

January 2015

### Changes to Pennsylvania's Power of Attorney will Affect Real Estate and Other Transactions


On July 2, 2014, the Pennsylvania General Assembly enacted Act 95 to address certain issues relating to Pennsylvania's Power of Attorney Act that arose out of a 2010 Pennsylvania Supreme Court decision. Because there are certain provisions in Act 95 that will become effective on January 1, 2015, and because these provisions affect commercial lending transactions, we wished to make our valued lending clients, including conduit lenders such as industrial development authorities, aware of them.

Specifically, Act 95 provides that instruments used in commercial transactions containing one or more of the following powers must now be acknowledged before a notary public or other individual authorized by law to take acknowledgements:

- A power that authorizes an agency relationship;
- A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a loan or other credit transaction;
- A power exclusively granted to facilitate a transfer of stock, bonds and other assets;
- A power contained in the governing document for a corporation, partnership or limited liability company or other legal entity by which a director, partner or member authorizes others to do other things on behalf of the entity, or a proxy or other delegation to exercise voting rights or management rights with respect to a legal entity;
- A warrant of attorney conferring authority to confess judgment;
- A power given to a dealer in the Board of Vehicles Act, when using the power in conjunction with a sale, purchase or transfer of a vehicle as authorized by 75 Pa.C.S. § 1119 (relating to application for certificate of title by agent); and
- A power created on a form prescribed by a Commonwealth agency, political subdivision or an authority or instrumentality of the Commonwealth or a political subdivision.

In commercial lending transactions, a promissory note, a mortgage and, guaranty (if there is one), will typically contain provisions authorizing a confession of judgment. If there is a security agreement or pledge agreement, these instruments will typically contain "attorney-in-fact" provisions authorizing the lender to take certain actions on behalf of the borrower. The practice has typically been, however, to have only the documents to be recorded i.e., the mortgage, acknowledged although some lenders have engaged in the practice of having promissory notes acknowledged. In view of the provisions of Act 95,





all commercial lending instruments that contain confession of judgment provisions and/or “attorney-in-fact” provisions must now be acknowledged.

Similarly, commercial leases often contain confession of judgment provisions and “attorney-in-fact” provisions, particularly with respect to subordination agreements and estoppel certificates. The practice has been not to have these leases acknowledged unless the parties intend to record the lease. Now, all leases containing such provisions must be acknowledged.

While commercial lending instruments and commercial leases are documents most impacted by Act 95, other documents such as motor vehicle transfers will also be affected.

Please contact John F. Lushis, Jr., at [jlushis@nmmlaw.com](mailto:jlushis@nmmlaw.com) regarding any questions you may have regarding Act 95.

The *Business Law Alert* provides information to our clients and friends about current legal developments of general interest in the area of business law. The information contained in this Alert should not be construed as legal advice, and readers should not act upon such without professional counsel. Copyright © 2015 Norris McLaughlin & Marcus, P.A.



PA: The Paragon Centre, Suite 300 1611 Pond Road Allentown, PA 18104-2258 • P: (610) 391-1800 • F: (610) 391-1805  
NJ: 721 Route 202-206, Suite 200 P.O. Box 5933 Bridgewater, NJ 08807-5933 • P: (908) 722-0700 • F: (908) 722-0755  
NY: 875 Third Avenue, 8th Floor New York, NY 10022 • P: (212) 808-0700 • F: (212) 808-0844

[www.nmmlaw.com](http://www.nmmlaw.com) E: [info@nmmlaw.com](mailto:info@nmmlaw.com)