



*A Division of Ohio Bar Title Insurance Company
A First American Company*

TITLE ALERT

Title Alert 2014-11

August 14, 2014

Powers of Attorney Statutory Amendments

Purpose: To advise Approved Attorneys of the recent statutory modifications to Title 20 Chapter 56 (20 Pa.C.S.A. §§ 5601–12) governing powers of attorney and to provide new procedures in compliance therewith.

Background: On July 2, 2014, Governor Corbett signed into law Act 95 of 2014 which contains broad revisions to Title 20, Chapter 56 of the Pennsylvania Consolidated Statutes governing powers of attorney. The effective dates for various provisions of the amended statute are staggered, as set forth below.

Execution Modifications – Effective January 1, 2015.

The revised statute under § 5601 (b)(1) requires that a power of attorney (“POA”) be signed and dated by the Principal by signature or mark, or if the Principal is unable to sign, by another individual on the principal’s behalf. The amendments under § 5601 (b)(3)(i) demand that the signature or mark be formally acknowledged by a notary or someone authorized to take acknowledgments, either of whom may not be the Agent designated by the POA. Also, § 5601 (b)(3)(ii), requires the POA to be witnessed by two individuals who are 18 years of age or older, not including the Agent or notary.

The existing statute governing POAs requires that a specific Notice signed by the Principal be included at the beginning of a POA (the “Notice”). The statute also requires that a specific Acknowledgment form signed by the Agent (the “Acknowledgment”) be attached to the POA.¹ These Notice and Acknowledgment forms have undergone some linguistic changes under the new amendments. Both the Notice and Acknowledgment now contain statements explicitly specifying that an Agent must act in accordance with the Principal’s reasonable expectations, in the Principal’s best interest, in good faith, and within the scope of the authority granted to him or her by the POA. Moreover, the Notice now contains an overt statement conceding that the law allows for broad authority to be exercised by an Agent appointed in a POA if so designated, including the power to give away all property during the Principal’s life or substantially change how it is distributed upon the Principal’s death. The revised Notice and Acknowledgment forms utilizing the amended language are attached as Exhibits A and B, respectively.

These new requirements relative to the execution of POAs and changes pertaining to the Notice and Acknowledgment forms take effect January 1, 2015, and apply to all POAs executed on or after that date.

Specific and General Grants of Authority – Effective January 1, 2015.

Section 5601.4(a) requires a POA to explicitly authorize certain Agent actions, including:

- 1) Create, amend, revoke or terminate an inter vivos trust unless otherwise specified.
- 2) Make a gift.
- 3) Create or change rights of survivorship.
- 4) Create or change a beneficiary designation.
- 5) Delegate authority granted under the POA.

¹ “Principal” refers to the person who executed the POA. “Agent” refers to the person appointed in the POA to act on behalf of the Principal.

- 6) Waive the Principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
- 7) Exercise fiduciary powers that the Principal has authority to delegate.
- 8) Disclaim property, including a power of appointment.

Additionally, notwithstanding a grant of authority as above, an Agent who is not an ancestor, spouse or descendant of the Principal may not exercise authority under a POA to create in him or herself, or in an individual to whom the Agent owes a legal obligation of support, any interest in the Principal's property.²

Please note that in a transaction where there is no or nominal consideration or where an Agent is gifting property to him or herself, is engaged in self-dealing, or is otherwise personally involved, please contact a First American underwriter for approval.

These changes relative to specific and general grants of authority take effect January 1, 2015, and apply to all POAs executed on or after that date.

Third Party Liability & Immunity – Effective July 2, 2014.

As an effective reversal of the 2010 case *Vine v. Commonwealth State Employees' Retirement Board*,³ broad protection is now afforded to corporate entities, banks, and other third parties who in good faith accept a POA as valid and not expired, or accept that the Agent is not exceeding his or her scope of authority. Except in defined circumstances,⁴ a third party must accept a POA or request (1) an affidavit/certification from the Agent attesting to continuance and validity of the POA; or (2) an English translation of the POA if applicable; or (3) an opinion of counsel validating that an Agent's proposed action is within the scope of the POA. If such documentation is requested and provided, a third party may rely upon such documentation without need for further investigation.

These changes relative to third party liability and immunity are effective as of July 2, 2014.

Standard: When relying on a POA in any insured transaction, continue to follow the underwriting requirements set forth in Title Alert 2010-12: Powers of Attorney. Additionally, review all POAs executed in Pennsylvania on or after January 1, 2015 to ensure that they: (1) include the revised Notice and Acknowledgment forms attached hereto as Exhibits A and B, (2) are notarized, and (3) are witnessed by two individuals 18 years of age or older, not including the Agent or notary. Finally, obtain an affidavit from the Agent of the POA attesting to its validity and ensuring that his or her actions conform to the scope granted to him or her. This affidavit form is attached as Exhibit C. Note that in certain circumstances an English translation if applicable and/or an opinion of counsel may also be requested. If you have any questions regarding whether to request any documentation other than the attached affidavit, please contact a First American underwriter.

If you have any questions, please feel free to contact us.

Note: Under the Approved Attorney system, the scope of our relationship is limited to the functions of underwriting and the issuance of title insurance policies on your behalf and does not include closing or escrow services. We sometimes provide information and recommendations with regard to your closing or escrow business as a courtesy to you. Moreover, some communications, depending on whether noncompliance could impact on liability under our policies or closing protection letters, should be considered directives. This Advisory is being provided to you with those considerations in mind.

