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# **POWERS OF ATTORNEY**

## **RECOMMENDED AMENDMENTS**

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**REPORT OF THE  
SUBCOMMITTEE ON GUARDIANSHIPS  
AND POWERS OF ATTORNEY  
of the  
Task Force and Advisory Committee on  
Decedents' Estates Laws**

General Assembly of the Commonwealth of Pennsylvania  
JOINT STATE GOVERNMENT COMMISSION  
November 1998

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General Assembly of the Commonwealth of Pennsylvania  
JOINT STATE GOVERNMENT COMMISSION  
108 Finance Building  
Harrisburg, Pennsylvania 17120  
November 1998



The release of this report should not be construed as an indication that the members of the Executive Committee of the Joint State Government Commission endorse all of the report's findings, recommendations or conclusions.

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November 1998

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Joint State Government Commission is pleased to present the report of the Subcommittee on Guardianships and Powers of Attorney of the Task Force and Advisory Committee on Decedents' Estates Laws. This report contains proposed amendments to the powers of attorney provisions of the Probate, Estates and Fiduciaries Code. Official comments are included to facilitate review of the legislation authorized for introduction by members of the task force.

With this report, we sadly report the death of M. Paul Smith on August 27, 1998. Mr. Smith served this advisory committee since its inception in 1945, first as a research consultant and later as a member of the advisory committee. Mr. Smith worked tirelessly for the advisory committee for over five decades. We are fortunate to have benefited from his dedication, his intellect and his time.

Respectfully submitted,

Roger A. Madigan  
Chairman





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## **INTRODUCTION**

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The proposed amendments contained in this report are recommended by the Subcommittee on Guardianships and Powers of Attorney of the Joint State Government Commission's Advisory Committee on Decedents' Estates Laws. The subcommittee was appointed in January 1995 to review and of Chapter 56 (Powers of Attorney) Chapter 55 (Incapacitated Persons) of Title 20 of the Pennsylvania Consolidated Statutes. The subcommittee consists of the following individuals: John J. Lombard Jr., chair; Judge Roger M. Fischer; Neil E. Hendershot; Michael J. Mullaugh; William Campbell Ries; and M. Paul Smith, who died August 27, 1998, after having served the advisory committee since its inception in 1945.

The subcommittee made its recommendations regarding Chapter 55 in its May 1996 report (Report of the Subcommittee on Guardianships and Powers and Attorney). In its March 1998 report, the subcommittee made its recommendations regarding health care decision-making.

The proposed amendments to Chapter 56 in this report were recommended by the subcommittee and approved by the full advisory committee. At its November 9, 1998 meeting, the Task Force on Decedents' Estates Laws authorized the introduction of legislation incorporating the amendments.

## PROPOSED AMENDMENTS

This recommended legislation would:

- Change the terminology from “attorney-in-fact” to “agent” (§ 5601(f))
- Repeal the statutory authority for a principal to authorize an agent to make an unlimited gift by incorporation by reference (§§ 5602(a)(1)(i) and 5603(a)(1))
- Require a principal who intends to authorize an agent to make an unlimited gift under the power of attorney to specifically provide for such authority in the power of attorney (§ 5601.2)
- Require all powers of attorney to include a statutory notice which broadly explains to the principal the purpose and effect of the power of attorney (§ 5601(c))
- Shift the burden of proof to the agent in the event of a challenge to an action taken by the agent when the statutory notice is not included in the power of attorney (§ 5601(c))
- Codify the fiduciary duties of an agent (§ 5601(e))
- Require an agent to execute an acknowledgment of duties prior to being authorized to act as an agent (§ 5601(d))
- Provide that the filing of an action in divorce terminates the spouse’s designation as agent for the other spouse (§ 5605(c))
- Permit a principal to direct a third party to execute a power of attorney on the principal’s behalf (§ 5601(b))

- Permit limited gifts to permissible donees for tuition or medical care to the extent that the gift is excluded from the Federal gift tax (§ 5603(a)(2)(iv))
- Allow an agent to consent to the splitting of gifts made by principal's spouse (§ 5603(a)(2)(v))
- Amend the definition of a "power to make an anatomical gift" to authorize the agent to act after the death of the principal in order to effectuate an anatomical gift (§ 5603(u.1))
- Provide for reasonable compensation for agents and for reimbursement for reasonable expenses incurred by agents (§ 5609)
- Provide for the filing of an agent's account of administration (§ 5610)
- Provide for the validity of powers of attorney executed in another jurisdiction (§ 5611)
- Make technical amendments to ensure consistency with Banking Code (§ 5607)
- Make conforming amendments (§ 8611(a))

The proposed amendments and official comments are set forth on the following pages. In order to place these proposed amendments in statutory context, they are set forth within a replication of Chapter 56. The official comments may be utilized in determining the intent of the General Assembly: 1 Pa.C.S. § 1939; *Martin Estate*, 365 Pa. 280, 74 A.2d 120 (1950).

# PROPOSED AMENDMENTS AND COMMENTS

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## CHAPTER 56

### POWERS OF ATTORNEY

NOTE: The transitional provisions (effective date and the special applicability rules for certain sections containing substantive changes) are set forth in full at the end of the proposed amendments.

For convenience, the relevant transitional language is also included under the appropriate substantive provision. For those amendments where only an effective date is noted, there is no special applicability rule. Those provisions will be effective in 60 days and apply immediately upon the effective date. The amendments which merely change the terminology from attorney-in-fact to agent have not been specifically noted. Those amendments will take effect in 60 days.

