

Pennsylvania's New Power of Attorney Law: What it could mean to confessions of judgment in commercial loan documents

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Pennsylvania's power of attorney law was overhauled, effective as of January 1, 2015. It seems that early focus on and preparation for the new law was primarily keyed to its impact on more traditional uses of powers of attorney. However, less known, and possibly more uncertain, is the potential affect the new law could have on the warrants of attorney to confess judgment and the other general powers of attorney provisions contained in commercial documents (including those authorizing collection of accounts receivable).

The new law may affect loan documents in two potentially significant ways. First, the new law requires, among other things, that the signature of the principal on a power of attorney be acknowledged before a notary public (or other individual authorized by law to take acknowledgments). Therefore, since there is at least a chance that the warrant of attorney to confess judgment could be deemed a power of attorney affected by the new law, financial institutions may want to redefine their best practices with respect to loan documents, to include the requirement of such acknowledgment in all loan documents containing powers of attorney (including, but not limited to, warrants of attorney to confess judgment). Second, the new law increases the duties of the agent to the principal and eliminates the prior exemption of commercial transactions from the power of attorney law. Therefore, to the extent the new law could be applied to affect powers of attorney in commercial loan documents, these increased duties - including a duty of loyalty to the principal and a duty to act in the best interest of the principal - could be deemed to be in direct conflict with the purpose of powers of attorney granted by borrowers (principals) to financial institutions (agents) in loan documents, especially warrants of attorney to confess judgment. Fortunately for financial institutions, these duties can be waived and disclaimed, if the waiver and disclaimer are contained in the power of attorney. Without the appropriate waiver and disclaimer, the fear is that financial institutions could find themselves faced with threats of losing the utility of the power of attorney, including the ability to confess judgment. Thus, financial institutions may want to also require the inclusion of the waiver and disclaimer in any loan document which contains a power of attorney or warrant of attorney.

It seems too early to predict the full impact of the new law on commercial lending practices and whether the new law even affects confessions of judgments. There are certainly arguments that it does not. However, until such time there is more certainty provided either through legislation or case law, and so as to avoid unnecessary problems enforcing its rights under loan documents against borrowers, financial institutions may want to strongly consider the following as part of its best practices:

- Incorporating notary acknowledgments and the waivers and disclaimer into their documents containing power of attorney provisions;
- Considering whether to amend existing loan documents (especially at convenient times, such as renewals or extensions) to include notary acknowledgments and waivers and disclaimers to such existing loan documents that contain a power of attorney -- since these increased agent duties, including the duties that may be waived, could apply to all powers of attorney entered into at any time (including, before the enactment of the new law); and
- Carefully reviewing existing documents before confessing or collection of accounts using powers of attorney - to prepare for possible opposition.

For more information about the new power of attorney law or to discuss the potential implications of the new law, please feel free to contact [Don Geiter](#) or [Tim Dietrich](#).

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