or on behalf of the principal
28 which are limited as follows:

29 (i) The class of permissible donees under this
30 paragraph shall consist solely of the principal's spouse,

1 issue and a spouse of the principal's issue (including
2 the agent if a member of any such class), or any of them.

3 (ii) During each calendar year, the gifts made to
4 any permissible donee, pursuant to such power, shall have
5 an aggregate value not in excess of, and shall be made in
6 such manner as to qualify in their entirety for, the
7 annual exclusion from the Federal gift tax permitted
8 under section 2503(b) of the Internal Revenue Code of
9 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) for the
10 principal and, if applicable, the principal's spouse.

11 (iv) In addition to the gifts authorized by
12 subparagraphs (i) and (ii), a gift made pursuant to such
13 power may be for the tuition or medical care of any
14 permissible donee to the extent that the gift is excluded
15 from the Federal gift tax under section 2503(e) of the
16 Internal Revenue Code of 1986 as a qualified transfer.

17 (v) The agent may consent, pursuant to section
18 2513(a) of the Internal Revenue Code of 1986, to the
19 splitting of gifts made by the principal's spouse to the
20 principal's issue or a spouse of the principal's issue in
21 any amount and to the splitting of gifts made by the
22 principal's spouse to any other person in amounts not
23 exceeding the aggregate annual gift tax exclusions for
24 both spouses under section 2503(b) of the Internal
25 Revenue Code of 1986.]

26 (a.1) Power to make limited gifts.--

27 (1) Unless the power of attorney otherwise provides, the
28 power to make limited gifts or other language in a power of
29 attorney granting general authority with respect to gifts
30 authorizes the agent only to:

1 (i) Make outright to or for the benefit of a person,
2 a gift of any of the principal's property, including by
3 the exercise of a presently exercisable general power of
4 appointment held by the principal:

5 (A) in an amount per donee not to exceed the
6 annual dollar limits of the Federal gift tax
7 exclusion under section 2503(b) of the Internal
8 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
9 2503(b)), without regard to whether the Federal gift
10 tax exclusion applies to the gift; or

11 (B) if the principal's spouse agrees to consent
12 to a split gift pursuant to section 2513 of the
13 Internal Revenue Code of 1986 (26 U.S.C. § 2513), in
14 an amount per donee not to exceed twice the annual
15 Federal gift tax exclusion limit.

16 (ii) Consent, pursuant to section 2513 of the
17 Internal Revenue Code of 1986, to the splitting of a gift
18 made by the principal's spouse in an amount per donee not
19 to exceed the aggregate annual gift tax exclusions for
20 both spouses.

21 (2) An agent may make a gift of the principal's property
22 only as the agent determines is consistent with the
23 principal's objectives if actually known by the agent and, if
24 unknown, as the agent determines is consistent with the
25 principal's best interest based on all relevant factors,
26 including:

27 (i) The value and nature of the principal's
28 property.

29 (ii) The principal's foreseeable obligations and
30 need for maintenance.

1 (iii) Minimization of taxes, including income,
2 estate, inheritance, generation-skipping transfer and
3 gift taxes.

4 (iv) Eligibility for a benefit, program or
5 assistance under a statute or regulation.

6 (v) The principal's personal history of making or
7 joining in making gifts.

8 (3) As used in this subsection, the phrase "a gift for
9 the benefit of a person" includes a gift to a trust, an
10 account under Chapter 53 (relating to Pennsylvania Uniform
11 Transfers to Minors Act) and a tuition savings account or
12 prepaid tuition plan as defined under section 529 of the
13 Internal Revenue Code of 1986 (26 U.S.C. § 529).

14 * * *

15 [(e) Power to disclaim any interest in property.--A power
16 "to disclaim any interest in property" shall mean that the agent
17 may release or disclaim any interest in property on behalf of
18 the principal in accordance with Chapter 62 (relating to
19 disclaimers) or section 6103 (relating to release or disclaimer
20 of powers or interests), provided that any disclaimer under
21 Chapter 62 shall be in accordance with the provisions of section
22 6202 (relating to disclaimers by fiduciaries or agents) in the
23 case of a principal who shall have been adjudicated an
24 incapacitated person at the time of the execution of the
25 disclaimer.]

