

No. 1999-39

## AN ACT

SB 173

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, further providing for powers of attorney and for orphans' court division appointments; providing for a property set-aside; further providing for transfers by fiduciaries and for separate trusts; and making conforming amendments.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 711 of Title 20 of the Pennsylvania Consolidated Statutes is amended by adding a paragraph to read:

§ 711. Mandatory exercise of jurisdiction through orphans' court division in general.

Except as provided in section 712 (relating to nonmandatory exercise of jurisdiction through the orphans' court division) and section 713 (relating to special provisions for Philadelphia County), the jurisdiction of the court of common pleas over the following shall be exercised through its orphans' court division:

\* \* \*

*(22) Agents.—All matters pertaining to the exercise of powers by agents acting under powers of attorney as provided in Chapter 56 (relating to powers of attorney).*

Section 2. Section 712 of Title 20 is amended to read:

§ 712. Nonmandatory exercise of jurisdiction through orphans' court division.

The jurisdiction of the court of common pleas over the following may be exercised through either its orphans' court division or other appropriate division:

(1) Title to real estate.—The determination of (1) the persons to whom the title to real estate of a decedent or of the creator of an estate or trust has passed by devise or descent or by the terms of the trust instrument where jurisdiction of such estate or trust is exercised through the orphans' court division: Provided, That nothing herein shall be construed to restrict the provisions of section 711 (relating to mandatory exercise of jurisdiction through orphans' court division in general) relating to distribution of real estate in an estate or trust.

(2) Guardian of person.—The appointment, control and removal of the guardian of the person of any incapacitated person.

(3) Other matters.—The disposition of any case where there are substantial questions concerning matters enumerated in section 711 and also matters not enumerated in that section.

**[(4) Powers of attorney.—All matters pertaining to the exercise of powers by attorneys in fact or agents acting under powers of attorney as provided in Chapter 56 (relating to powers of attorney).]**

Section 3. Section 751 of Title 20 is amended by adding a paragraph to read:

§ 751. Appointment; purpose.

The orphans' court division may appoint:

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***(6) Representation of parties in interest.—Persons interested in an estate or trust as beneficiary or heir, if minors or otherwise legally incapacitated, and possible unborn or unascertained persons, may be represented in a judicial proceeding by a guardian or trustee ad litem if the court deems necessary. The court may dispense with the appointment of a guardian or trustee ad litem for a person who is a minor or otherwise legally incapacitated, unborn or unascertained if there is a living person sui juris having a similar interest or if such person is or would be issue of a living ancestor sui juris and interested in the estate or trust whose interest is not adverse to his. If the whereabouts of any beneficiary or heir is unknown or if there is doubt as to his existence, the court shall provide for service of notice and representation in the judicial proceeding as it deems proper.***

Section 4. Sections 2206 and 2514(16.2) of Title 20 are amended to read:  
§ 2206. Right of election personal to surviving spouse.

The right of election of the surviving spouse may be exercised in whole or in part only during his lifetime by him or by his [attorney-in-fact] *agent* in accordance with section 5603(d) (relating to implementation of power of attorney). In the case of a minor spouse, the right of election may be exercised in whole or in part only by the spouse's guardian; in the case of an incapacitated spouse, the right of election may be exercised in whole or in part only by the spouse's guardian or by his [attorney-in-fact] *agent* in accordance with section 5603(d) if the power of attorney qualifies as a durable power of attorney under section 5604 (relating to durable powers of attorney); provided, that, in each case, the election shall be exercised only upon order of the court having jurisdiction of the minor's or the incapacitated person's estate, after finding that exercise of the right is advisable.

§ 2514. Rules of interpretation.

In the absence of a contrary intent appearing therein, wills shall be construed as to real and personal estate in accordance with the following rules:

\* \* \*

**(16.2) Nonademption; [attorney-in-fact] *agent*.—If an [attorney-in-fact] *agent* under a power of attorney, during the time that his principal**

is an incapacitated person within the meaning of section 5501 (relating to meaning of incapacitated person), sells or exchanges property of the principal which is specifically devised or bequeathed, the specific legatee or devisee has the right to the net sale price or the property received in exchange. For the purposes of this paragraph, a sale or exchange of property made by an **[attorney-in-fact] agent** shall be deemed to have been made during the time that the principal is an incapacitated person, unless shown to the contrary. This paragraph does not apply if it is shown that for a period of at least one year subsequent to the sale or exchange the principal was not an incapacitated person within the meaning of section 5501.

\* \* \*

Section 5. Title 20 is amended by adding a section to read:

**§ 3316.1. Set-aside.**

*A personal representative may, without court approval, set aside property in a separate fund prior to actual distribution, after which income earned on the separate fund and appreciation or depreciation of the property set-aside shall belong to the separate fund.*

Section 6. Sections 3319(a) and 3321 heading, (c) and (d) are amended to read:

§ 3319. Power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations.

(a) Power of attorney.—A personal representative may convey real estate, transfer title to personal estate, or perform any other act of administration by an attorney or **[attorneys-in-fact] agent under a power of attorney**. Nothing in this subsection authorizes the delegation of any discretionary power.

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§ 3321. Nominee registration; corporate fiduciary as **[attorney-in-fact] agent**; deposit of securities in a clearing corporation; book-entry securities.

\* \* \*

(c) Corporate fiduciary as **[attorney-in-fact] agent**.—An individual personal representative may employ a bank and trust company or a trust company incorporated in the Commonwealth, or a national bank with trust powers having its principal office in the Commonwealth, to act as his **[attorney-in-fact] agent under a power of attorney** in the performance of ministerial duties, including the safekeeping of estate assets, and such **[attorney-in-fact] agent**, when so acting, may be authorized to hold such investments in the name of its nominee to the same extent and subject to the same requirements that such **[attorney-in-fact] agent**, if it were the personal representative, would be authorized to hold such investments in the name of the nominee.