Sec.

5601. General provisions.

5601.1. Powers of attorney presumed durable.

5601.2. Special rules for gifts.

5602. Form of power of attorney.

5603. Implementation of power of attorney.

5604. Durable powers of attorney.

5605. Power of attorney not revoked until notice.

5606. Proof of continuance of powers of attorney by affidavit.

5607. Corporate [attorney-in-fact] agent.

5608. Liability.

5609. Compensation and reimbursement for expenses.

5610. Account.

5611. Validity.

§ 5601. General provisions.

(a) General rule.--In addition to all other powers that may be delegated to an [attorney-in-fact] agent, any or all of the powers referred to in section 5602(a) (relating to form of power of attorney) may lawfully be granted in writing to an agent and, unless the power of attorney expressly directs to the contrary, shall be construed in accordance with the provisions of this chapter.

(b) Execution.--[All powers of attorney shall be signed by the principal in his own handwriting, but, if for any physical reason he is unable to sign his name, the principal may make his mark to which his name shall be subscribed in his presence before or after he makes his mark. The principal shall make his mark in the presence of two witnesses who shall sign their names to the power of attorney in his presence.]

A power of attorney shall be signed and dated by the principal by signature or mark, or by another on behalf of and at the direction of the principal. If the power of attorney is executed by mark or by another individual, then it shall be witnessed by two individuals, each of whom is 18 years of age or older. A witness shall not be the individual who signed the power of attorney on behalf of and at the direction of the principal.

**Comment: Subsection (b) is recast to make it gender neutral. Also, subsection (b) as rewritten enables an individual to execute a principal's power of attorney at the direction of the**

**principal. This third-party execution of the power of attorney must be witnessed by two other individuals. In addition, there is a requirement that a witness be 18 years of age or older.**

**Effective date: 60 days**

**Applicability: Any power of attorney executed on or after this effective date**

(c) Notice.--All powers of attorney shall include the following notice in capital letters at the beginning of the power of attorney. The notice shall be signed by the principal. In the absence of a signed notice, upon a challenge to the authority of an agent to exercise a power under the power of attorney, the agent shall have the burden of demonstrating that the exercise of this authority is proper.

#### NOTICE

THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON YOU DESIGNATE (YOUR "AGENT") BROAD POWERS TO HANDLE YOUR PROPERTY, WHICH MAY INCLUDE POWERS TO SELL OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU.

THIS POWER OF ATTORNEY DOES NOT IMPOSE A DUTY ON YOUR AGENT TO EXERCISE GRANTED POWERS, BUT WHEN POWERS ARE EXERCISED, YOUR AGENT MUST USE DUE CARE TO ACT FOR YOUR BENEFIT AND IN ACCORDANCE WITH THIS POWER OF ATTORNEY.

YOUR AGENT MAY EXERCISE THE POWERS GIVEN HERE THROUGHOUT YOUR LIFETIME, EVEN AFTER YOU BECOME INCAPACITATED, UNLESS YOU EXPRESSLY



LIMIT THE DURATION OF THESE POWERS OR YOU REVOKE THESE POWERS OR A COURT ACTING ON YOUR BEHALF TERMINATES YOUR AGENT'S AUTHORITY.

YOUR AGENT MUST KEEP YOUR FUNDS SEPARATE FROM YOUR AGENT'S FUNDS.

A COURT CAN TAKE AWAY THE POWERS OF YOUR AGENT IF IT FINDS YOUR AGENT IS NOT ACTING PROPERLY.

THE POWERS AND DUTIES OF AN AGENT UNDER A POWER OF ATTORNEY ARE EXPLAINED MORE FULLY IN CHAPTER 56 OF TITLE 20 OF THE PENNSYLVANIA CONSOLIDATED STATUTES.

IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER OF YOUR OWN CHOOSING TO EXPLAIN IT TO YOU.

I HAVE READ OR HAD EXPLAINED TO ME THIS NOTICE, AND I UNDERSTAND ITS CONTENTS.

---

(Principal)

(Date)

**Comment: All powers of attorney are required to include this statutory notice. If a power of attorney contains the signed notice provision, the burden of demonstrating an agent's impropriety in exercising a power falls to the person challenging such act. If the power of attorney does not contain the notice provision, the agent carries the burden of demonstrating the propriety of actions taken under the power of attorney. This shifting burden of proof protects a principal and provides a sanction for an agent operating under a power of attorney with no signed notice provision.**

**Effective date: 6 months**

**Applicability: Any power of attorney executed on or after this effective date**

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

I, \_\_\_\_\_, have read the attached Power of Attorney and am the person identified as the agent for the principal. I hereby acknowledge that in the absence of a specific provision to the contrary in the power of attorney or in Title 20 of the Pennsylvania Consolidated Statutes when I act as agent:

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

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

I shall exercise reasonable caution and prudence.

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

\_\_\_\_\_  
(Agent)

\_\_\_\_\_  
(Date)

**Comment: It is not intended that this acknowledgment be executed only at the time that the principal executes the power of attorney. An agent may execute this acknowledgment at any time, but the agent cannot properly act as agent until the acknowledgment is executed.**

**Effective date: 6 months**

**Applicability: Any agent acting under a power of attorney executed on or after this effective date**

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

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

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

(3) Exercise reasonable caution and prudence.

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

**Comment: This subsection does not create a duty to act on the part of the agent. However, when the agent acts pursuant to the power of attorney, the agent must comply with this subsection.**

**Effective date: 60 days**

(f) Definition.--As used in this chapter, unless the context clearly indicates otherwise, "agent" means a person designated by a principal in a power of attorney to act on behalf of that principal.

