



## **PENNSYLVANIA UNDERWRITING BULLETIN**

**FROM: Underwriting Department**

**DATE: December 29, 2014**

**TO: All Pennsylvania Policy Issuing Agents of WFG National Title Insurance Company**

**BULLETIN No.: PA 2014-05**

**SUBJECT: Revisions to Pennsylvania Power of Attorney Statutes.**

Effective January 1, 2015 a number of changes to Pennsylvania Power of Attorney Statutes go into effect. [Act 95 of 2014](#). Among the changes made are the following:

### **Enhanced Execution & Content Requirements.**

The revised statute continues the existing statutory requirement that a power of attorney (POA) be signed and dated by the Principal; but adds requirements for POAs executed after January 1, 2015, that the signature of the Principal be acknowledged before a notary (who is not the Agent designated by the POA); and that the POA be witnessed by two adult individuals. The statute adds qualifications that the witnesses must be someone other than the Agent named in the POA, the notary or the person who made a mark or signed on behalf of a Principal who is unable to sign on their own behalf. §5601(b).

The revised statute adds additional statutory language to the notice that must appear at the beginning of any POA executed after January 1, 2015. That notice must be separately signed by the Principal. §5601(c). It also alters the Agent Acknowledgement language. §5601(d).

The Notice, Agent acknowledgement and requirement for two witnesses do not apply to POAs in commercial transactions; a POA which is part of the governing documents of a corporation, LLC or Partnership; stock powers; vehicle transfer POAs and certain other government mandated POA forms. §5601(e)(1.1).

### **Specific and General Grants of Authority**

Effective January 1, 2015, §5601.4(a) requires a POA to explicitly authorize certain Agent actions related to estate planning. Some of these powers, requiring explicit authorization, occasionally become relevant in the context of a real estate transaction:

1. Create, amend, revoke, or terminate an inter vivos trust;
2. Make a gift;
3. Create or change rights of survivorship;

4. Exercise fiduciary powers that the Principal has authority to delegate, such as powers under a trust instrument or a power of appointment in a will;
5. Disclaim property, including a power of appointment.

On the other hand, §5601.4(c) creates broad statutory authority based on a POA containing a general grant of authority to perform “all acts that a principal is authorized to perform” or similar language. The revised statute provides that such language incorporates all specific powers as enumerated in §5602(a). That section expressly includes the authority to engage in real property transactions, to engage in tangible personal property transactions, and to borrow money.

### **Validity of Copies.**

If recorded with the Orphans Court or the office for the recording of deeds, a certified copy has “the same validity and the same force and effect as if it were the original,” and the certified copy may be filed of record in any other office of the commonwealth. §5602(c)

Except for purposes of recording, any photocopy or electronically transferred copy has the same effect as an original. §5602(d).

### **Liability for Refusing to Accept a POA**

Under the Act, a third party continues to have a duty to accept a POA and may be liable for refusing to accept it. §5608.1(c) The revised statute gives the third party who has concerns the right to request an agents certification under oath of their authority and other factual matters, an English language translation of a POA, and/or an opinion of counsel relating to whether the agent is acting within the scope of authority, and then to rely on that additional information without further investigation. §5608(e)

The third party must either accept the POA or request an affidavit, certification, translation or opinion of counsel, and then accept the POA within 5 days of being provided the requested information, unless there is cause to reject. §5608.1(a) The third party may not require a POA to be on their own or a different form than the one presented. §5608.1(a)(3)

A person can't be required to accept and the liability section does not apply to a person who “is not otherwise required to engage in a transaction with the principal in the same circumstances.” §5608.1(b) This includes a title insurer and title agent. We are not “Required” to insure anyone. We always have discretion as to our requirements for insuring a given transaction. Nonetheless, the best practice when declining a POA is to cite this statutory exclusion.

### **Out of State POA**

A Power of Attorney executed in or under the laws of another state is valid in Pennsylvania if its execution complied with the laws of the other state when executed or was a military power of attorney. §5611.

**NOTE: This Bulletin is intended for use by title issuing offices, title insurance agents and approved attorneys of WFG National Title Insurance Company and any reliance by any other person or entity is unauthorized. This bulletin is intended solely for the purpose of underwriting policies of WFG National Title Insurance Company.**