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July 20, 2014

## **New law changing rules on powers of attorney**

On July 3, 2014, Governor Tom Corbett signed Pennsylvania Act 95 of 2014 which made significant changes to the existing laws in Pennsylvania surrounding Powers of Attorney for finances. This is the culmination of three years of hard work by various groups including the legislators, Pennsylvania Bankers, the PA Bar Association and various groups within the Bar Association. The primary driving force appears to have been a “fix” legislatively due to a Pennsylvania Court ruling that left financial institutions less than comfortable about accepting Powers of Attorney should the Power of Attorney be void or voidable although originally accepted in good faith, resulting in liability to the financial institution.

After January 1, 2015, Power of Attorney documents will need to meet certain requirements to insure acceptance by financial institutions. Some parts of the law are effective immediately, including acceptance by third parties (such as banks). However, as of January 1, the signature of the principal must be notarized and the document witnessed by two persons over the age of 18 years, neither of whom is the Agent named within. The now familiar notice page has been modified with additional warnings indicating that the Agent named could (if the document allows) give away the principal’s property or change how the property is distributed at death. The acknowledgment form is also revised and lists more specifically how an Agent is to act, including with “care, competence, and diligence.” There are express limits on the liability of an agent also.

Although Powers of Attorney in the past should have been tailored to the principal, many times the standard form has been used. The new law has certain areas that should be discussed with the principal and determined if the principal wants the agent to have such powers and under what circumstances.

Acceptance by third parties is an important part of the legislation. Sometimes agents attempt to use a Power of Attorney document that meets all of the current guidelines only to be rebuffed by a financial institution fearful of liability if they cannot be sure that the document is still in full force and effect. This is very frustrating for an agent who with all good intentions wants to help the principal who is unable to manage his or her finances for whatever reason.

The Uniform Law Commission (ULC) has recommended proposals for Powers of Attorney which were issued in 2006. These recommendations were a “deliberate attempt to preserve the durable power of attorney as a low-cost, flexible, and private form of surrogate decision making while deterring use of the power of attorney as a tool of financial abuse of incapacitated individuals.” Although Pennsylvania did not directly adopt the ULC recommendations, hopefully the new law will allow for improved acceptance of these documents with more thoughtful drafting and execution as a side effect.

The consumer should be even more wary of documents obtained online. What might appear to be a cost savings will likely result in a document that proves unusable when it is really needed.