(d) Deposit of securities in a clearing corporation.—A personal representative holding securities in its fiduciary capacity, any bank and trust company, trust company or National bank holding securities as an **[attorney-**

**in-fact] agent** pursuant to subsection (c) of this section, is authorized to deposit or arrange for the deposit of such securities in a clearing corporation (as defined in Division 8 of Title 13 (relating to investment securities)). When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank and trust company, trust company or National bank acting as **[attorney-in-fact] an agent under a power of attorney** for a personal representative shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities. A bank and trust company, trust company or National bank so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of State chartered institutions, the Department of Banking and, in the case of National banking associations, the comptroller of the currency may from time to time issue including, without limitation, standards for, or the method of making a determination of, the financial responsibility of any clearing corporation in which securities are deposited. A bank and trust company, trust company or National bank acting as custodian for a personal representative shall, on demand by the personal representative, certify in writing to the personal representative the securities so deposited by such bank and trust company, trust company or National bank in such clearing corporation for the account of such personal representative. A personal representative shall, on demand by any party to a judicial proceeding for the settlement of such personal representative's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such personal representative in such clearing corporation for its account as such personal representative.

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Section 7. Section 3504 of Title 20 is repealed.

Section 8. Sections 5144, 5306(c), 5521(b), 5552 and 5601 of Title 20 are amended to read:

§ 5144. Powers, duties and liabilities identical with personal representatives.

The provisions concerning the powers, duties and liabilities of a guardian appointed by the court shall be the same as those set forth in the following provisions of this title for the administration of a decedent's estate:

Section 3313 (relating to liability insurance).

Section 3314 (relating to continuation of business).

Section 3315 (relating to incorporation of estate's business).

Section 3317 (relating to claims against co-fiduciary).

Section 3318 (relating to revival of judgments against personal representative).

Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).

Section 3320 (relating to voting stock by proxy).

Section 3321 (relating to nominee registration; corporate fiduciary as **[attorney-in-fact] agent**; deposit of securities in a clearing corporation; book-entry securities).

Section 3322 (relating to acceptance of deed in lieu of foreclosure).

Section 3323 (relating to compromise of controversies).

Section 3324 (relating to death or incapacity of fiduciary).

Section 3327 (relating to surviving or remaining personal representatives).

Section 3328 (relating to disagreement of personal representatives).

Section 3331 (relating to liability of personal representatives on contracts).

Section 3332 (relating to inherent powers and duties).

§ 5306. Other transfer by fiduciary.

\* \* \*

(c) Additional requirements for transfer.—A transfer under subsection (a) or (b) may be made only if:

(1) the personal representative, trustee or guardian considers the transfer to be in the best interest of the minor;

(2) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement or other governing instrument; and

(3) the transfer is authorized by the court if it exceeds **[\$10,000] \$25,000** in value.

§ 5521. Provisions concerning powers, duties and liabilities.

\* \* \*

(b) Duty of guardian of the estate.—The provisions concerning the powers, duties and liabilities of guardians of incapacitated persons' estates shall be the same as those set forth in the following provisions of this title relating to personal representatives of decedents' estates and guardians of minors' estates:

Section 3313 (relating to liability insurance).

Section 3314 (relating to continuation of business).

Section 3315 (relating to incorporation of estate's business).

Section 3317 (relating to claims against co-fiduciary).

Section 3318 (relating to revival of judgments against personal representative).

Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).

Section 3320 (relating to voting stock by proxy).

Section 3321 (relating to nominee registration; corporate fiduciary as **[attorney-in-fact] agent**; deposit of securities in a clearing corporation; book-entry securities).

Section 3322 (relating to acceptance of deed in lieu of foreclosure).

Section 3323 (relating to compromise of controversies).

Section 3324 (relating to death or incapacity of fiduciary).

Section 3327 (relating to surviving or remaining personal representatives).

Section 3328 (relating to disagreement of personal representatives).

Section 3331 (relating to liability of personal representative on contracts).

Section 3332 (relating to inherent powers and duties).

Section 3355 (relating to restraint of sale).

Section 3356 (relating to purchase by personal representative).

Section 3359 (relating to record of proceedings; county where real estate lies).

Section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).

Section 3372 (relating to substitution of personal representative in pending action or proceedings).

Section 3374 (relating to death or removal of fiduciary).

Section 3390 (relating to specific performance of contracts).

Section 5141 (relating to possession of real and personal property).

Section 5142 (relating to inventory).

Section 5143 (relating to abandonment of property).

Section 5145 (relating to investments).

Section 5146 (relating to guardian named in conveyance).

Section 5147 (relating to proceedings against guardian).

Section 5151 (relating to power to sell personal property).

Section 5154 (relating to title of purchaser).

Section 5155 (relating to order of court).

\* \* \*

§ 5552. Services to individuals whose decision-making ability is impaired.

Guardianship support agencies shall provide guardianship services under this chapter. Such services shall include, but not be limited to:

(1) Assistance to individuals in decision making, including financial management training.

(2) Assistance to individuals in securing and maintaining benefits and services.

(3) Recruiting, training and maintaining a group of individuals to serve as representative payees or similar fiduciaries established by benefit-issuing agencies, **[attorneys-in-fact] agents** pursuant to a power of attorney, and trustees.

§ 5601. General provisions.

(a) General rule.—In addition to all other powers that may be delegated to an **[attorney-in-fact] agent**, any or all of the powers referred to in section 5602(a) (relating to form of power of attorney) may lawfully be granted in writing to *an agent* and, unless the power of attorney expressly directs to the contrary, shall be construed in accordance with the provisions of this chapter.

