Pennsylvania Consolidated Statutes

DECEDENTS, ESTATES AND FIDUCIARIES (TITLE 20)

CHAPTER 56. POWERS OF ATTORNEY

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§ 5601. General provisions.

(a) General rule.--In addition to all other powers that may be delegated to an 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.--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.

(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 a 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 20 PA.C.S. CH. 56.

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)____

(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 20 Pa.C.S. 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)____

(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.

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

§ 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.

(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.

(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.

(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.

(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.

(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.

§ 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 an 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. "To make limited gifts."
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 agent and successor agent.--A principal may provide for:

(1) The appointment of more than one agent, who shall act jointly, severally or in any other combination that the principal may designate, but if there is no such designation, such agents shall only act jointly.
(1.1) The delegation of one or more powers by the agent to such person or persons as the agent may designate and on terms as the power of attorney may specify.
(2) The appointment of one or more successor 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 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 the 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 limited gifts.--A power "to make limited gifts" shall mean that the agent may make only gifts for or on behalf of the principal which are limited as follows:

1. [deleted]
2.
    i. The class of permissible donees under this paragraph shall consist solely of the principal's spouse and, issue and a spouse of the principal's issue (including the agent if a member of any such class), or any of them.
    ii. During each calendar year, the gifts made to any permissible donee, pursuant to such power, shall have an aggregate value not in escess of, and shall be made in such manner as to qualify in their entirety for, the annual exclusion from the Federal gift tax permitted under section 2503(b) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) for the principal and, if applicable, the principal's spouse.
    iii. [deleted]
    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.
    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 Internal Revenue Code of 1986.

[remaining subsections yet to be inserted.]

§ 5604. Durable powers of attorney.

(a) Definition.--A durable power of attorne is a power of attorney by which a principal designates another his 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 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 an 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 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 agent is accountable to the guardian as well as 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.

(d) Discovery of information and records regarding actions of agent.--

1. If the agency acting pursuant to the act of November 6, 1987 (P.L.381, No. 79), known as the Older Adults Protective Services Act, is denied access to records necessary for the completion of a proper investigation of a report or a client assessment and service plan or the delivery of needed services in order to prevent further abuse, neglect, exploitation or abandonment of the older adult principal reported to be in need of protective services, the agency may petition the court of common pleas for an order requiring the appropriate access when either of the following conditions applies:
   i. the older adult principal has provided written consent for confidential records to be disclosed and the agent denies access; or
   ii. the agency can demonstrate that the older adult principal has denied or directed the agent to deny access to the records because of incompetence, coercion, extortion or justifiable fear of future abuse, neglect, exploitation or abandonment.
2. This petition may be filed in the county wherein the agent resides or has his principal place of business or, if a nonresident, in the county wherein the older adult principal resides. The court, after reasonable notice to the agent and to the older adult principal, may conduct a hearing on the petition.
3. Upon the failure of the agent to provide the requested information, the court may make and enforce such further orders.
4. A determination to grant or deny an order, whether in whole or in part, shall not be considered a finding regarding the competence, capacity or impairment of the older adult principal, nor shall the granting or denial of an order preclude the availability of other remedies involving protection of the person or estate of the older adult principal or the rights and duties of the agent.

(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Abandonment."

As that term is defined in the act of November 6, 1987 (P.L.381, No. 79), known as the Older Adults Protective Services Act,

"Abuse."

As that term is defined in the act of November 6, 1987 (P.L.381, No. 79), known as the Older Adults Protective Services Act,

"Agency."

As that term is defined in the act of November 6, 1987 (P.L.381, No. 79), known as the Older Adults Protective Services Act, except that in cities of the first class the term shall mean the Department of Aging.

"Exploitation."

As that term is defined in the act of November 6, 1987 (P.L.381, No. 79), known as the Older Adults Protective Services Act,

"Neglect."

As that term is defined in the act of November 6, 1987 (P.L.381, No. 79), known as the Older Adults Protective Services Act,

"Older adult principal."

A principal who is 60 years of age or older.

§ 5605. Power of attorney not revoked until notice.

[to be inserted]

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

As to acts undertaken in good faith reliance thereon, an affidavit executed by the agent under a power of attorney stating that he did not have at the time of execution 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 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.

§ 5607. Corporate attorney-in-fact.

A bank and trust company or a trust company authorized to act as a fiduciary in this Commonwealth and acting as an 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 agent; deposit of securities in a clearing corporation; book-entry securities.)

§ 5608. Liability.

(a) Third party liability.--Any person who is given instructions by an 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 302 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 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.

§ 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.

§ 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.