**Comment: The term "agent" replaces the term "attorney-in-fact" since the term "agent" is a more commonly understood term. Implementing changes are made throughout Chapter 56 to replace "attorney-in-fact" with "agent."**

**Effective date: 60 days**

§ 5601.1. Powers of attorney presumed durable.

Unless specifically provided otherwise in the power of attorney, all powers of attorney shall be durable as provided in section 5604 (durable powers of attorney).

§ 5601.2. Special rules for gifts.

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

**Effective date: 60 days**

**Applicability: Any power of attorney executed on or after this effective date**

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

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

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

**Effective date: 60 days**

**Applicability: Any power of attorney executed on or after this effective date**

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

**Comment:** It is the intent of subsections (a), (b) and (c) to overrule *Estate of Reifsneider*, 531 Pa. 19, 610 A.2d 958 (1992), to the extent that *Reifsneider* would permit an agent to make a gift under a power of attorney which does not specifically provide for that power. The purpose of these subsections is to provide that when the principal intends to authorize the agent to make a gift under the power of attorney, that authorization is specifically stated in the power of attorney. The principal may no longer authorize the agent to make an unlimited gift by incorporation by reference. See repeal of section 5602(a)(1)(i) (form of

**power of attorney).**

**Effective date: 60 days**

**Applicability: Any power of attorney executed on or after this effective date**

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

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

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

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

(4) In making any gift, the agent need not treat the donees equally or proportionately and may entirely exclude one or more permissible donees.

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

**Comment: Subsection (d) is based on former section 5603(a)(3). Paragraph (1) applies only to limited gifts. Paragraphs (2), (3), (4) and (5) apply to limited and unlimited gifts.**

**Effective date: 60 days**

**Applicability: Any power of attorney executed before, on or after this effective date**

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

**Comment:** Subsection (e) is based on former section 5603(a)(4). The use of the term “liable” is intended to provide more certainty in holding an agent accountable. Also, this subsection clarifies that the court has the authority to determine what equity and justice require with respect to whether a gift is inconsistent with prudent estate planning or the intent of the principal.

**Effective date: 60 days**

**Applicability: Any power of attorney executed before, on or after the effective date**

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

**Comment:** Subsection (f) is based on former section 5603(a)(5), with stylistic changes.

**Effective date: 60 days**

§ 5602. Form of power of attorney.

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

- (1) [Either:
  - (i) "to make gifts"; or
  - (ii) "to] "To make limited gifts."

**Comment:** The repeal of the provision "to make gifts" does not preclude a principal from authorizing the agent to make unlimited gifts. However, the power of attorney must specifically provide for and define such authorization as set forth in section 5601.2 (special rules for gifts).

**Effective date:** 60 days

**Applicability:** Any power of attorney executed on or after this effective date

**Savings clause:** The repeal of subparagraph (i) shall not affect the authority of an agent to make unlimited gifts under a power of attorney executed before the effective date of the repeal of this subparagraph.

- (2) "To create a trust for my benefit."
- (3) "To make additions to an existing trust for my benefit."
- (4) "To claim an elective share of the estate of my deceased spouse."
- (5) "To disclaim any interest in property."
- (6) "To renounce fiduciary positions."
- (7) "To withdraw and receive the income or corpus of a trust."
- (8) "To authorize my admission to a medical, nursing, residential or similar facility and to enter into agreements for my care."
- (9) "To authorize medical and surgical procedures."
- (10) "To engage in real property transactions."
- (11) "To engage in tangible personal property transactions."

- (12) "To engage in stock, bond and other securities transactions."
- (13) "To engage in commodity and option transactions."
- (14) "To engage in banking and financial transactions."
- (15) "To borrow money."
- (16) "To enter safe deposit boxes."
- (17) "To engage in insurance transactions."
- (18) "To engage in retirement plan transactions."
- (19) "To handle interests in estates and trusts."
- (20) "To pursue claims and litigation."
- (21) "To receive government benefits."
- (22) "To pursue tax matters."
- (23) "To make an anatomical gift of all or part of my body."

(b) Appointment of [attorney-in-fact] agent and successor [attorney] agent.--A principal may provide for:

(1) The appointment of more than one [attorney-in-fact] agent, who shall act jointly, severally or in any other combination that the principal may designate, but if there is no such designation, such [attorneys-in-fact] agents shall only act jointly.

(1.1) The delegation of one or more powers by the [attorney-in-fact] agent to such person or persons as the [attorney-in-fact] agent may designate and on terms as the power of attorney may specify.



(2) The appointment of one or more successor [attorneys-in-fact] agents who shall serve in the order named in the power of attorney, unless the principal expressly directs to the contrary.

(3) The delegation to an original or successor [attorney-in-fact] agent of the power to appoint his successor or successors.

(c) Filing of power of attorney.--An executed copy of the power of attorney may be filed with the clerk of the orphans' court division of the court of common pleas in the county in which the principal resides, and if it is acknowledged, it may be recorded in the office for the recording of deeds of the county of the principal's residence and of each county in which real property to be affected by an exercise of the power is located. The clerk of the orphans' court division or any office for the recording of deeds with whom the power has been filed, may, upon request, issue certified copies of the power of attorney. Each such certified copy shall have the same validity and the same force and effect as if it were the original, and it may be filed of record in any other office of this Commonwealth (including, without limitation, the clerk of the orphans' court division or the office for the recording of deeds) as if it were the original.

