

No. 2016-103

AN ACT

HB 665

Amending Titles 20 (Decedents, Estates and Fiduciaries) and 57 (Notaries Public) of the Pennsylvania Consolidated Statutes, in powers of attorney, further providing for general provisions; and, in Revised Uniform Law on Notarial Acts, further providing for short form certificates, for implementation of power of attorney and for durable powers of attorney.

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

Section 1. Sections 5601(b)(3), (e.1) and (e.2), 5603(d) and 5604(c)(1) of Title 20 of the Pennsylvania Consolidated Statutes are amended to read:

§ 5601. General provisions.

* * *

(b) Execution.—

* * *

(3) For a power of attorney executed on or after the effective date of this paragraph, the signature or mark of the principal, or the signature [**or mark**] of another individual signing a power of attorney on behalf of and at the direction of the principal, shall be:

(i) Acknowledged before a notary public or other individual authorized by law to take acknowledgments. The notary public or other individual authorized by law to take acknowledgments shall not be the agent designated in the power of attorney.

(ii) 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, the agent designated in the power of attorney or the notary public or other person authorized by law to take acknowledgments before whom the power of attorney is acknowledged. *Nothing in this section shall prohibit an acknowledgment of a power of attorney before a member of the bar of the Pennsylvania Supreme Court in the manner authorized by 42 Pa.C.S. § 327(a) (relating to oaths and acknowledgments) certified in the manner provided by 57 Pa.C.S. § 316(2.1) (relating to short form certificates) provided the attorney taking the acknowledgment does not act as one of the two witnesses required by this paragraph.*

* * *

(e.1) Limitation on applicability [**in commercial transaction**] *generally*.—

(1.1) Subsections [(b)(3)(ii)] (b)(3), (c) and (d) *and section 5601.3 (relating to agent's duties)* do not apply to:

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

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

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

(iv) **[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 or a proxy or other delegation to exercise voting rights or management rights with respect to a legal entity.] A power:**

(A) contained in the governing document for a corporation, partnership or limited liability company or other legal entity;

(B) authorized by the law that governs the internal affairs of a legal entity;

(C) by which a director, shareholder, partner, member or manager authorizes others to do things on behalf of the entity; or

(D) contained in a proxy or other delegation to exercise voting rights or management rights with respect to a legal entity.

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

(vi) 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).

(vii) A power created on a form prescribed by a Commonwealth agency, political subdivision or an authority or instrumentality of the Commonwealth or a political subdivision.

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

(3) Powers of attorney exempted by this subsection which are recorded in the office for the recorder of deeds under section 5602(c) shall be acknowledged before recording.

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

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§ 5603. Implementation of power of attorney.

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(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]** *is not* an incapacitated person.

* * *

§ 5604. Durable powers of attorney.

* * *

(c) Relation of agent to court-appointed guardian.—

(1) If, following execution of a durable power of attorney, the principal **[is adjudicated]** *becomes* 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.

* * *

Section 2. Section 316(2.1) of Title 57 is amended to read:

§ 316. Short form certificates.

The following short form certificates of notarial acts are sufficient for the purposes indicated if completed with the information required by section 315(a) and (b) (relating to certificate of notarial act):

* * *

(2.1) For an acknowledgment by an attorney at law pursuant to 42 Pa.C.S. § 327 (relating to oaths and acknowledgements):
State of
County of
This record was acknowledged before me on
(date)
by (name of attorney)
Supreme Court identification number
as a member of the bar of the Pennsylvania Supreme Court **[and a subscribing witness to this record and]** certified that he/she was personally present when (name(s) of individual(s)) executed the record and that (name(s) of individual(s)) executed the record for the purposes contained therein.
Signature of notarial officer
Stamp
Title of office
My commission expires:

* * *

Section 3. This act applies as follows:

(1) The amendment of 20 Pa.C.S. §§ 5601(b)(3), (e.1) and (e.2), 5603(d) and 5604(c)(1) shall be retroactive to January 1, 2015.

(2) The amendment of 57 Pa.C.S. § 316(2.1) shall apply to a form used for an acknowledgment taken by a member of the bar of the Pennsylvania Supreme Court pursuant to 42 Pa.C.S. § 327(a) retroactively to January 1, 2015.

Section 4. This act shall take effect immediately.

APPROVED—The 4th day of October, A.D. 2016

TOM WOLF