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CHICAGO TITLE INSURANCE COMPANY



Commonwealth
LAND TITLE INSURANCE COMPANY

PLEASE DISTRIBUTE TO ALL AFFECTED PERSONNEL

PENNSYLVANIA LEGAL BULLETIN

DATE: November 7, 2014

TO: All Pennsylvania Agents

FROM: Jon R. Effner, V.P. & CLTIC/CTIC Underwriting Counsel
 Laura E. Fox, V.P. & FNTIC Underwriting Counsel
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SUBJECT: **Changes to Power of Attorney Law**

On July 2, 2014, Governor Corbett signed into law House Bill 1429, now known as Act 95 of 2014, which amended certain provisions of Pennsylvania law relating to Powers of Attorney. Changes to portions of the Act were effective immediately while other changes become effective January 1, 2015. The changes were driven in part by a 2010 Pennsylvania Supreme Court case which held that a third party could be liable for relying on a POA and acting on the direction of the agent if the POA was void due to the incapacity of the principal at the time of execution of the POA.

Acceptance, Liability and Immunity – Currently Effective

The statute provides that a person who in good faith (which has been defined as honesty in fact) accepts a POA without actual knowledge that the POA or the purported Agent's authority is void, invalid or terminated, that the Agent is exceeding or improperly exercising his authority, or that a signature thereon is not actually genuine, may without liability rely on the POA. Notwithstanding the presumptions supplied in the statute, you need to do all regular due diligence to investigate the POA and ensure the validity and proper use of the POA being presented including measures such as contacting the Principal, the attorney involved, if any, the notary public and the witnesses.

You have the option, under the statute, to request additional information within 7 business days of presentation to you of the POA. Third parties can request an Agent's certification of relevant factual matters, an affidavit of the Agent as to the continuing effectiveness of the POA, an opinion of counsel and/or an English translation. Ultimately, you need to either accept the use of a particular POA or request additional information within 7 business days of when it was

presented to you. Once you receive the additional information, you then have 5 business days to accept the use of the POA unless the responses you receive provide a substantial basis for making a further request for information. **Attached to this Bulletin is a proposed form of Agent's Affidavit and Certification that you should use for transactions involving POAs. The form of Agent's Affidavit and Certification was not defined in the statute so you can edit this form as necessary to address particular concerns in the transactions you have.**

You can be subject to civil liability for wrongful refusal to accept a POA. You cannot simply insist on your preferred form of POA. However, you are not required to accept a POA if you would not be required to do the transaction with the Principal in the first place or if the POA does not comply with other requirements of Chapter 56 (such as those relating to proper form or execution), if the use of the POA would be unlawful in some other way, if you have actual knowledge or in good faith believe that the POA is not valid, or if the POA is subject to the laws of another state. **If you have questions or concerns about the acceptability or use of a POA, please contact your brand Underwriter for assistance.**

Execution, Notices, Powers – For POAs signed on or after January 1, 2015

All POAs must be signed by the Principal, dated, witnessed by two individuals who are 18 years of age or older, neither of whom is the Agent or Notary Public, and acknowledged before a Notary Public. The Notary Public cannot be the Agent.

There is a new form of Notice to the Principal which must be signed by the Principal and attached to the POA. There is also a new form of Agent Acknowledgment which the Agent must sign and attach to the beginning of the POA before the Agent has the authority to act under the POA. Both new forms are set out in the statute and attached hereto. **These new forms must be part of all POAs executed on or after January 1, 2015.**

Certain powers the Principal wishes to grant to the Agent, such as those involving the Principal's inter vivos trusts, creating or changing rights of survivorship, delegating authority under a POA, making gifts, and exercising fiduciary powers must be specifically granted by the Principal and set out in the POA with further limitations if the Agent is not an ancestor, spouse or descendant of the Principal. **Transactions involving gifting or self-dealing by Agents should get additional scrutiny.**

SUMMARY/REQUIREMENTS

If you have any questions concerning the acceptability or use of a POA, please contact your brand Underwriter. As always, please ensure that you obtain government issued photo identification from the Agent to verify the Agent's identity at closing. All POAs must be recorded in connection with the transaction to be insured – e-recording is permitted. If you are advised that the POA has not yet been signed, please ask the parties to have the Principal sign the Deed or Mortgage, if it is available, at the same time he or she is signing the POA and then verify same with the Notary Public who acknowledged the instruments. Transactions involving POAs that are not durable should get additional scrutiny.

GENERAL DURABLE POWER OF ATTORNEY

NOTICE

THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON YOU DESIGNATE TO BE YOUR "AGENT" BROAD POWERS TO HANDLE YOUR PROPERTY. THOSE POWERS 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 DOCUMENT DOES NOT IMPOSE A DUTY UPON 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, 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 A POWER OF ATTORNEY ARE EXPLAINED MORE FULLY IN 20 Pa.C.S. Ch.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.

DATE

**SAMPLE OF
NOW REQUIRED
ADDITIONAL PAGES**

Agent's Affidavit and Certification

Date:

State of

Premises:

County of

File No.

On the above date before me, a Notary Public for the Commonwealth of Pennsylvania, personally appeared _____ who, being duly sworn according to law, and intending to be legally bound, certifies under penalty of perjury and deposes and says that the following answers and statements are true:

1. _____ (the "Principal"), granted me authority as an agent in a power of attorney dated _____ (the "Power of Attorney").
2. The Principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not been terminated;
3. No court has revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not been terminated.
4. I am acting in accordance with the Principal's reasonable expectations and the Principal's best interests, in good faith and within the scope of the authority granted to me by the Principal in the Power of Attorney.
5. [If the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred.
6. [If I was named as a successor agent, the prior agent is no longer able or willing to serve.

Agent makes this Affidavit and Certification for the purposes of inducing this Company to hold settlement for the above premises, and to issue its Title Insurance Policy insuring the title thereto.

Agent:

Address:

SWORN TO AND SUBSCRIBED
Before me on the date aforesaid

My Commission expires _____

IN WITNESS WHEREOF, I have read or had explained to me this document and I understand its contents. I have executed this General Durable Power of Attorney this _____ day of _____, 201 .

_____ (SEAL)

Witness: _____

Address: _____

Witness: _____

Address: _____

Commonwealth of Pennsylvania :
: ss
County of :

On this _____ day of _____, 201 , before me the undersigned officer, personally appeared _____, and those persons listed as witnesses, all known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument, and acknowledged that _____ executed this document for the purposes therein contained.

Witness my hand and official seal the day and year aforesaid.

Notary Public

I, _____, have read the attached General Durable Power of Attorney and am the person identified as the Agent for the Principal, _____. I hereby acknowledge that, in the absence of a specific provision to the contrary in this document, or in Statute 20 Pa.C.S. Ch.56, when I act as Agent, I shall do all of the following:

I shall exercise the powers for the benefit of the Principal, 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.

Commonwealth of Pennsylvania ;
; ss
County of _____ ;

On this _____ day of _____, 201 , before me the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed it for the purposes therein contained.

Witness my hand and official seal the day and year aforesaid.

Notary Public