§ 5603. Implementation of power of attorney.

(a) Power [to make gifts and power] to make limited gifts.--

[(1) A power "to make gifts" shall mean that the attorney-in-fact may make gifts for and on behalf of the principal to any donees (including the attorney-in-fact) and in such amounts as the attorney-in-fact may decide.]

**Comment: This amendment is made in conjunction with the repeal of section 5602(a)(1)(i) (form of power of attorney).**

**Effective date: 60 days**

**Applicability: Any power of attorney executed on or after this effective date**

**Savings clause: The repeal of this paragraph shall not affect the authority of an agent to make unlimited gifts under a power of attorney executed before the effective date of the repeal of this paragraph**

(2) A power "to make limited gifts" shall mean that the [attorney-in-fact] agent may make only gifts for or on behalf of the principal which are limited as follows:

(i) The class of permissible donees under this paragraph shall consist solely of the principal's spouse [and] the principal's issue and a spouse of the principal's issue (including the [attorney-in-fact] agent if [he is] a member of any such class), or any of them.

**Comment: The class of permissible donees is expanded to include a spouse of the principal's issue. The addition of the phrase "under this paragraph" is a clarifying amendment. The deletion of the words "he is" is stylistic.**

**Effective date: 60 days**

**Applicability: Any power of attorney executed before, on or after this effective date**

(ii) During each calendar year, the gifts made to [each] any permissible donee, pursuant to such power, shall have an aggregate value not in excess of, and shall be made in such manner as to qualify in their entirety for, the

[principal's] annual exclusion from the Federal gift tax permitted under section 2503(b) of the Internal Revenue Code[, determined without regard to section 2513(a) thereof (or any successor provision to the code)] of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) for the principal and, if applicable, the principal's spouse.

**Comment: The amendments to this subparagraph allow the full use of gift splitting with a spouse for gifts made by the agent to the class of permissible donees of the principal as defined in subparagraph (i).**

**Effective date: 60 days**

**Applicability: Any power of attorney executed before, on or after this effective date**

[(iii) The attorney-in-fact shall be responsible as equity and justice may require to the extent that any gift made pursuant to a power "to make limited gifts" exceeds the limitations imposed by subparagraph (i) or (ii).]

**Comment: This subparagraph is repealed as the sanction is encompassed by section 5601.2(e), because limited gifts which exceed the stated limitations could be determined to be inconsistent with prudent estate planning or financial management.**

**Effective date: 60 days**

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

**Comment:** This subparagraph is added to include qualified transfers for tuition and medical care which are excluded from taxable gifts under IRC section 2503(e).

**Effective date:** 60 days

**Applicability:** Any power of attorney executed before, on or after this effective date

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

**Comment:** The addition of subparagraph (v) allows an agent to consent to gifts made by the principal's spouse in any amount to the principal's issue or a spouse of the principal's issue. Furthermore, this subparagraph allows the splitting of gifts made by the principal's spouse to others in amounts not exceeding the aggregate annual gift tax exclusions for both spouses under IRC section 2503(b). The present exclusion is \$10,000 per person per year so that the limitation under this subparagraph would be \$20,000.

**Effective date:** 60 days

**Applicability:** Any power of attorney executed before, on or after this effective date

[(3) A power to make gifts, whether or not limited as aforesaid, shall be construed to empower the attorney-in-fact to make gifts to each donee either outright or in trust; in the case of a gift to a minor, such gifts may be made in trust or in accordance with Chapter 53 (relating to Pennsylvania Uniform

Transfers to Minors Act) or section 5155 (relating to order of court). In the case of a gift made in trust, the attorney-in-fact may execute a deed of trust for such purpose, designating one or more persons (including the attorney-in-fact) as original or successor trustees, or may make additions to an existing trust. In making any gifts, the attorney-in-fact need not treat the donees equally or proportionately and may entirely exclude one or more permissible donees, and the pattern followed on the occasion of any gift or gifts need not be followed on the occasion of any other gift or gifts.]

**Comment: Paragraph (3) is relocated to section 5601.2(d).**

**Effective date: 60 days**

[(4) An attorney-in-fact and the donee of a gift shall be responsible as equity and justice may require to the extent that a gift made by the attorney-in-fact is inconsistent with prudent estate planning or financial management for the principal or with the known or probable intent of the principal with respect to disposition of his estate.]

**Comment: Paragraph (4) is relocated to section 5601.2(e).**

**Effective date: 60 days**

[(5) No transfer agent, depository or other third party acting in good faith shall have any responsibility to see to the proper discharge by the attorney-in-fact of his duties hereunder.]

**Comment: Paragraph (5) is relocated to section 5601.2(f).**

**Effective date: 60 days**

(b) Power to create a trust.--A power "to create a trust for my benefit" shall mean that the [attorney-in-fact] agent may execute a deed of trust, designating one or more persons (including the [attorney-in-fact] agent) as original or successor trustees and transfer to the trust any or all property owned by the principal as the [attorney-in-fact] agent may decide, subject to the following conditions:

(1) The income and corpus of the trust shall either be distributable to the principal or to the guardian of his estate, or be applied for the principal's benefit, and upon the principal's death, any remaining balance of corpus and unexpended income of the trust shall be distributed to the deceased principal's estate.

(2) The deed of trust may be amended or revoked at any time and from time to time, in whole or in part, by the principal or the [attorney-in-fact] agent, provided that any such amendment by the [attorney-in-fact] agent shall not include any provision which could not be included in the original deed.

