

CHAPTER 56
POWERS OF ATTORNEY

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Enactment. Present Chapter 56 was added February 18, 1982, P.L.45, No.26, effective immediately.

Applicability. Section 13 of Act 26 of 1982 provided that Chapter 56 shall apply to all powers of attorney executed on or after the date of enactment of Act 26 and provided that nothing in Act 26 shall be construed to limit the effectiveness of powers of attorney in effect prior to the date of enactment of Act 26.

Prior Provisions. Former Chapter 56, which related to the same subject matter, was added December 10, 1974, P.L.899, No.295, and repealed February 18, 1982, P.L.45, No.26, effective immediately.

Cross References. Chapter 56 is referred to in sections 711, 5601, 7732 of this title section 2713 of Title 18 (Crimes and Offenses).

§ 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 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 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.

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

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

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

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

(iii) A power contained in the governing document for a corporation, partnership or limited liability company or other legal entity by which a director, partner or member

authorizes others to do other things on behalf of the entity.

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

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

(2) Powers and powers of attorney exempted by this subsection need not be dated.

(e.2) Limitation on applicability in health care power of attorney.--Subsections (c) and (d) do not apply to a power of attorney which exclusively provides for health care decision making.

(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.

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 12, 1999, P.L.422, No.39; May 16, 2002, P.L.330, No.50, eff. Apr. 12, 2000; Nov. 25, 2003, P.L.211, No.36, eff. 60 days)

2003 Amendment. Act 36 amended subsec. (e.1).

2002 Amendment. Act 50 added subsecs. (e.1) and (e.2). See section 14(a) of Act 50 in the appendix to this title for special provisions relating to applicability.

1999 Amendment. Act 39 amended the entire section, effective in six months as to subsecs. (c) and (d) and 60 days as to the remainder of the section. See section 13(1), (2), (3) and (8) of Act 39 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5601 is referred to in section 5843 of this title.

§ 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).

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.)

1992 Amendment. Act 152 added section 5601.1. Section 27(c) of Act 152 provided that section 5601.1 shall apply to powers of attorney executed on or after the effective date of Act 152.

§ 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.

(Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. Act 39 added section 5601.2. See section 13(1), (4) and (8) of Act 39 in the appendix to this title for special provisions relating to applicability.

§ 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 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.

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Dec. 1, 1994, P.L.655, No.102, eff. 90 days; Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. See section 13(5) and (8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1994 Amendment. Section 10 of Act 102 provided that the amendment shall apply beginning with the effective date of Act 102.

1992 Amendment. Section 27(e) of Act 152 provided that the amendments to subsecs. (a)(10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21) and (22) and (b)(1.1) shall apply beginning with the effective date of Act 152.

Cross References. Section 5602 is referred to in sections 5601, 5601.2 of this title.

§ 5603. Implementation of power of attorney.

(a) Power to make limited gifts.--

(1) (Deleted by amendment).

(2) 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:

(i) The class of permissible donees under this paragraph shall consist solely of the principal's spouse, 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 excess 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 by amendment).

(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.

(3) (Deleted by amendment).

(4) (Deleted by amendment).

(5) (Deleted by amendment).

(b) Power to create a trust.--A power "to create a trust for my benefit" shall mean that the agent may execute a deed of trust, designating one or more persons (including the agent) as original or successor trustees and transfer to the trust any or all property owned by the principal as the 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 agent, provided that any such amendment by the 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 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 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 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 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 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 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 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 agent deems advisable.

(2) The term "fiduciary" shall be deemed to include, without limitation, an executor, administrator, trustee, guardian, 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 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 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 agent may designate, including the retention of nurses for the principal.

(2) A power "to authorize medical and surgical procedures" shall mean that the 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 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 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 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 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 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 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 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 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 agent shall not deposit or keep in any safe deposit box of the principal any property in which the agent has a personal interest.

(p) Power to engage in insurance transactions.--A power to "engage in insurance transactions" shall mean that the 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 agent cannot designate himself beneficiary of a life insurance policy unless the agent is the spouse, child, grandchild, parent, brother or sister of the principal. An agent and a beneficiary of a life insurance policy shall be liable as equity and justice may require to the extent that, as determined by the court, a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal.

(q) Power to engage in retirement plan transactions.--A power to "engage in retirement plan transactions" shall mean that the 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. However, the agent cannot designate himself beneficiary of a retirement plan unless the agent is the spouse, child, grandchild, parent, brother or sister of the principal. An agent and a beneficiary of a retirement plan shall be liable as equity and justice may require to the extent that, as determined by the court, a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal.

(r) Power to handle interests in estates and trusts.--A power to "handle interests in estates and trusts" shall mean that the 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 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 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 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 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 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).

(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.

(April 16, 1992, P.L.108, No.24, eff. 60 days; Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Dec. 1, 1994, P.L.655, No.102, eff. 90 days; Oct. 12, 1999, P.L.422, No.39, eff. 60 days; Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

2010 Amendment. Act 85 amended subsecs. (p) and (q).

Cross References. Section 5603 is referred to in sections 2206, 5601.2, 5602 of this title.

§ 5604. Durable powers of attorney.

(a) Definition.--A durable power of attorney 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 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 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 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.

(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.
(Apr. 16, 1992, P.L.108, No.24, eff. 60 days; Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 12, 1999, P.L.422, No.39, eff. 60 days; Dec. 20, 2000, P.L.978, No.137, eff. imd.)

2000 Amendment. Act 137 added subsecs. (d) and (e).

1999 Amendment. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1992 Amendments. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability. See section 27(b) of Act 152 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5604 is referred to in sections 2206, 5601.1, 6202 of this title.

§ 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 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 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) Filing a complaint in divorce.--If a principal designates

his spouse as his agent and thereafter either the principal or his spouse files an action in divorce, the designation of the spouse as agent shall be revoked as of the time the action was filed, unless it appears from the power of attorney that the designation was intended to survive such an event.
(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. See section 13(1) of Act 39 in the appendix to this title for special provisions relating to applicability.

1992 Amendment. Section 27(c) of Act 152 provided that the amendment of section 5605 shall apply to powers of attorney executed on or after the effective date of Act 152.

§ 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 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 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.

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1992 Amendment. Section 27(e) of Act 152 provided that the amendment of section 5606 shall apply beginning with the effective date of Act 152.

§ 5607. Corporate agent.

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).

(Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

§ 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.

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1992 Amendment. Section 27(e) of Act 152 provided that section 5608 shall apply beginning with the effective date of Act 152.

§ 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.

(Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. Act 39 added section 5609. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

§ 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.

(Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. Act 39 added section 5610. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

§ 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.

(Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. Act 39 added section 5611. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.