(b) Execution.—**[All powers of attorney shall be signed by the principal in his own handwriting, but, if for any physical reason he is unable to sign his name, the principal may make his mark to which his name shall be subscribed in his presence before or after he makes his mark. The principal shall make his mark in the presence of two witnesses who shall sign their names to the power of attorney in his presence.]** *A power of attorney shall be signed and dated by the principal by signature or mark, or by another on behalf of and at the direction of the principal. If the power of attorney is executed by mark or by another individual, then it shall be witnessed by two individuals, each of whom is 18 years of age or older. A witness shall not be the individual who signed the power of attorney on behalf of and at the direction of the principal.*

(c) Notice.—*All powers of attorney shall include the following notice in capital letters at the beginning of the power of attorney. The notice shall be signed by the principal. In the absence of a signed notice, upon a challenge to the authority of an agent to exercise a power under the power of attorney, the agent shall have the burden of demonstrating that the exercise of this authority is proper.*

**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 keep your funds separate from your agent’s funds.*

*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.*

.....  
.....

*(Principal)*

*(Date)*

*(d) Acknowledgment executed by agent.—An agent shall have no authority to act as agent under the power of attorney unless the agent has first executed and affixed to the power of attorney an acknowledgment in substantially the following form:*

*I, ....., have read the attached 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 the power of attorney or in 20 Pa.C.S. when I act as agent:*

*I shall exercise the powers for the benefit of the principal.*

*I shall keep the assets of the principal separate from my assets.*

*I shall exercise reasonable caution and prudence.*

*I shall keep a full and accurate record of all actions, receipts and disbursements on behalf of the principal.*

.....  
.....

*(Agent)*

*(Date)*

*(e) Fiduciary relationship.—An agent acting under a power of attorney has a fiduciary relationship with the principal. In the absence of a specific provision to the contrary in the power of attorney, the fiduciary relationship includes the duty to:*

*(1) Exercise the powers for the benefit of the principal.*

*(2) Keep separate the assets of the principal from those of an agent.*

*(3) Exercise reasonable caution and prudence.*

*(4) Keep a full and accurate record of all actions, receipts and disbursements on behalf of the principal.*

*(f) Definition.—As used in this chapter, the term “agent” means a person designated by a principal in a power of attorney to act on behalf of that principal.*

Section 9. Title 20 is amended by adding a section to read:

§ 5601.2. *Special rules for gifts.*

*(a) General rule.—A principal may empower an agent to make a gift in a power of attorney only as provided in this section.*

*(b) Limited gifts.—A principal may authorize an agent to make a limited gift as defined under section 5603(a)(2) (relating to implementation of power of attorney) by the inclusion of:*

*(1) the language quoted in section 5602(a)(1) (relating to form of power of attorney); or*

*(2) other language showing a similar intent on the part of the principal to empower the agent to make a limited gift.*



*(c) Unlimited gifts.*—A principal may authorize an agent to make any other gift only by specifically providing for and defining the agent's authority in the power of attorney.

*(d) Nature of gifts.*—In the absence of a specific provision to the contrary in the power of attorney:

*(1) A power to make a limited gift shall be construed to empower the agent to make a gift to each donee either outright or in trust.*

*(2) In the case of any gift to a minor, that gift may be made in trust or in accordance with Chapter 53 (relating to Pennsylvania Uniform Transfers to Minors Act) or section 5155 (relating to order of court).*

*(3) In the case of any gift made in trust, the agent may execute a deed of trust for such purpose, designating one or more persons, including the agent, as original or successor trustees, or may make an addition to an existing trust.*

*(4) In making any gift, the agent need not treat the donees equally or proportionately and may entirely exclude one or more permissible donees.*

*(5) The pattern followed on the occasion of any gift need not be followed on the occasion of any other gift.*

*(e) Equity.*—An agent and the donee of a gift shall be liable as equity and justice may require to the extent that, as determined by the court, a gift made by the agent is inconsistent with prudent estate planning or financial management for the principal or with the known or probable intent of the principal with respect to disposition of the estate.

*(f) Third party.*—No transfer agent, depository or other third party acting in good faith shall have any responsibility to see to the proper discharge of the agent's duty.

Section 10. Sections 5602, 5603, 5604, 5605, 5606, 5607 and 5608 of Title 20 are amended to read:

§ 5602. Form of power of attorney.

(a) Specification of powers.—A principal may, by inclusion of the language quoted in any of the following paragraphs or by inclusion of other language showing a similar intent on the part of the principal, empower [his attorney-in-fact] *an agent* to do any or all of the following, each of which is defined in section 5603 (relating to implementation of power of attorney):

(1) [Either:

(i) "to make gifts"; or

(ii) "to] "To make limited gifts."

(2) "To create a trust for my benefit."

(3) "To make additions to an existing trust for my benefit."

(4) "To claim an elective share of the estate of my deceased spouse."

(5) "To disclaim any interest in property."

(6) "To renounce fiduciary positions."

(7) "To withdraw and receive the income or corpus of a trust."

- (8) "To authorize my admission to a medical, nursing, residential or similar facility and to enter into agreements for my care."
- (9) "To authorize medical and surgical procedures."
- (10) "To engage in real property transactions."
- (11) "To engage in tangible personal property transactions."
- (12) "To engage in stock, bond and other securities transactions."
- (13) "To engage in commodity and option transactions."
- (14) "To engage in banking and financial transactions."
- (15) "To borrow money."
- (16) "To enter safe deposit boxes."
- (17) "To engage in insurance transactions."
- (18) "To engage in retirement plan transactions."
- (19) "To handle interests in estates and trusts."
- (20) "To pursue claims and litigation."
- (21) "To receive government benefits."
- (22) "To pursue tax matters."
- (23) "To make an anatomical gift of all or part of my body."