(c) Power to make additions to an existing trust.--A power "to make additions to an existing trust for my benefit" shall mean that the [attorney-in-fact] agent, at any time or times, may add any or all of the property owned by the principal to any trust in existence when the power was created, provided that the terms of such trust relating to the disposition of the income and corpus during the lifetime of the principal are the same as those set forth in subsection (b). The [attorney-in-fact] agent and the trust and its beneficiaries shall be answerable as equity and justice may require to the extent that an addition to a trust is inconsistent with prudent estate planning

or financial management for the principal or with the known or probable intent of the principal with respect to disposition of his estate.

(d) Power to claim an elective share.--A power "to claim an elective share of the estate of my deceased spouse" shall mean that the [attorney-in-fact] agent may elect to take against the will and conveyances of the principal's deceased spouse, disclaim any interest in property which the principal is required to disclaim as a result of such election, retain any property which the principal has the right to elect to retain, file petitions pertaining to the election, including petitions to extend the time for electing and petitions for orders, decrees and judgments in accordance with section 2211(c) and (d) (relating to determination of effect of election; enforcement), and take all other actions which the [attorney-in-fact] agent deems appropriate in order to effectuate the election: Provided, however, That the election shall be made only upon the approval of the court having jurisdiction of the principal's estate in accordance with section 2206 (relating to right of election personal to surviving spouse) in the case of a principal who has been adjudicated an incapacitated person, or upon the approval of the court having jurisdiction of the deceased spouse's estate in the case of a principal who has not been adjudicated an incapacitated person.

(e) Power to disclaim any interest in property.--A power "to disclaim any interest in property" shall mean that the [attorney-in-fact] agent may release or disclaim any interest in property on behalf of the principal in accordance with Chapter 62 (relating to disclaimers) or section 6103 (relating to release or disclaimer of powers or interests), provided that any disclaimer under Chapter 62 shall be in accordance with

the provisions of section 6202 (relating to disclaimers by fiduciaries or [attorneys-in-fact] agents) in the case of a principal who shall have been adjudicated an incapacitated person at the time of the execution of the disclaimer.

(f) Power to renounce fiduciary position.--

(1) A power "to renounce fiduciary positions" shall mean that the [attorney-in-fact] agent may:

(i) renounce any fiduciary position to which the principal has been appointed; and

(ii) resign any fiduciary position in which the principal is then serving, and either file an accounting with a court of competent jurisdiction or settle on receipt and release or other informal method as the [attorney-in-fact] agent deems advisable.

(2) The term "fiduciary" shall be deemed to include, without limitation, an executor, administrator, trustee, guardian, [attorney-in-fact] agent or officer or director of a corporation.

(g) Power to withdraw and receive.--A power "to withdraw and receive the income or corpus of a trust" shall mean that the [attorney-in-fact] agent may:

(1) demand, withdraw and receive the income or corpus of any trust over which the principal has the power to make withdrawals;

(2) request and receive the income or corpus of any trust with respect to which the trustee thereof has the discretionary power to make distribution to or on behalf of the principal; and



(3) execute a receipt and release or similar document for the property received under paragraphs (1) and (2).

(h) Power to authorize admission to medical facility and power to authorize medical procedures.--

(1) A power "to authorize my admission to a medical, nursing, residential or similar facility, and to enter into agreements for my care" shall mean that the [attorney-in-fact] agent may apply for the admission of the principal to a medical, nursing, residential or other similar facility, execute any consent or admission forms required by such facility which are consistent with this paragraph, and enter into agreements for the care of the principal by such facility or elsewhere during his lifetime or for such lesser period of time as the [attorney-in-fact] agent may designate, including the retention of nurses for the principal.

(2) A power "to authorize medical and surgical procedures" shall mean that the [attorney-in-fact] agent may arrange for and consent to medical, therapeutical and surgical procedures for the principal, including the administration of drugs.

(i) Power to engage in real property transactions.--A power to "engage in real property transactions" shall mean that the [attorney-in-fact] agent may:

(1) Acquire or dispose of real property (including the principal's residence) or any interest therein, including, but not limited to, the power to buy or sell at public or private sale for cash or credit or partly for each; exchange, mortgage, encumber, lease for any period of time; give or acquire options for sales,

purchases, exchanges or leases; buy at judicial sale any property on which the principal holds a mortgage.

(2) Manage, repair, improve, maintain, restore, alter, build, protect or insure real property; demolish structures or develop real estate or any interest in real estate.

(3) Collect rent, sale proceeds and earnings from real estate; pay, contest, protest and compromise real estate taxes and assessments.

(4) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part and enforce any mortgage, encumbrance, lien or other claim to real property.

(5) Grant easements, dedicate real estate, partition and subdivide real estate and file plans, applications or other documents in connection therewith.

(6) In general, exercise all powers with respect to real property that the principal could if present.

(j) Power to engage in tangible personal property transactions.--A power to "engage in tangible personal property transactions" shall mean that the [attorney-in-fact] agent may:

(1) Buy, sell, lease, exchange, collect, possess and take title to tangible personal property.

(2) Move, store, ship, restore, maintain, repair, improve, manage, preserve and insure tangible personal property.

(3) In general, exercise all powers with respect to tangible personal property that the principal could if present.

(k) Power to engage in stock, bond and other securities transactions.--A power to "engage in stock, bond and other securities transactions" shall mean that the [attorney-in-fact] agent may:

(1) Buy or sell (including short sales) at public or private sale for cash or credit or partly for cash all types of stocks, bonds and securities; exchange, transfer, hypothecate, pledge or otherwise dispose of any stock, bond or other security.

