

Act 95 of 2014  
Changes to Pennsylvania's  
Power of Attorney Statute

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# History Behind Act 95

- Vine v. PSERB, 9 A.3d 1150 (Pa. 2010)
  - Third party was liable for relying upon facially valid POA
- March 2010 Report of the JSGC Advisory Committee
- Uniform POA Act



# New Execution Requirements

- Signed by principal and dated
- Two witnesses other than notary or agent
- Similar to HCPOA
- Effective January 1, 2015



# New Notice / Agent Acknowledgment

- Revised mandatory notice
- Revised acknowledgement
  - Reflects agent's mandatory, non-waivable duties
- Effective January 1, 2015



# Agent's Mandatory Duties Clarified

- New PEF Code Section 5601.3(a)
  - Based on UPOAA Section 114(a)
- Duties: cannot be waived
  - Act in accordance with principal's expectations and best interests
  - Act in good faith
  - Act only within scope of authority granted

# Agent's Modifiable Duties Clarified

- New PEF Code Section 5601.3(b)
  - Based on UPOAA Section 114(b)
- Default duties
  - Can be modified if POA provides otherwise



# Agent's Modifiable Duties Clarified

## ➤ Modifiable duties:

- Keep assets separate
- Do not create conflict of interest
- Act competently



# Agent's Modifiable Duties Clarified

## ➤ Modifiable duties cont'd:

- Keep records
- Cooperate with health care surrogate
- Preserve principal's estate plan





# Protection of Agent

- Acts in “good faith”
  - Not liable for failing to preserve estate plan
- Acts with care, competence, and diligence
  - Not liable solely because agent may benefit
- Absent breach of duty
  - Not liable if value of principal’s property declines

# Disclosure of Records

- 30 days for agent to disclose
  - Unless POA provides otherwise or court orders
- Disclose records to:
  - Principal
  - Principal's guardian or other fiduciary acting agent
  - Governmental agency (i.e. AAA)
  - After death, principal's PR

# Hot Power Limits

- Agent cannot exercise the following powers unless POA expressly grants authority:
  - Create a trust
  - Make a gift or disclaim property
  - Create or change a right of survivorship



# Hot Power Limits

## ➤ Powers cont'd:

- Create or change a beneficiary designation
- Delegate authority
- Waive survivor benefits under retirement plan
- Exercise fiduciary powers



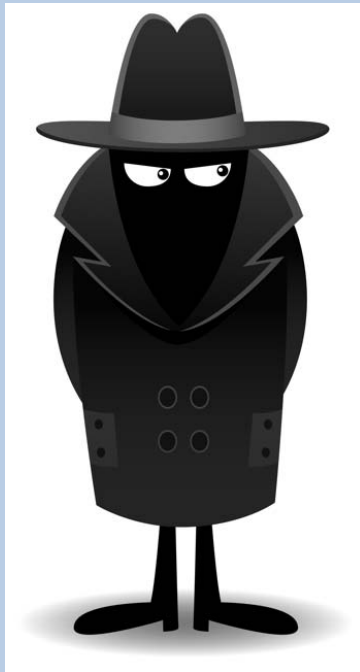
# Rules Regarding Gifts

- Phrase “to make limited gifts” means:
  - Annual exclusion gifts and gift splitting
  - If known, consistent with principal’s objectives
  - If not known, consistent with best interests
    - Value of estate
    - Foreseeable needs
    - Tax-savings
    - Eligibility for benefits
    - History of making gifts



# Incorporated Powers

- If POA grants an agent authority to do all acts, the agent has all powers listed in §5602(a)
- Power to disclaim is removed from 5602(a)



# Incorporated Powers

- Power to engage in life insurance transactions
  - Includes annuities, but no automatic power to change beneficiaries
- Power to engage in retirement plan transactions
  - No longer includes automatic power to change beneficiaries

# Vine Fix Changes

- Third parties given immunity if POA is accepted in good faith
  - Even if POA is void, invalid, or terminated
- Third party must accept POA or ask for:
  - Agent's certification
  - English translation
  - Opinion of counsel within 7 days



# Vine Fix Changes

- Third party must accept POA within 5 days
  - After receipt of agent's certification
  - English translation
  - Opinion of counsel
- Acceptance not required in certain cases

# Vine Fix Changes

- A person who refuses to accept a POA as required by the PEF Code is subject to:
  - (1) Civil liability for pecuniary harm to the economic interests of the principal
  - 2) A court order mandating acceptance of the POA



# Questions That Have Arose?

- First American Title issue
- Combining documents



Thank You!

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