(b) Appointment of **[attorney-in-fact] agent** and successor **[attorney] agent**.—A principal may provide for:

(1) The appointment of more than one **[attorney-in-fact] agent**, who shall act jointly, severally or in any other combination that the principal may designate, but if there is no such designation, such **[attorneys-in-fact] agents** shall only act jointly.

(1.1) The delegation of one or more powers by the **[attorney-in-fact] agent** to such person or persons as the **[attorney-in-fact] agent** may designate and on terms as the power of attorney may specify.

(2) The appointment of one or more successor **[attorneys-in-fact] agents** who shall serve in the order named in the power of attorney, unless the principal expressly directs to the contrary.

(3) The delegation to an original or successor **[attorney-in-fact] agent** of the power to appoint his successor or successors.

(c) Filing of power of attorney.—An executed copy of the power of attorney may be filed with the clerk of the orphans' court division of the court of common pleas in the county in which the principal resides, and if it is acknowledged, it may be recorded in the office for the recording of deeds of the county of the principal's residence and of each county in which real property to be affected by an exercise of the power is located. The clerk of the orphans' court division or any office for the recording of deeds with whom the power has been filed, may, upon request, issue certified copies of the power of attorney. Each such certified copy shall have the same validity and the same force and effect as if it were the original, and it may be filed of record in any other office of this Commonwealth (including, without limitation, the clerk of the orphans' court division or the office for the recording of deeds) as if it were the original.

§ 5603. Implementation of power of attorney.

(a) Power [to make gifts and power] to make limited gifts.—

[(1) A power “to make gifts” shall mean that the attorney-in-fact may make gifts for and on behalf of the principal to any donees (including the attorney-in-fact) and in such amounts as the attorney-in-fact may decide.]

(2) A power “to make limited gifts” shall mean that the [attorney-in-fact] *agent* may make only gifts for or on behalf of the principal which are limited as follows:

(i) The class of permissible donees *under this paragraph* shall consist solely of the principal’s spouse [and], issue *and a spouse of the principal’s issue* (including the [attorney-in-fact] *agent* if [he is] a member of *any* such class), or any of them.

(ii) During each calendar year, the gifts made to [each] *any permissible* donee, pursuant to such power, shall have an aggregate value not in excess of, and shall be made in such manner as to qualify in their entirety for, the [principal’s] annual exclusion from the Federal gift tax permitted under section 2503(b) of the Internal Revenue Code[, determined without regard to section 2513(a) thereof (or any successor provision to the code)] *of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) for the principal and, if applicable, the principal’s spouse.*

[(iii) The attorney-in-fact shall be responsible as equity and justice may require to the extent that any gift made pursuant to a power “to make limited gifts” exceeds the limitations imposed by subparagraph (i) or (ii).

(3) A power to make gifts, whether or not limited as aforesaid, shall be construed to empower the attorney-in-fact to make gifts to each donee either outright or in trust; in the case of a gift to a minor, such gifts may be made in trust or in accordance with Chapter 53 (relating to Pennsylvania Uniform Transfers to Minors Act) or section 5155 (relating to order of court). In the case of a gift made in trust, the attorney-in-fact may execute a deed of trust for such purpose, designating one or more persons (including the attorney-in-fact) as original or successor trustees, or may make additions to an existing trust. In making any gifts, the attorney-in-fact need not treat the donees equally or proportionately and may entirely exclude one or more permissible donees, and the pattern followed on the occasion of any gift or gifts need not be followed on the occasion of any other gift or gifts.

(4) An attorney-in-fact and the donee of a gift shall be responsible as equity and justice may require to the extent that a gift made by the attorney-in-fact is inconsistent with prudent estate planning or financial management for the principal or with the known or probable intent of the principal with respect to disposition of his estate.

(5) No transfer agent, depository or other third party acting in good faith shall have any responsibility to see to the proper discharge by the attorney-in-fact of his duties hereunder.]

(iv) *In addition to the gifts authorized by subparagraphs (i) and (ii), a gift made pursuant to such power may be for the tuition or medical care of any permissible donee to the extent that the gift is excluded from the Federal gift tax under section 2503(e) of the Internal Revenue Code of 1986 as a qualified transfer.*

(v) *The agent may consent, pursuant to section 2513(a) of the Internal Revenue Code of 1986, to the splitting of gifts made by the principal's spouse to the principal's issue or a spouse of the principal's issue in any amount and to the splitting of gifts made by the principal's spouse to any other person in amounts not exceeding the aggregate annual gift tax exclusions for both spouses under section 2503(b) of the Internal Revenue Code of 1986.*

(b) Power to create a trust.—A power “to create a trust for my benefit” shall mean that the [attorney-in-fact] agent may execute a deed of trust, designating one or more persons (including the [attorney-in-fact] agent) as original or successor trustees and transfer to the trust any or all property owned by the principal as the [attorney-in-fact] agent may decide, subject to the following conditions:

(1) The income and corpus of the trust shall either be distributable to the principal or to the guardian of his estate, or be applied for the principal's benefit, and upon the principal's death, any remaining balance of corpus and unexpended income of the trust shall be distributed to the deceased principal's estate.

(2) The deed of trust may be amended or revoked at any time and from time to time, in whole or in part, by the principal or the [attorney-in-fact] agent, provided that any such amendment by the [attorney-in-fact] agent shall not include any provision which could not be included in the original deed.