(2) Collect dividends, interest and other distributions.

(3) Vote in person or by proxy, with or without power of substitution, either discretionary, general or otherwise, at any meeting.

(4) Join in any merger, reorganization, voting-trust plan or other concerted action of security holders and make payments in connection therewith.

(5) Hold any evidence of the ownership of any stock, bond or other security belonging to the principal in the name of a nominee selected by the [attorney-in-fact] agent.

(6) Deposit or arrange for the deposit of securities in a clearing corporation as defined in Division 8 of Title 13 (relating to investment securities).

(7) Receive, hold or transfer securities in book-entry form.

(8) In general, exercise all powers with respect to stocks, bonds and securities that the principal could if present.

(l) Power to engage in commodity and option transactions.--A power to “engage in commodity and option transactions” shall mean that the [attorney-in-fact] agent may:

(1) Buy, sell, exchange, assign, convey, settle and exercise commodities future contracts and call and put options on stocks and stock indices traded on a regulated options exchange and collect and receipt for all proceeds of any such transactions.

(2) Establish or continue option accounts for the principal with any securities of a futures broker.

(3) In general, exercise all powers with respect to commodity and option transactions that the principal could if present.

(m) Power to engage in banking and financial transactions.--A power to “engage in banking and financial transactions” shall mean that the [attorney-in-fact] agent may:

(1) Sign checks, drafts, orders, notes, bills of exchange and other instruments (“items”) or otherwise make withdrawals from checking, savings, transaction, deposit, loan or other accounts in the name of the principal and endorse items payable to the principal and receive the proceeds in cash or otherwise.

(2) Open and close such accounts in the name of the principal, purchase and redeem savings certificates, certificates of deposit or similar instruments in the

name of the principal and execute and deliver receipts for any funds withdrawn or certificates redeemed.

(3) Deposit any funds received for the principal in accounts of the principal.

(4) Do all acts regarding checking, savings, transaction, deposit, loan or other accounts, savings certificates, certificates of deposit or similar instruments, the same as the principal could do if personally present.

(5) Sign any tax information or reporting form required by Federal, State or local taxing authorities, including, but not limited to, any Form W-9 or similar form.

(6) In general, transact any business with a banking or financial institution that the principal could if present.

(n) Power to borrow money.--A power to "borrow money" shall mean that the [attorney-in-fact] agent may borrow money and pledge or mortgage any properties that the principal owns as a security therefor.

(o) Power to enter safe deposit boxes.--A power to "enter safe deposit boxes" shall mean that the [attorney-in-fact] agent may enter any safe deposit box in the name of the principal; add to or remove the contents of such box, open and close safe deposit boxes in the name of the principal; however, the [attorney-in-fact] agent shall not deposit or keep in any safe deposit box of the principal any property in which the [attorney-in-fact] agent has a personal interest.

(p) Power to engage in insurance transactions.--A power to "engage in insurance transactions" shall mean that the [attorney-in-fact] agent may:

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

(2) Exercise nonforfeiture provisions under insurance policies.

(3) In general, exercise all powers with respect to insurance that the principal could if present; however, the [attorney-in-fact] agent cannot designate himself beneficiary of a life insurance policy unless the [attorney-in-fact] agent is the spouse, child, grandchild, parent, brother or sister of the principal.

(q) Power to engage in retirement plan transactions.--A power to “engage in retirement plan transactions” shall mean that the [attorney-in-fact] agent may contribute to, withdraw from and deposit funds in any type of retirement plan (including, but not limited to, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and retirement plan, deferred compensation plan or individual retirement account), select and change payment options for the principal, make roll-over contributions from any retirement plan to other retirement plans and, in general, exercise all powers with respect to retirement plans that the principal could if present.

(r) Power to handle interests in estates and trusts.--A power to “handle interests in estates and trusts” shall mean that the [attorney-in-fact] agent may receive a bequest, devise, gift or other transfer of real or personal property to the principal in the principal's own right or as a fiduciary for another and give full receipt and acquittance therefor or a refunding bond therefor; approve accounts of any estate,

trust, partnership or other transaction in which the principal may have an interest; and enter into any compromise and release in regard thereto.

(s) Power to pursue claims and litigation.--A power to "pursue claims and litigation" shall mean that the [attorney-in-fact] agent may:

(1) Institute, prosecute, defend, abandon, arbitrate, compromise, settle or otherwise dispose of, and appear for the principal in, any legal proceedings before any tribunal regarding any claim relating to the principal or to any property interest of the principal.

(2) Collect and receipt for any claim or settlement proceeds; waive or release rights of the principal; employ and discharge attorneys and others on such terms (including contingent fee arrangements) as the [attorney-in-fact] agent deems appropriate.

(3) In general, exercise all powers with respect to claims and litigation that the principal could if present.

(t) Power to receive government benefits.--A power to "receive government benefits" shall mean that the [attorney-in-fact] agent may prepare, sign and file any claim or application for Social Security, unemployment, military service or other government benefits; collect and receipt for all government benefits or assistance; and, in general, exercise all powers with respect to government benefits that the principal could if present.

(u) Power to pursue tax matters.--A power to "pursue tax matters" shall mean that the [attorney-in-fact] agent may:

(1) Prepare, sign, verify and file any tax return on behalf of the principal, including, but not limited to, joint returns and declarations of estimated tax; examine and copy all the principal's tax returns and tax records.