26 * * *

27 (K) POWER TO ENGAGE IN STOCK, BOND AND OTHER SECURITIES <--
28 TRANSACTIONS.--A POWER TO "ENGAGE IN STOCK, BOND AND OTHER
29 SECURITIES TRANSACTIONS" SHALL MEAN THAT THE AGENT MAY:

30 * * *

1 (4) JOIN IN ANY MERGER, REORGANIZATION, CONSOLIDATION,
2 DISSOLUTION, LIQUIDATION, VOTING-TRUST PLAN OR OTHER
3 CONCERTED ACTION OF SECURITY HOLDERS AND MAKE PAYMENTS IN
4 CONNECTION THEREWITH.

5 * * *

6 (p) Power to engage in insurance and annuity transactions.--
7 A power to "engage in insurance and annuity transactions" shall
8 mean that the agent may:

9 (1) Purchase, continue, renew, convert or terminate any
10 type of insurance (including, but not limited to, life,
11 accident, health, disability or liability insurance) or
12 annuity and pay premiums and collect benefits and proceeds
13 under insurance policies and annuity contracts.

14 (2) Exercise nonforfeiture provisions under insurance
15 policies and annuity contracts.

16 (3) In general, exercise all powers with respect to
17 insurance and annuities that the principal could if present;
18 [however, the agent cannot designate himself beneficiary of a
19 life insurance policy unless the agent is the spouse, child,
20 grandchild, parent, brother or sister of the principal. An
21 agent and a beneficiary of a life insurance policy shall be
22 liable as equity and justice may require to the extent that,
23 as determined by the court, a beneficiary designation made by
24 the agent is inconsistent with the known or probable intent
25 of the principal] provided, however, that the agent shall
26 have no power to create or change a beneficiary designation
27 unless authorized in accordance with section 5601.4 (relating
28 to authority that requires specific and general grant of
29 authority).

30 (q) Power to engage in retirement plan transactions.--A

1 power to "engage in retirement plan transactions" shall mean
2 that the agent may contribute to, withdraw from and deposit
3 funds in any type of retirement plan (including, but not limited
4 to, any tax qualified or nonqualified pension, profit sharing,
5 stock bonus, employee savings and retirement plan, deferred
6 compensation plan or individual retirement account), select and
7 change payment options for the principal, make roll-over
8 contributions from any retirement plan to other retirement plans
9 and, in general, exercise all powers with respect to retirement
10 plans that the principal could if present[. However, the agent
11 cannot designate himself beneficiary of a retirement plan unless
12 the agent is the spouse, child, grandchild, parent, brother or
13 sister of the principal. An agent and a beneficiary of a
14 retirement plan shall be liable as equity and justice may
15 require to the extent that, as determined by the court, a
16 beneficiary designation made by the agent is inconsistent with
17 the known or probable intent of the principal] provided,
18 however, that the agent shall have no power to create or change
19 a beneficiary designation unless authorized in accordance with
20 section 5601.4.

21 * * *

22 (V) POWERS GENERALLY.--

<--

23 (1) ALL POWERS DESCRIBED IN THIS SECTION SHALL BE
24 EXERCISABLE WITH RESPECT TO ANY MATTER IN WHICH THE PRINCIPAL
25 IS IN ANY WAY INTERESTED AT THE GIVING OF THE POWER OF
26 ATTORNEY OR THEREAFTER AND WHETHER ARISING IN THIS
27 COMMONWEALTH OR ELSEWHERE.

28 (2) A PRINCIPAL MAY, IN A POWER OF ATTORNEY, MODIFY ANY
29 POWER DESCRIBED IN THIS SECTION.

30 Section 6 5. Section 5608 of Title 20 is amended to read:

<--

1 § 5608. [Liability] Acceptance of and reliance upon power of
2 attorney.

3 [(a) Third party liability.--Any person who is given
4 instructions by an agent in accordance with the terms of a power
5 of attorney shall comply with the instructions. Any person who
6 without reasonable cause fails to comply with those instructions
7 shall be subject to civil liability for any damages resulting
8 from noncompliance. Reasonable cause under this subsection shall
9 include, but not be limited to, a good faith report having been
10 made by the third party to the local protective services agency
11 regarding abuse, neglect, exploitation or abandonment pursuant
12 to section 302 of the act of November 6, 1987 (P.L.381, No.79),
13 known as the Older Adults Protective Services Act.

14 (b) Third party immunity.--Any person who acts in good faith
15 reliance on a power of attorney shall incur no liability as a
16 result of acting in accordance with the instructions of the
17 agent.]

18 (c) Genuineness.--A person who in good faith accepts a power
19 of attorney without actual knowledge that a signature or mark of
20 any of the following are not genuine may, without liability,
21 rely upon the genuineness of the signature or mark of:

22 (1) The principal.

23 (2) A person who signed the power of attorney on behalf
24 of the principal and at the direction of the principal.