(c) Power to make additions to an existing trust.—A power “to make additions to an existing trust for my benefit” shall mean that the [attorney-in-fact] agent, at any time or times, may add any or all of the property owned by the principal to any trust in existence when the power was created, provided that the terms of such trust relating to the disposition of the income and corpus during the lifetime of the principal are the same as those set forth in subsection (b). The [attorney-in-fact] agent and the trust and its beneficiaries shall be answerable as equity and justice may require to the extent that an addition to a trust is inconsistent with prudent estate planning or financial management for the principal or with the known or probable intent of the principal with respect to disposition of his estate.

(d) Power to claim an elective share.—A power “to claim an elective share of the estate of my deceased spouse” shall mean that the [attorney-in-fact] agent may elect to take against the will and conveyances of the

principal's deceased spouse, disclaim any interest in property which the principal is required to disclaim as a result of such election, retain any property which the principal has the right to elect to retain, file petitions pertaining to the election, including petitions to extend the time for electing and petitions for orders, decrees and judgments in accordance with section 2211(c) and (d) (relating to determination of effect of election; enforcement), and take all other actions which the **[attorney-in-fact] agent** deems appropriate in order to effectuate the election: Provided, however, That the election shall be made only upon the approval of the court having jurisdiction of the principal's estate in accordance with section 2206 (relating to right of election personal to surviving spouse) in the case of a principal who has been adjudicated an incapacitated person, or upon the approval of the court having jurisdiction of the deceased spouse's estate in the case of a principal who has not been adjudicated an incapacitated person.

(e) Power to disclaim any interest in property.—A power “to disclaim any interest in property” shall mean that the **[attorney-in-fact] agent** may release or disclaim any interest in property on behalf of the principal in accordance with Chapter 62 (relating to disclaimers) or section 6103 (relating to release or disclaimer of powers or interests), provided that any disclaimer under Chapter 62 shall be in accordance with the provisions of section 6202 (relating to disclaimers by fiduciaries or **[attorneys-in-fact] agents**) in the case of a principal who shall have been adjudicated an incapacitated person at the time of the execution of the disclaimer.

(f) Power to renounce fiduciary position.—

(1) A power “to renounce fiduciary positions” shall mean that the **[attorney-in-fact] agent** may:

(i) renounce any fiduciary position to which the principal has been appointed; and

(ii) resign any fiduciary position in which the principal is then serving, and either file an accounting with a court of competent jurisdiction or settle on receipt and release or other informal method as the **[attorney-in-fact] agent** deems advisable.

(2) The term “fiduciary” shall be deemed to include, without limitation, an executor, administrator, trustee, guardian, **[attorney-in-fact] agent** or officer or director of a corporation.

(g) Power to withdraw and receive.—A power “to withdraw and receive the income or corpus of a trust” shall mean that the **[attorney-in-fact] agent** may:

(1) demand, withdraw and receive the income or corpus of any trust over which the principal has the power to make withdrawals;

(2) request and receive the income or corpus of any trust with respect to which the trustee thereof has the discretionary power to make distribution to or on behalf of the principal; and

(3) execute a receipt and release or similar document for the property received under paragraphs (1) and (2).

(h) Power to authorize admission to medical facility and power to authorize medical procedures.—

(1) A power “to authorize my admission to a medical, nursing, residential or similar facility, and to enter into agreements for my care” shall mean that the **[attorney-in-fact] agent** may apply for the admission of the principal to a medical, nursing, residential or other similar facility, execute any consent or admission forms required by such facility which are consistent with this paragraph, and enter into agreements for the care of the principal by such facility or elsewhere during his lifetime or for such lesser period of time as the **[attorney-in-fact] agent** may designate, including the retention of nurses for the principal.

(2) A power “to authorize medical and surgical procedures” shall mean that the **[attorney-in-fact] agent** may arrange for and consent to medical, therapeutical and surgical procedures for the principal, including the administration of drugs.

(i) Power to engage in real property transactions.—A power to “engage in real property transactions” shall mean that the **[attorney-in-fact] agent** may:

(1) Acquire or dispose of real property (including the principal’s residence) or any interest therein, including, but not limited to, the power to buy or sell at public or private sale for cash or credit or partly for each; exchange, mortgage, encumber, lease for any period of time; give or acquire options for sales, purchases, exchanges or leases; buy at judicial sale any property on which the principal holds a mortgage.

(2) Manage, repair, improve, maintain, restore, alter, build, protect or insure real property; demolish structures or develop real estate or any interest in real estate.

(3) Collect rent, sale proceeds and earnings from real estate; pay, contest, protest and compromise real estate taxes and assessments.

(4) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part and enforce any mortgage, encumbrance, lien or other claim to real property.

(5) Grant easements, dedicate real estate, partition and subdivide real estate and file plans, applications or other documents in connection therewith.

(6) In general, exercise all powers with respect to real property that the principal could if present.

(j) Power to engage in tangible personal property transactions.—A power to “engage in tangible personal property transactions” shall mean that the **[attorney-in-fact] agent** may:

(1) Buy, sell, lease, exchange, collect, possess and take title to tangible personal property.

(2) Move, store, ship, restore, maintain, repair, improve, manage, preserve and insure tangible personal property.

(3) In general, exercise all powers with respect to tangible personal property that the principal could if present.

(k) Power to engage in stock, bond and other securities transactions.—A power to “engage in stock, bond and other securities transactions” shall mean that the **[attorney-in-fact] agent** may:

(1) Buy or sell (including short sales) at public or private sale for cash or credit or partly for cash all types of stocks, bonds and securities; exchange, transfer, hypothecate, pledge or otherwise dispose of any stock, bond or other security.

(2) Collect dividends, interest and other distributions.

(3) Vote in person or by proxy, with or without power of substitution, either discretionary, general or otherwise, at any meeting.

(4) Join in any merger, reorganization, voting-trust plan or other concerted action of security holders and make payments in connection therewith.