(2) Sign an Internal Revenue Service power of attorney form.

(3) Represent the principal before any taxing authority; protest and litigate tax assessments; claim, sue for and collect tax refunds; waive rights and sign all documents required to settle, pay and determine tax liabilities; sign waivers extending the period of time for the assessment of taxes or tax deficiencies.

(4) In general, exercise all powers with respect to tax matters that the principal could if present.

(u.1) Power to make anatomical gift.--A power "to make an anatomical gift of all or part of my body" shall mean that the [attorney-in-fact] agent may arrange and consent, either before or after the death of the principal, to procedures to make an anatomical gift in accordance with Chapter 86 (relating to anatomical gifts).

**Comment: This change is necessary, because under ordinary principles governing powers of attorney, the authority to act ceases upon the death of the principal.**

**Effective date: 60 days**

**Applicability: Any power of attorney executed before, on or after this effective date**

(v) Powers generally.--All powers described in this section shall be exercisable with respect to any matter in which the principal is in any way interested at the giving of the power of attorney or thereafter and whether arising in this Commonwealth or elsewhere.



§ 5604. Durable powers of attorney.

(a) Definition.--A durable power of attorney is a power of attorney by which a principal designates another his [attorney-in-fact] agent in writing. The authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity. A principal may provide in the power of attorney that the power shall become effective at a specified future time or upon the occurrence of a specified contingency, including the disability or incapacity of the principal.

(b) Durable power of attorney not affected by disability or lapse of time.--All acts done by an [attorney-in-fact] agent pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled. Unless the power of attorney states a time of termination, it is valid notwithstanding the lapse of time since its execution.

(c) Relation of [attorney-in-fact] agent to court-appointed guardian.--

(1) If, following execution of a durable power of attorney, the principal is adjudicated an incapacitated person and a guardian is appointed for his estate, the [attorney-in-fact] agent is accountable to the guardian as well as to the principal. The guardian shall have the same power to revoke or amend the power of attorney that the principal would have had if he were not an incapacitated person.

(2) A principal may nominate, by a durable power of attorney, the guardian of his estate or of his person for consideration by the court if incapacity

proceedings for the principal's estate or person are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

§ 5605. Power of attorney not revoked until notice.

(a) Death of principal.--The death of a principal who has executed a written power of attorney, durable or otherwise, shall not revoke or terminate the agency as to the [attorney-in-fact] agent or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, shall bind successors in interest of the principal.

(b) Disability or incapacity of principal.--The disability or incapacity of a principal who has previously executed a written power of attorney which is not a durable power shall not revoke or terminate the agency as to the [attorney-in-fact] agent or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, shall bind the principal and his successors in interest.

(c) [Divorce] Filing a complaint in divorce. If a principal designates his spouse as his [attorney-in-fact] agent and thereafter either the principal [and] or his spouse [are divorced from the bonds of matrimony] files an action in divorce, the designation of the spouse as [attorney-in-fact] agent shall be deemed revoked as of the time the [divorce decree became effective] action was filed, unless it appears from the power of attorney that the designation was intended to survive [the divorce] such an event.

**Comment:** The filing of an action in divorce by either spouse terminates a spouse's designation as an agent for the other, unless it appears that the designation was intended to continue notwithstanding such filing.

**Effective date: 60 days**

**Applicability: Any power of attorney executed on or after this effective date**

§ 5606. Proof of continuance of powers of attorney by affidavit.

As to acts undertaken in good faith reliance thereon, an affidavit executed by the [attorney-in-fact] agent under a power of attorney stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation, death or, if applicable, disability or incapacity or the filing of an action in divorce and that, if applicable, the specified future time or contingency has occurred, is conclusive proof of the nonrevocation or nontermination of the power at that time and conclusive proof that the specified time or contingency has occurred. The [attorney-in-fact] agent shall furnish an affidavit to a person relying upon the power of attorney on demand; however, good faith reliance on the power shall protect the person who acts without an affidavit. If the exercise of the power of attorney requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

**Note:** This is a conforming amendment in light of the amendments to section 5605(c).

**Effective date: 60 days**

§ 5607. Corporate [attorney-in-fact] agent.

A bank and trust company or a trust company [incorporated] authorized to act as a fiduciary in this Commonwealth[, or a National bank with trust powers having its principal office in this Commonwealth,] and acting as an [attorney-in-fact] agent pursuant to a power of attorney, or appointed by another who possesses such a power, shall have the powers, duties and liabilities set forth in section 3321 (relating to nominee registration; corporate fiduciary as [attorney-in-fact] agent; deposit of securities in a clearing corporation; book-entry securities).

**Comment: The amendments to this section are technical in nature and are intended to ensure that this section is consistent with section 106 of the Banking Code of 1965.**

**Effective date: 60 days**

§ 5608. Liability.

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

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

§ 5609. Compensation and reimbursement for expenses.

(a) Compensation.--In the absence of a specific provision to the contrary in the power of attorney, the agent shall be entitled to reasonable compensation based upon the actual responsibilities assumed and performed.

(b) Reimbursement for expenses.--An agent shall be entitled to reimbursement for actual expenses advanced on behalf of the principal and to reasonable expenses incurred in connection with the performance of the agent's duties.

**Comment: This section entitles an agent to reasonable compensation and reimbursement for reasonable expenses.**

**Effective date: 60 days**

§ 5610. Account.

An agent shall file an account of his administration whenever directed to do so by the court and may file an account at any other time. All accounts shall be filed in the office of the clerk in the county where the principal resides.

