

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 299 Session of 2015

INTRODUCED BY BIZZARRO, COHEN, KOTIK, SCHLOSSBERG, O'BRIEN, McNEILL, FREEMAN, GODSHALL, DAVIDSON, YOUNGBLOOD, MATZIE, DEASY, KORTZ, SNYDER, MURT, PETRI, MULLERY, THOMAS, WATSON, ROZZI, KINSEY, FLYNN, BISHOP, QUINN, D. COSTA, HARKINS, KIM, SONNEY, BROWNLEE, DAVIS, BLOOM, MAHONEY, FABRIZIO AND McCARTER, FEBRUARY 2, 2015

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 14, 2015

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 durable
4 powers of attorney.

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

7 Section 1. Sections ~~5601(d)~~ 5601(C) AND (D) and 5604(d) of <--
8 Title 20 of the Pennsylvania Consolidated Statutes are amended
9 to read:

10 § 5601. General provisions.

11 * * *

12 (C) NOTICE.--ALL POWERS OF ATTORNEY SHALL INCLUDE THE <--
13 FOLLOWING NOTICE IN CAPITAL LETTERS AT THE BEGINNING OF THE
14 POWER OF ATTORNEY. THE NOTICE SHALL BE SIGNED BY THE PRINCIPAL.
15 IN THE ABSENCE OF A SIGNED NOTICE, UPON A CHALLENGE TO THE
16 AUTHORITY OF AN AGENT TO EXERCISE A POWER UNDER THE POWER OF

1 ATTORNEY, THE AGENT SHALL HAVE THE BURDEN OF DEMONSTRATING THAT
2 THE EXERCISE OF THIS AUTHORITY IS PROPER.

3 NOTICE

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

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

13 YOUR AGENT MAY EXERCISE THE POWERS GIVEN HERE THROUGHOUT
14 YOUR LIFETIME, EVEN AFTER YOU BECOME INCAPACITATED, UNLESS
15 YOU EXPRESSLY LIMIT THE DURATION OF THESE POWERS OR YOU
16 REVOKE THESE POWERS OR A COURT ACTING ON YOUR BEHALF
17 TERMINATES YOUR AGENT'S AUTHORITY.

18 YOUR AGENT MUST ACT IN ACCORDANCE WITH YOUR REASONABLE
19 EXPECTATIONS TO THE EXTENT ACTUALLY KNOWN BY YOUR AGENT AND,
20 OTHERWISE, IN YOUR BEST INTEREST, ACT IN GOOD FAITH AND ACT
21 ONLY WITHIN THE SCOPE OF AUTHORITY GRANTED BY YOU IN THE
22 POWER OF ATTORNEY.

23 THE LAW PERMITS YOU, IF YOU CHOOSE, TO GRANT BROAD
24 AUTHORITY TO AN AGENT UNDER POWER OF ATTORNEY, INCLUDING THE
25 ABILITY TO GIVE AWAY ALL OF YOUR PROPERTY WHILE YOU ARE ALIVE
26 OR TO SUBSTANTIALLY CHANGE HOW YOUR PROPERTY IS DISTRIBUTED
27 AT YOUR DEATH. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD SEEK
28 THE ADVICE OF AN ATTORNEY AT LAW TO MAKE SURE YOU UNDERSTAND
29 IT.

30 A COURT CAN TAKE AWAY THE POWERS OF YOUR AGENT IF IT

1 FINDS YOUR AGENT IS NOT ACTING PROPERLY.

2 IF YOU BELIEVE THAT YOU ARE A VICTIM OF FINANCIAL ABUSE
3 BY YOUR AGENT AND YOU ARE A SENIOR CITIZEN, YOU MAY CALL THE
4 DEPARTMENT OF AGING, 1-800-490-8505. THE HOTLINE IS OPEN 24
5 HOURS A DAY, SEVEN DAYS A WEEK.

6 THE POWERS AND DUTIES OF AN AGENT UNDER A POWER OF
7 ATTORNEY ARE EXPLAINED MORE FULLY IN 20 PA.C.S. CH. 56.

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

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

13
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 understand that if any intentional act
23 or omission on my part as the agent causes harm to the
24 principal, I may be subject to criminal penalties. I
25 hereby acknowledge that when I act as agent:

26 I shall 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
2
3 (Agent) (Date)

4 * * *

5 § 5604. Durable powers of attorney.

6 * * *

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

9 (1) If the agency acting pursuant to the act of November
10 6, 1987 (P.L.381, No.79), known as the Older Adults
11 Protective Services Act, is denied access to records
12 necessary for the completion of a proper investigation of a
13 report or a client assessment and service plan or the
14 delivery of needed services in order to prevent further
15 abuse, neglect, exploitation or abandonment of the older
16 adult principal reported to be in need of protective
17 services, the agency may petition the court of common pleas
18 for an order requiring the appropriate access when [either]
19 any of the following conditions [applies] are met:

20 (i) the older adult principal has provided written
21 consent for confidential records to be disclosed and the
22 agent denies access; [or]

23 (ii) the agency can demonstrate that the older adult
24 principal has denied or directed the agent to deny access
25 to the records because of incompetence, coercion,
26 extortion or justifiable fear of future abuse, neglect,
27 exploitation or abandonment[.]; or

28 (iii) the agency has a good faith belief that a
29 crime has been committed and alleges that the principal
30 lacks the capacity to provide consent to the release of

1 confidential records.

2 (2) This petition may be filed in the county wherein the
3 agent resides or has his principal place of business or, if a
4 nonresident, in the county wherein the older adult principal
5 resides. The court, after reasonable notice to the agent and
6 to the older adult principal, may conduct a hearing on the
7 petition.

8 (3) Upon the failure of the agent to provide the
9 requested information, the court may make and enforce such
10 further orders.

11 (4) A determination to grant or deny an order, whether
12 in whole or in part, shall not be considered a finding
13 regarding the competence, capacity or impairment of the older
14 adult principal, nor shall the granting or denial of an order
15 preclude the availability of other remedies involving
16 protection of the person or estate of the older adult
17 principal or the rights and duties of the agent.

18 * * *

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