(5) Hold any evidence of the ownership of any stock, bond or other security belonging to the principal in the name of a nominee selected by the **[attorney-in-fact] agent**.

(6) Deposit or arrange for the deposit of securities in a clearing corporation as defined in Division 8 of Title 13 (relating to investment securities).

(7) Receive, hold or transfer securities in book-entry form.

(8) In general, exercise all powers with respect to stocks, bonds and securities that the principal could if present.

(l) Power to engage in commodity and option transactions.—A power to “engage in commodity and option transactions” shall mean that the **[attorney-in-fact] agent** may:

(1) Buy, sell, exchange, assign, convey, settle and exercise commodities future contracts and call and put options on stocks and stock indices traded on a regulated options exchange and collect and receipt for all proceeds of any such transactions.

(2) Establish or continue option accounts for the principal with any securities of a futures broker.

(3) In general, exercise all powers with respect to commodity and option transactions that the principal could if present.

(m) Power to engage in banking and financial transactions.—A power to “engage in banking and financial transactions” shall mean that the **[attorney-in-fact] agent** may:

(1) Sign checks, drafts, orders, notes, bills of exchange and other instruments (“items”) or otherwise make withdrawals from checking, savings, transaction, deposit, loan or other accounts in the name of the principal and endorse items payable to the principal and receive the proceeds in cash or otherwise.

(2) Open and close such accounts in the name of the principal, purchase and redeem savings certificates, certificates of deposit or similar

instruments in the name of the principal and execute and deliver receipts for any funds withdrawn or certificates redeemed.

(3) Deposit any funds received for the principal in accounts of the principal.

(4) Do all acts regarding checking, savings, transaction, deposit, loan or other accounts, savings certificates, certificates of deposit or similar instruments, the same as the principal could do if personally present.

(5) Sign any tax information or reporting form required by Federal, State or local taxing authorities, including, but not limited to, any Form W-9 or similar form.

(6) In general, transact any business with a banking or financial institution that the principal could if present.

(n) Power to borrow money.—A power to “borrow money” shall mean that the **[attorney-in-fact] agent** may borrow money and pledge or mortgage any properties that the principal owns as a security therefor.

(o) Power to enter safe deposit boxes.—A power to “enter safe deposit boxes” shall mean that the **[attorney-in-fact] agent** may enter any safe deposit box in the name of the principal; add to or remove the contents of such box, open and close safe deposit boxes in the name of the principal; however, the **[attorney-in-fact] agent** shall not deposit or keep in any safe deposit box of the principal any property in which the **[attorney-in-fact] agent** has a personal interest.

(p) Power to engage in insurance transactions.—A power to “engage in insurance transactions” shall mean that the **[attorney-in-fact] agent** may:

(1) Purchase, continue, renew, convert or terminate any type of insurance (including, but not limited to, life, accident, health, disability or liability insurance) and pay premiums and collect benefits and proceeds under insurance policies.

(2) Exercise nonforfeiture provisions under insurance policies.

(3) In general, exercise all powers with respect to insurance that the principal could if present; however, the **[attorney-in-fact] agent** cannot designate himself beneficiary of a life insurance policy unless the **[attorney-in-fact] agent** is the spouse, child, grandchild, parent, brother or sister of the principal.

(q) Power to engage in retirement plan transactions.—A power to “engage in retirement plan transactions” shall mean that the **[attorney-in-fact] agent** may contribute to, withdraw from and deposit funds in any type of retirement plan (including, but not limited to, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and retirement plan, deferred compensation plan or individual retirement account), select and change payment options for the principal, make roll-over contributions from any retirement plan to other retirement plans and, in general, exercise all powers with respect to retirement plans that the principal could if present.

(r) Power to handle interests in estates and trusts.—A power to “handle interests in estates and trusts” shall mean that the **[attorney-in-fact] agent**



may receive a bequest, devise, gift or other transfer of real or personal property to the principal in the principal's own right or as a fiduciary for another and give full receipt and acquittance therefor or a refunding bond therefor; approve accounts of any estate, trust, partnership or other transaction in which the principal may have an interest; and enter into any compromise and release in regard thereto.

(s) Power to pursue claims and litigation.—A power to “pursue claims and litigation” shall mean that the **[attorney-in-fact] agent** may:

(1) Institute, prosecute, defend, abandon, arbitrate, compromise, settle or otherwise dispose of, and appear for the principal in, any legal proceedings before any tribunal regarding any claim relating to the principal or to any property interest of the principal.

(2) Collect and receipt for any claim or settlement proceeds; waive or release rights of the principal; employ and discharge attorneys and others on such terms (including contingent fee arrangements) as the **[attorney-in-fact] agent** deems appropriate.

(3) In general, exercise all powers with respect to claims and litigation that the principal could if present.

(t) Power to receive government benefits.—A power to “receive government benefits” shall mean that the **[attorney-in-fact] agent** may prepare, sign and file any claim or application for Social Security, unemployment, military service or other government benefits; collect and receipt for all government benefits or assistance; and, in general, exercise all powers with respect to government benefits that the principal could if present.

(u) Power to pursue tax matters.—A power to “pursue tax matters” shall mean that the **[attorney-in-fact] agent** may:

(1) Prepare, sign, verify and file any tax return on behalf of the principal, including, but not limited to, joint returns and declarations of estimated tax; examine and copy all the principal's tax returns and tax records.

(2) Sign an Internal Revenue Service power of attorney form.

(3) Represent the principal before any taxing authority; protest and litigate tax assessments; claim, sue for and collect tax refunds; waive rights and sign all documents required to settle, pay and determine tax liabilities; sign waivers extending the period of time for the assessment of taxes or tax deficiencies.

(4) In general, exercise all powers with respect to tax matters that the principal could if present.

