

Executing Documents with Powers of Attorney and Confessions of Judgment in PA Just Got Easier

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Certain tedious requirements in Pennsylvania for the execution of a document used in a commercial transaction which contains a power of attorney have been eliminated. Act 103 of 2016, which was signed by Governor Wolf on October 4, 2016, exempts certain powers of attorney from the requirement that it be acknowledged by a notary public as well as other formalities.

Of critical importance to commercial lenders is that Act 103 also removes the need to have loan documents containing warrants of attorney to confess judgment acknowledged before a notary public (unless, of course, the document is being recorded) and clarifies that the lender is not subject to certain fiduciary duties extended to lenders by the 2014 amendments to Pennsylvania's Decedents, Estate and Fiduciaries Code (the "2014 Amendments") which have caused lenders loan documentation issues since early 2015.

Now, lenders no longer need to have loan documents notarized merely because they contain warrants of attorney to confess judgment and no longer need to include the lengthy fiduciary duties "waiver" language many began to use in their loan documents due to the 2014 Amendments.

With regard to commercial transactions generally, Act 103 also expands the situations under which certain powers of attorney are exempt from requirements for notarization and certain other technical requirements. The expanded list of exemptions apply to powers:

1. contained in the governing documents of an entity,
2. authorized by a governing statute,
3. by which a director, shareholder, partner, member or manager authorizes others to do things on behalf of the entity, or
4. contained in a proxy of or other delegation to exercise a voting or management right with respect to an entity.

This essentially means that powers of attorney which satisfy any of those tests do not have to be notarized, do not need two witnesses, do not need to include the standard forms required to be executed by agents and principals, and are exempt from the list of duties of agents.

As a result of Act 103, many of the work-arounds stemming from the 2014 Amendments that were included in loan documents, leases and other transaction instruments containing confessions of judgment or other powers of attorney are no longer necessary.

If you have questions or would like additional information regarding the impact of Act 103 on commercial powers of attorney, please contact Tom Rogers (rogerst@whiteandwilliams.com; 215.864.7190), Nancy Sabol Frantz (frantzn@whiteandwilliams.com; 215-864-7026) or Susan Fetterman (fettermans@whiteandwilliams.com; 215-864-7048).

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