25 (3) A witness.

26 (4) A notary public or other person authorized by law to
27 take acknowledgments.

28 (d) Immunity.--A person who in good faith accepts a power of
29 attorney without actual knowledge of any of the following may,
30 without liability, rely upon the power of attorney as if the

1 power of attorney and agent's authority were genuine, valid and
2 still in effect and the agent had not exceeded and had properly
3 exercised the authority that:

4 (1) The power of attorney is void, invalid or
5 terminated.

6 (2) The purported agent's authority is void, invalid or
7 terminated.

8 (3) The agent is exceeding or improperly exercising the
9 agent's authority.

10 (e) Request for information.--A person who is asked to
11 accept a power of attorney may request and, without liability,
12 rely upon without further investigation:

13 (1) An agent's certification under penalty of perjury of
14 any factual matter concerning the principal, agent or power
15 of attorney or an affidavit under section 5606 (relating to
16 proof of continuance of powers of attorney by affidavit).

17 (2) An English translation of the power of attorney, if
18 the power of attorney contains, in whole or in part, language
19 other than English.

20 (3) An opinion of counsel relating to whether the agent
21 is acting within the scope of the authority granted by the
22 power of attorney, if the person making the request provides
23 in a writing or other record the reason for the request.

24 (f) Additional request for information.--A person who has
25 accepted a power of attorney, whether or not the person has a
26 certification or opinion of counsel under subsection (e) or an
27 affidavit under section 5606, and has acted upon it by allowing
28 the agent to exercise authority granted under the power of
29 attorney, shall not be precluded from requesting at later times
30 a certification or opinion of counsel under this subsection,

1 subsection (e) or an affidavit under section 5606 with regard to
2 any further exercise of authority by the agent under the power
3 of attorney.

4 (g) English translation.--An English translation or an
5 opinion of counsel requested under this section shall be at the
6 principal's expense, unless the request is made more than seven
7 business days after the power of attorney is presented for <--
8 acceptance, OR ANY REVISION OR ADDITION TO A POWER OF ATTORNEY: <--

9 (1) IS PRESENTED FOR ACCEPTANCE; OR
10 (2) AFTER BEING PREVIOUSLY ACCEPTED BY A PERSON, IS
11 PRESENTED TO EXERCISE A POWER NOT PREVIOUSLY EXERCISED BY THE
12 AGENT IN A TRANSACTION WITH THAT PERSON.

13 (h) Limitations.--Except as otherwise provided by law,
14 nothing in this section shall in itself:

15 (1) validate a forged instrument conveying an interest
16 in real property;

17 (2) provide that the recording of a forged instrument
18 gives constructive notice of a conveyance of an interest in
19 real property; or

20 (3) limit the liability of an insurer, indemnitor or
21 guarantor of contractual obligations to indemnify, hold
22 harmless or defend a person who accepts or relies upon a
23 power of attorney.

24 Section 7 6. Title 20 is amended by adding sections to read: <--
25 § 5608.1. Liability for refusal to accept power of attorney.

26 (a) Acceptance required.--Except as provided under
27 subsections (b) and (d):

28 (1) A person shall either:
29 (i) accept a power of attorney; or
30 (ii) request one of the following:

1 (A) an affidavit under section 5606 (relating to
2 proof of continuance of powers of attorney by
3 affidavit); or

4 (B) a certification, translation or an opinion
5 of counsel under section 5608(e) (relating to
6 acceptance of and reliance upon power of attorney);
7 not later than seven business days after presentation of
8 the power of attorney for acceptance.

9 (2) If a person requests a certification, a translation,
10 an affidavit under section 5606 or an opinion of counsel
11 under section 5608(e), the person shall accept the power of
12 attorney not later than five business days after receipt of
13 the certification, translation, affidavit or opinion of
14 counsel or, unless the information provided by the
15 certification, translation, affidavit or opinion of counsel
16 provides a substantial basis for making a further request
17 under section 5606 or 5608(e).

18 (3) A person may not require an additional or different
19 form of power of attorney for authority granted in the power
20 of attorney presented.

21 (b) Acceptance not required.--A person may not be required
22 to accept a power of attorney if any of the following applies:

23 (1) The person is not otherwise required to engage in a
24 transaction with the principal in the same circumstances.

25 (2) Engaging in a transaction with the agent or the
26 principal in the same circumstances would be inconsistent
27 with any provisions of this chapter, including:

28 (i) the failure of the power of attorney to be
29 executed in the manner required under section 5601(b)
30 (relating to general provisions); and