(u.1) Power to make anatomical gift.—A power “to make an anatomical gift of all or part of my body” shall mean that the **[attorney-in-fact] agent** may arrange and consent, *either before or after the death of the principal*, to procedures to make an anatomical gift in accordance with Chapter 86 (relating to anatomical gifts).

(v) Powers generally.—All powers described in this section shall be exercisable with respect to any matter in which the principal is in any way

interested at the giving of the power of attorney or thereafter and whether arising in this Commonwealth or elsewhere.

§ 5604. Durable powers of attorney.

(a) Definition.—A durable power of attorney is a power of attorney by which a principal designates another his **[attorney-in-fact] agent** in writing. The authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity. A principal may provide in the power of attorney that the power shall become effective at a specified future time or upon the occurrence of a specified contingency, including the disability or incapacity of the principal.

(b) Durable power of attorney not affected by disability or lapse of time.—All acts done by an **[attorney-in-fact] agent** pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled. Unless the power of attorney states a time of termination, it is valid notwithstanding the lapse of time since its execution.

(c) Relation of **[attorney-in-fact] agent** to court-appointed guardian.—

(1) If, following execution of a durable power of attorney, the principal is adjudicated an incapacitated person and a guardian is appointed for his estate, the **[attorney-in-fact] agent** is accountable to the guardian as well as to the principal. The guardian shall have the same power to revoke or amend the power of attorney that the principal would have had if he were not an incapacitated person.

(2) A principal may nominate, by a durable power of attorney, the guardian of his estate or of his person for consideration by the court if incapacity proceedings for the principal's estate or person are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

§ 5605. Power of attorney not revoked until notice.

(a) Death of principal.—The death of a principal who has executed a written power of attorney, durable or otherwise, shall not revoke or terminate the agency as to the **[attorney-in-fact] agent** or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, shall bind successors in interest of the principal.

(b) Disability or incapacity of principal.—The disability or incapacity of a principal who has previously executed a written power of attorney which is not a durable power shall not revoke or terminate the agency as to the **[attorney-in-fact] agent** or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, shall bind the principal and his successors in interest.

(c) [Divorce] *Filing a complaint in divorce.*—If a principal designates his spouse as his [attorney-in-fact] agent and thereafter *either* the principal [and] *or* his spouse [are divorced from the bonds of matrimony] files an *action in divorce*, the designation of the spouse as [attorney-in-fact] agent shall be [deemed] revoked as of the time the [divorce decree became effective] *action was filed*, unless it appears from the power of attorney that the designation was intended to survive [the divorce] *such an event*.

§ 5606. Proof of continuance of powers of attorney by affidavit.

As to acts undertaken in good faith reliance thereon, an affidavit executed by the [attorney-in-fact] agent under a power of attorney stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation, death or, if applicable, disability or incapacity or *the filing of an action in divorce* and that, if applicable, the specified future time or contingency has occurred, is conclusive proof of the nonrevocation or nontermination of the power at that time and conclusive proof that the specified time or contingency has occurred. The [attorney-in-fact] agent shall furnish an affidavit to a person relying upon the power of attorney on demand; however, good faith reliance on the power shall protect the person who acts without an affidavit. If the exercise of the power of attorney requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

§ 5607. Corporate [attorney-in-fact] agent.

A bank and trust company or a trust company [incorporated] *authorized to act as a fiduciary* in this Commonwealth[, or a National bank with trust powers having its principal office in this Commonwealth,] *and* acting as an [attorney-in-fact] agent pursuant to a power of attorney, or appointed by another who possesses such a power, shall have the powers, duties and liabilities set forth in section 3321 (relating to nominee registration; corporate fiduciary as [attorney-in-fact] agent; deposit of securities in a clearing corporation; book-entry securities).

§ 5608. Liability.

(a) Third party liability.—Any person who is given instructions by an [attorney-in-fact] agent in accordance with the terms of a power of attorney shall comply with the instructions. Any person who without reasonable cause fails to comply with those instructions shall be subject to civil liability for any damages resulting from noncompliance. Reasonable cause under this subsection shall include, but not be limited to, a good faith report having been made by the third party to the local protective services agency regarding abuse, neglect, exploitation or abandonment pursuant to section [5(a)] 302 of the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act.

(b) Third party immunity.—Any person who acts in good faith reliance on a power of attorney shall incur no liability as a result of acting in accordance with the instructions of the **[attorney-in-fact] agent**.

Section 11. Title 20 is amended by adding sections to read:

**§ 5609. Compensation and reimbursement for expenses.**

(a) *Compensation.*—*In the absence of a specific provision to the contrary in the power of attorney, the agent shall be entitled to reasonable compensation based upon the actual responsibilities assumed and performed.*

(b) *Reimbursement for expenses.*—*An agent shall be entitled to reimbursement for actual expenses advanced on behalf of the principal and to reasonable expenses incurred in connection with the performance of the agent's duties.*

**§ 5610. Account.**

*An agent shall file an account of his administration whenever directed to do so by the court and may file an account at any other time. All accounts shall be filed in the office of the clerk in the county where the principal resides.*

**§ 5611. Validity.**

*A power of attorney executed in another state or jurisdiction and in conformity with the laws of that state or jurisdiction shall be considered valid in this Commonwealth, except to the extent that the power of attorney executed in another state or jurisdiction would allow an agent to make a decision inconsistent with the laws of this Commonwealth.*

Section 12. Sections 6202, 7133, 7191 and 8611(a) of Title 20 are amended to read:

**§ 6202. Disclaimers by fiduciaries or **[attorneys-in-fact] agents**.**

A disclaimer on behalf of a decedent, a minor or an incapacitated person may be made by his personal representative, the guardian of his estate or in the case of an incapacitated person who executed a power of attorney which confers the authority to disclaim upon his **[attorney-in-fact] agent** and which qualifies as a durable power of attorney under section 5604 (relating to durable powers of attorney) by such **[attorney-in-fact] agent**, if, in each case, the court having jurisdiction of the estate authorizes the disclaimer after finding that it is advisable and will not materially prejudice the rights of creditors, heirs or beneficiaries of the decedent, the minor or his creditors, or the incapacitated person or his creditors, as the case may be. A personal representative may make a disclaimer on behalf of his decedent without court authorization if the will of the decedent so authorizes him.

