

Act 103 Finally Clarifies Execution Requirements and Agents' Duties Under PA Commercial Powers of Attorney

Act 95 of 2014 enacted several changes to Pennsylvania's financial power of attorney statute (Chapter 56 of Title 20) that inadvertently affected commercial powers of attorney, including stock powers and confessions of judgment. Generally effective as of January 1, 2015, this Act suddenly required commercial powers of attorney to be notarized and witnessed by two witnesses. More critically, this Act also imposed mandatory, affirmative duties upon the agent acting under a commercial power of attorney including the unwaivable duty to act in the principal's "best interest" and in accordance with the principal's "reasonable expectations," as well as the duty to act in good faith and in a manner that would not exceed the scope of the power of attorney document. While these duties make sense in the context of one individual acting as agent with respect to another individual's personal finances, these duties understandably caused significant concern in the commercial power of attorney context. Suddenly, landlords, lenders and creditors in any commercial transaction had an unwaivable duty to act in the best interests of the individual or entity against whom they would, paradoxically, be enforcing a confession of judgment.

On October 4, 2016, Governor Wolf signed into law Act 103, which corrects these major errors. **Act 103 is retroactive to January 1, 2015, and finally corrects 20 Pa. C.S. §5601 to provide that commercial powers of attorney do not need to be notarized, witnessed, or even dated.** (It should be noted, however, that a commercial power of attorney recorded in the Recorder of Deed's Office must have a signed "Agent Acknowledgment" page attached to it as described in 20 Pa. C.S. §5601(d)). **Even more importantly, Act 103 also exempts all commercial powers of attorney from the duties otherwise imposed upon agents acting under a financial power of attorney.**

In an unexpected but welcome move, Act 103 amended the definition of "commercial power of attorney" to expand the universe of documents that are exempt from the execution requirements and duties otherwise imposed by Chapter 56. Any of the following documents will be considered to be "commercial powers of attorney" under 20 Pa. C.S. §5601(e.1)(1.1) and therefore excluded from these requirements:

- A power contained in an instrument used in a commercial transaction that authorizes an agency relationship;
- 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;

- A power exclusively granted to facilitate transfer of stock, bonds and other assets;
- A power contained in the governing document for a corporation, partnership or limited liability company or other legal entity;
- A power authorized by the law that governs the internal affairs of a legal entity;
- A power by which a director, shareholder, partner, member or manager authorizes others to do things on behalf of the entity;
- A power contained in a proxy or other delegation to exercise voting rights or management rights with respect to a legal entity;
- A warrant of attorney conferring authority to confess judgment; and
- A power given to a dealer under the Board of Vehicles Act in conjunction with a sale, purchase or transfer of a vehicle.

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