



## Fox Rothschild Podcast

### Featuring Estate Planning Partner Linda Rhone Enion in Pittsburgh

*We are talking today with Linda Rhone Enion on the Fox Rothschild Podcast about “How Recent Changes to Pennsylvania’s Power of Attorney Law May Impact You.” Linda is a partner with Fox Rothschild in Pittsburgh. She is an experienced practitioner who handles an array of estate planning and estate and trust administration matters. Linda, good morning.*

**Linda Rhone Enion:** Good morning. Thank you.

***Question:** Linda, what can you tell our listeners about the new Pennsylvania law impacting the power of attorney process, or P-O-A for short?*

**Linda Rhone Enion:** A Pennsylvania Supreme Court case about a woman who was severely injured, and whose hastily executed POA was used to select retirement benefits, has led to a new state law. It’s intended to protect older residents, while also protecting those accepting the power. Most of the provisions take effect January 1, but certain provisions, including the protections for financial institutions and others asked to accept the power, are already in effect.

***Question:** Linda, what are the benefits of having a financial POA in place?*

**Linda Rhone Enion:** There are great benefits to having one in place and easily accepted when needed. If you become incapacitated, it’s much easier for your financial affairs to be handled using the power you – the principal – created. The alternative is to seek a guardian of the estate through the courts. It’s time-consuming and expensive and requires you to be declared incapacitated.

***Question:** Linda, can you shed more light on the new changes?*

**Linda Rhone Enion:** The new law, known as Act 95 of 2014, includes extensive provisions about the agent’s duties. The agent is required to act in good faith, and only within the authority the principal has given. Generally, the agent must act in accordance with the principal’s reasonable expectations to the extent actually known by the agent. Otherwise, the agent is expected to act in the principal’s best interest. Other duties are set forth in the new law, but the principal can change those by direction in the POA.

***Question:** Linda, what does an agent need to know about his or her financial powers?*

**Linda Rhone Enion:** Certain powers must be clearly given to the agent in the POA. These include making gifts beyond limitations in the law and powers beyond existing law for the creation or amendment, revocation or termination of trusts created during the principal’s lifetime. They also cover creating or changing rights of survivorship or beneficiary designations or disclaiming property.

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*Question: Linda, can you be even more specific?*

**Linda Rhone Enion:** Beginning January 1, 2015, new signature requirements take effect. The POA must be dated and signed, witnessed by two adults and acknowledged before a notary public. Neither the agent or the notary can be a witness. The notice provision at the beginning of the power, which must be in capital letters, revises the existing form. It adds language regarding the duties of the agent, as well as a warning that you may grant broad authority to your agent to give away all your property, or change its distribution at your death. Finally, you are advised to consult with an attorney. The agent's acknowledgment must be signed and attached before using the power, and it notes the new requirements for agents.

*Question: Linda, what's the impact going to be on financial institutions?*

**Linda Rhone Enion:** For those with a POA for financial matters already in place, the POA form does not have to be changed because of the new law. You do need to be aware of how the new law may affect its use. Banks and other financial providers will be looking for the new signature requirements, notices and acknowledgments after January 1. This may cause confusion about existing powers until everyone becomes comfortable with the new requirements.

*Question: Does the new law change the protection for financial institutions?*

**Linda Rhone Enion:** There are protections in the new law for financial institutions and other third parties that accept a POA and follow the agent's instructions. If accepted in good faith – defined in the act as “honesty in fact” – without actual knowledge the signatures are not genuine and valid, or the power is no longer in effect, or the agent was acting outside the scope of his or her authority, a financial institution may rely upon the POA without liability.

*Question: Linda, how does the new law protect actions by employees of financial institutions?*

**Linda Rhone Enion:** An employer is considered to be without actual knowledge of a fact relating to a power, the principal or the agent, unless its employee has knowledge of a fact. This means the employee has actual knowledge of the fact or is acting with conscious disregard or willful ignorance of the fact.

*Question: Is there more?*

**Linda Rhone Enion:** Effectively, financial institutions aren't required to investigate the facts about the creation or continuing validity of a POA, but it would require a different result if an employee has knowledge of a fact. The new act provides rules and time frames for financial institutions to accept powers presented to them or to require certain additional information. There are valid reasons why POAs may not be accepted, but if the reason is not permitted under the law, failure to accept the power may result in liability for money damages.

*Question: Linda, tell our listeners about the Vine case.*

**Linda Rhone Enion:** These protections are a reaction to *Vine v. Commonwealth*, a Pennsylvania Supreme Court case. A power was signed with an “X” by Mrs. Vine, who was an employee of the Commonwealth of Pennsylvania. The power was executed shortly after she was severely injured and paralyzed from a car accident and subsequently suffered a stroke. Her husband was named as her agent. Within a month of the accident, she retired, and her husband selected a retirement option that provided a monthly payment but permitted him to withdraw certain additional amounts. The husband did not select the option that would have resulted in a larger monthly payment but no option to withdraw.

*Question: That sounds complex.*

**Linda Rhone Enion:** Several years later, the husband filed for divorce, and Mrs. Vine discovered she was not receiving a disability retirement. She wrote to the State Employees’ Retirement System to change her election. This request was denied. After an administrative hearing finding she was incapacitated when the power was executed, the retirement system board took exception.

The board did not challenge the finding of incapacity, but rather argued it was immune from liability (under prior law) because it acted in good faith reliance upon the POA and lacked reasonable cause to not follow her agent’s directions. Ultimately, the court found immunity from liability only applied if there is a valid POA in place. Since the power was invalid due to Mrs. Vine’s incapacity, no protection applied, and they were required to adjust her benefits retroactively.

*Question: Linda, how important is it to consult a lawyer?*

**Linda Rhone Enion:** Even though the form of a power that a lawyer prepares may become relatively routine, the review and thought that goes into its completion for a particular client is not. The required notice actually states that “...you should seek the advice of an attorney at law to make sure you understand it.”

*Well thank you, Linda. Listeners, to confidentially discuss how the new power of attorney law may apply to you, please contact Linda at 412.391.2428 or lenion@foxrothschild.com– that’s L-E-N-I-O-N – at foxrothschild.com.*

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