**§ 7133. Powers, duties and liabilities identical with personal representatives.**

The provisions concerning the powers, duties and liabilities of a trustee shall be the same as those set forth in the following provisions of this title for the administration of a decedent's or a minor's estate:

Section 3313 (relating to liability insurance).

Section 3314 (relating to continuation of business).

Section 3315 (relating to incorporation of estate's business).

Section 3317 (relating to claims against co-fiduciary).

Section 3318 (relating to revival of judgments against personal representative).

Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).

Section 3320 (relating to voting stock by proxy).

Section 3321 (relating to nominee registration; corporate fiduciary as [attorney-in-fact] *agent*; deposit of securities in a clearing corporation; book-entry securities).

Section 3322 (relating to acceptance of deed in lieu of foreclosure).

Section 3323 (relating to compromise of controversies).

Section 3324 (relating to death or incapacity of fiduciary).

Section 3327 (relating to surviving or remaining personal representatives).

Section 3328 (relating to disagreement of personal representatives).

Section 3331 (relating to liability of personal representative on contracts).

Section 3332 (relating to inherent powers and duties).

Section 3353 (relating to order of court).

Section 3354 (relating to power given in governing instrument).

Section 3355 (relating to restraint of sale).

Section 3356 (relating to purchase by personal representative).

Section 3358 (relating to collateral attack).

Section 3359 (relating to record of proceedings; county where real estate lies).

Section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).

Section 5147 (relating to proceedings against guardian).

§ 7191. Separate trusts.

*(a) Without court approval.—A trustee may, without court approval, divide a trust into separate trusts, allocating to each separate trust either a fractional share of each asset and each liability held by the original trust or assets having an appropriate aggregate fair market value and fairly representing the appreciation or depreciation in the assets of the original trust as a whole. If the division reflects disclaimers or different tax elections, the division shall relate back to the date to which the disclaimer or tax election relates.*

*(b) With court approval.—The court, for cause shown, may authorize the division of a trust into two or more separate trusts upon such terms and conditions and with such notice as the court shall direct.*

*(c) Separate fund.—A trustee may, without court approval, set aside property in a separate fund prior to actual distribution, after which income earned on the separate fund and appreciation or depreciation of the property set-aside shall belong to the separate fund.*

§ 8611. Persons who may execute anatomical gift.

(a) General rule.—Any individual of sound mind and 18 years of age or more may give all or any part of his body for any purpose specified in section 8612 (relating to persons who may become donees; purposes for which anatomical gifts may be made), the gift to take effect upon death. ***Any agent acting under a power of attorney which authorizes the agent to make anatomical gifts may effectuate a gift for any purpose specified in section 8612.*** Any individual who is a minor and 16 years [or] of age or older may effectuate a gift for any purpose specified in section 8612, provided parental or guardian consent is deemed given. Parental or guardian consent shall be noted on the minor's donor card, application for the donor's learner's permit or driver's license or other document of gift. A gift of the whole body shall be invalid unless made in writing at least 15 days prior to the date of death or consent is obtained from the legal next of kin. Where there are adult children of the deceased who are not children of the surviving spouse, their consent shall also be required for a gift of the whole body for anatomical study.

\* \* \*

Section 13. This act shall apply as follows:

(1) The amendment or addition of 20 Pa.C.S. §§ 5601(b), 5601.2(a), (b) and (c) and 5605(c) shall apply to powers of attorney executed on or after the effective date of the amendment or addition of those sections.

(2) The addition of 20 Pa.C.S. § 5601(c) shall apply to powers of attorney executed on or after the effective date of the addition of that subsection.

(3) The addition of 20 Pa.C.S. § 5601(d) shall apply to agents acting under powers of attorney executed on or after the effective date of the addition of that subsection.

(4) The amendment or addition of 20 Pa.C.S. §§ 5601.2(d) and (e) and 5603(a)(2)(i), (ii), (iv) and (v) and (u.1) shall apply to powers of attorney executed before, on or after the effective date of the amendment or addition of those sections.

(5) The amendment or repeal of 20 Pa.C.S. §§ 5602(a)(1) and 5603(a)(1) shall apply to powers of attorney executed on or after the effective date of the amendment or repeal of those sections. The amendment or repeal of sections 5602(a)(1) and 5603(a)(1) shall not affect the authority of an agent to make unlimited gifts under any power of attorney relying on those sections executed before the effective date of the amendment or repeal of those sections.

(6) The repeal of 20 Pa.C.S. § 5603(a)(2)(iii), (3), (4) and (5) shall apply beginning with the effective date of the repeal of that section.

(7) The amendment of 20 Pa.C.S. § 8611(a) shall apply to agents acting under powers of attorney executed before, on or after the effective date of the amendment of that section.

(8) The remaining amendments in this act shall apply beginning with the effective date of the amendments of those sections.

Section 14. This act shall take effect as follows:

- (1) The addition of 20 Pa.C.S. § 5601(c) and (d) shall take effect in six months.
- (2) The remainder of this act shall take effect in 60 days.

APPROVED—The 12th day of October, A.D. 1999.

THOMAS J. RIDGE