WARNING: This Underwriting Communication is intended solely for the employees of Penn Attorneys/Ohio Bar Title Insurance Company and its Approved Attorneys, and is not to be distributed to third parties, and any reliance by any other person or entity is unauthorized. This Underwriting Communication is intended solely for the purpose of underwriting policies of Ohio Bar Title Insurance Company.

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² By gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

³ *Vine v. Com., State Employees' Retirement Bd.*, 9 A.3d 1150 (Pa. 2010).

⁴ Amendments to the current statute specify requirements for instances where acceptance of the POA is required. However, in reliance on § 5608.1 (b)(1), Penn Attorneys/Ohio Bar Title Insurance Company is not required to accept a POA, as the company is not otherwise required to engage in a transaction with the Principal in the same circumstances.

Exhibit A – Notice By Principal

NOTICE

THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON YOU DESIGNATE (YOUR “AGENT”) BROAD POWERS TO HANDLE YOUR PROPERTY, WHICH MAY INCLUDE POWERS TO SELL OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU.

THIS POWER OF ATTORNEY DOES NOT IMPOSE A DUTY ON YOUR AGENT TO EXERCISE GRANTED POWERS, BUT WHEN POWERS ARE EXERCISED, YOUR AGENT MUST USE DUE CARE TO ACT FOR YOUR BENEFIT AND IN ACCORDANCE WITH THIS POWER OF ATTORNEY.

YOUR AGENT MAY EXERCISE THE POWERS GIVEN HERE THROUGHOUT YOUR LIFETIME, EVEN AFTER YOU BECOME INCAPACITATED, UNLESS YOU EXPRESSLY LIMIT THE DURATION OF THESE POWERS OR YOU REVOKE THESE POWERS OR A COURT ACTING ON YOUR BEHALF TERMINATES YOUR AGENT’S AUTHORITY.

YOUR AGENT MUST ACT IN ACCORDANCE WITH YOUR REASONABLE EXPECTATIONS TO THE EXTENT ACTUALLY KNOWN BY YOUR AGENT AND, OTHERWISE, IN YOUR BEST INTEREST, ACT IN GOOD FAITH AND ACT ONLY WITHIN THE SCOPE OF AUTHORITY GRANTED BY YOU IN THE POWER OF ATTORNEY.

THE LAW PERMITS YOU, IF YOU CHOOSE, TO GRANT BROAD AUTHORITY TO AN AGENT UNDER POWER OF ATTORNEY, INCLUDING THE ABILITY TO GIVE AWAY ALL OF YOUR PROPERTY WHILE YOU ARE ALIVE OR TO SUBSTANTIALLY CHANGE HOW YOUR PROPERTY IS DISTRIBUTED AT YOUR DEATH. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD SEEK THE ADVICE OF AN ATTORNEY AT LAW TO MAKE SURE YOU UNDERSTAND IT.

A COURT CAN TAKE AWAY THE POWERS OF YOUR AGENT IF IT FINDS YOUR AGENT IS NOT ACTING PROPERLY.

THE POWERS AND DUTIES OF AN AGENT UNDER POWER OF ATTORNEY ARE EXPLAINED MORE FULLY IN 20 Pa.C.S. CHAPTER 56.

IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER OF YOUR OWN CHOOSING TO EXPLAIN IT TO YOU.

I HAVE READ OR HAD EXPLAINED TO ME THIS NOTICE AND I UNDERSTAND ITS CONTENTS.

(Principal)

(Date)

Exhibit B – Agent Acknowledgment

AGENT ACKNOWLEDGMENT

I, [AGENT], have read the attached power of attorney and am the person identified as the agent for the principal. I hereby acknowledge that when I act as agent:

I shall act in accordance with the principal's reasonable expectations to the extent actually known by me and, otherwise, in the principal's best interest, act in good faith and act only within the scope of authority granted to me by the principal in the power of attorney.

(Agent)

(Date)

Exhibit C – Agent Affidavit

AGENT AFFIDAVIT – PENNSYLVANIA

Penn Attorneys/Ohio Bar Title Insurance Company

COMMITMENT NO.

PREMISES

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF) §

ON THE _____ day of _____ A.D. 20____, before me, the undersigned Officer, personally appeared the undersigned, who being duly sworn according to law and intending to be legally bound, depose(s) and say(s) that the following statements are true and correct to the best of my/our knowledge and belief.

That I, _____, am acting as Agent on behalf of _____, Principal, under the Power of Attorney dated _____ day of _____ A.D. 20____, referred to herein (Power of Attorney).

That no termination of the power by revocation by the Principal, death of the Principal, or if applicable, disability or incapacity or the filing of an action in divorce by the Principal has occurred.

That I am acting in the Principal’s best interest in accordance with the Power of Attorney.

That I am acting in good faith in execution of my duties in accordance with the Power of Attorney.

That I am explicitly acting only within the scope of authority granted to me by the Principal as stated in the Power of Attorney.

This affidavit is made for the purpose of inducing Approved Attorney _____ to hold settlement on the above premises and to make disbursements of funds arising out of said transaction and to induce Ohio Bar Title Insurance Company to issue its title insurance policy insuring the title thereto.

SWORN TO AND SUBSCRIBED before me,

the day and year aforesaid.

Notary Public

My Commission Expires: _____
