

## Pennsylvania Commercial Power of Attorney Problems Fixed by Act 103 of 2016

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It took almost 2 years, but finally this past October 2016, technical corrections were signed into law to address the problems for commercial powers of attorney that arose by virtue of the 2014 Amendments to the Title 20 PA Power of Attorney ("POA") law. The 2014 Amendment had created some serious problems commercial powers of attorney, including for a warrant of attorney to confess judgment that is covered as an excluded commercial transaction by subsection 5601 (e.1)(v).

The technical corrections, codified at Act 103 of 2016 (2016 Act), were effective October 4, 2016 and RETROACTIVE TO JANUARY 1, 2015 (the date on which the 2014 amendments became effective). Act 103:

(1) provides that a commercial POA does not require a notarization or other acknowledgment by excluding a commercial power of attorney from the provisions of Section 5601(b)(3) in its entirety (thus including both (b)(3)(i) and (b)(3)(ii) whereas the 2014 amendments only excluded (b)(3)(ii) witness requirements);

(2) excludes an agent designated by a commercial power of attorney from the statutory duties imposed upon agents under other types of powers of attorney by adding to Section 5601 references to subsection (b)(3) [and not just (b)(3)(ii)] and references to Section 5601.3 as additional provisions excluded from application of the rules (and thus excluding a confession of judgment warrant of attorney from the new rules)

(3) allows a POA to be acknowledged by a lawyer if the lawyer subsequently certifies to a notary public or another officer authorized to administer oaths that the attorney witnessed the execution of the power of attorney by adding the following language to Section 5601(b):

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.

(4) expands the definition of the commercial power of attorney to include powers of attorney contained in governing documents by deleting the old section (e.1)(iv) and replacing it with the following:

(vi) 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.

Use this link to view a copy of the Act.