**Comment: This section is derived from 20 Pa.C.S. §§ 7181 (when account filed) and 7182 (where accounts filed).**

**Effective date: 60 days**

§ 5611. Validity.

A power of attorney executed in another state or jurisdiction and in conformity with the laws of that state or jurisdiction shall be considered valid in this

Commonwealth, except to the extent that the power of attorney executed in another state or jurisdiction would allow an agent to make a decision inconsistent with the laws of this Commonwealth.

**Effective date: 60 days**

## CONFORMING AMENDMENT

§ 8611. Persons who may execute anatomical gift.

(a) General rule.--Any individual of sound mind and 18 years of age or more may give all or any part of his body for any purpose specified in section 8612 (relating to persons who may become donees; purposes for which anatomical gifts may be made), the gift to take effect upon death. Any agent acting under a power of attorney, which authorizes the agent to make anatomical gifts, may effectuate a gift for any purpose specified in section 8612. Any individual who is a minor and 16 years [or] of age or older may effectuate a gift for any purpose specified in section 8612, provided parental or guardian consent is deemed given. Parental or guardian consent shall be noted on the minor's donor card, application for the donor's learner's permit or driver's license or other document of gift. A gift of the whole body shall be invalid unless made in writing at least 15 days prior to the date of death or consent is obtained from the legal next of kin. Where there are adult children of the deceased who are not children of the surviving spouse, their consent shall also be required for a gift of the whole body for anatomical study.

\* \* \*

**Comment: This amendment conforms to section 5603(u.1).**

**Effective date: 60 days**

**Applicability: Any agent acting under a power of attorney executed before, on or after this effective date**

TRANSITIONAL PROVISIONS OF

## IMPLEMENTING LEGISLATION

Section \_\_\_\_\_. This act shall apply as follows:

(1) The amendment or addition of 20 Pa.C.S. §§ 5601(b), 5601.2(a), (b) and (c) and 5605(c) shall apply to powers of attorney executed on or after the effective date of the amendment or addition of those sections.

(2) The addition of 20 Pa.C.S. § 5601(c) shall apply to powers of attorney executed on or after the effective date of the addition of that section.

(3) The addition of 20 Pa.C.S. § 5601(d) shall apply to agents acting under powers of attorney executed on or after the effective date of that section.

(4) The amendment or addition of 20 Pa.C.S. §§ 5601.2(d) and (e) and 5603(a)(2)(i), (ii), (iv) and (v) and (u.1) shall apply to powers of attorney executed before, on or after the effective date of the amendment or addition of those sections.

(5) The amendment or repeal of 20 Pa.C.S. §§ 5602(a)(1) and 5603(a)(1) shall apply to powers of attorney executed on or after the effective date of the amendment or repeal of those sections. The amendment or repeal of sections 5602(a)(1) and 5603(a)(1) shall not affect the authority of an agent to make unlimited gifts under any power of attorney relying on those sections, executed before the effective date of the amendment or repeal of those sections.

(6) The repeal of 20 Pa.C.S. § 5603(a)(2)(iii), (3), (4) and (5) shall apply beginning with the effective date of the repeal of that section.

(7) The amendment of 20 Pa.C.S. § 8611(a) shall apply to agents acting under



powers of attorney executed before, on or after the effective date of that section.

(8) The remaining amendments in this act shall apply beginning with the effective date of the amendments of those sections.

Section \_\_\_\_\_. This act shall take as follows:

(1) The addition of 20 Pa.C.S. § 5601(c) and (d) shall take effect in six months.

(2) The remainder of this act shall take effect in 60 days.

Section \_\_\_\_\_.

(a) The amendments to section 5601(b) and 5605(c) and the addition of section 5601.2(a), (b) and (c) shall take effect in 60 days and shall apply to powers of attorney executed on or after the effective date of these amendments.

(b) The addition of section 5601(c) shall take effect in six months and shall apply to powers of attorney executed on or after the effective date of the addition of section 5601(c).

(c) The addition of section 5601(d) shall be effective in six months and shall apply to agents acting under powers of attorney executed on or after the effective date of the addition of section 5601(d).

(d) The amendments to sections 5601.2(d) and (e), 5603(a)(2)(i), (ii), (iv) and (v) and 5603(u.1) shall take effect in 60 days and shall apply to powers of attorney executed before, on or after the effective date of the amendments to these sections.

(e) The amendment to section 5602(a)(1) and the repeal of section 5603(a)(1) shall take effect in 60 days and shall apply to powers of attorney executed on or after the effective date of the amendment and repeal of these sections.

(f) The repeal of sections 5603(a)(2)(iii) and 5603(a)(3), (4) and (5) shall take effect in 60 days and shall apply beginning with the effective dates of the repeal of these sections.

(g) The addition of sections 5601(e), 5601(f), 5609, 5610 and 5611 and the amendments to sections 5601.2(f), 5606 and 5607 shall take effect in 60 days and shall apply beginning with the effective date of these amendments.

(h) The amendment to section 8611(a) shall take effect in 60 days and shall apply to agents acting under powers of attorney executed before, on or after the effective date of the amendment to section 8611(a).

(i) The remaining amendments in this act shall take effect in 60 days and shall apply beginning with the effective date.

(j) The amendment to section 5602(a)(1) and the repeal of section 5603(a)(1) shall not affect the authority of an agent to make unlimited gifts under any power of attorney relying on those sections, executed before the effective date of the amendment to section 5602(a)(1) and the repeal of section 5603(a)(1).