Section 5601(e.1) was amended into Senate Bill 1014, which became 2002 Act No. 50. The following includes the official commments of the Advisory Committee on Decedents' Estates Laws.

§ 5601. General provisions.

* * *

(e.1) Limitation on applicability in commercial transaction.--

(1) Subsections (c), (d) and (e) do not apply to a power or a power of attorney contained in an instrument used in a commercial transaction which simply authorizes an agency relationship. This paragraph includes the following:

(i) A power given to or for the benefit of a creditor in connection with a loan or other credit transaction.

(ii) A power exclusively granted to facilitate transfer of stock, bonds and other assets.

(iii) 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.

(iv) A warrant of attorney conferring authority to confess judgment.

(2) Powers and powers of attorney exempted by this subsection need not be dated.

Comment: The purpose of this subsection is to clarify the applicability of subsections (c) (notice), (d) (acknowledgment

executed by agent) and (e) (fiduciary relationship). These provisions were added by 1999 Act No. 39 and became effective on April 12, 2000.

Subsection (c) provides that powers of attorney are required to include a statutory notice to the principal. Subsection (d) requires that an agent execute an acknowledgment prior to exercising authority under a power of attorney. Subsection (e) sets forth the fiduciary relationship between the principal and agent.

Subsections (c), (d) and (e) apply only to powers of attorney that comply with the execution requirements of subsection (b), create a fiduciary relationship between the agent and principal, are revocable by the principal and terminate upon death of the principal. It was never contemplated that subsections (c), (d) and (e) would apply to instruments used in commercial transactions which might create an agency authorization but do not have the characteristics set forth in the preceding sentence.

For example, subsections (c), (d) and (e) were not intended to apply to a "power" given to or for the benefit of a creditor (or a creditor's agent) in connection with a credit transaction. That kind of power is often included in a security agreement and allows a creditor to perfect a lien on collateral which the debtor has already authorized, for example, where the debtor signed a security agreement but after obtaining funds refuses to sign a financing statement needed to perfect the lien. *Here, the creditor is not acting in a fiduciary capacity for the debtor.*

Subsections (c), (d) and (e) were not intended to apply to "powers" contained in a stock power, bond power or other document the exclusive purpose of which is to facilitate the transfer of stocks, bonds or other assets. *In such cases, the primary purpose of the document is to facilitate the transfer of the asset. Also, these powers are considered to be powers "coupled with an interest," meaning that the power can be made irrevocable and made to survive the death of the principal.*

It was not intended that subsections (c), (d) and (e) would apply to "powers" contained in the governing documents for a corporation (articles of incorporation, bylaws), partnerships (partnership agreements), shareholders (shareholder

agreements) or limited liability companies (certificate of organization, operating agreement) by which one director, partner, member, etc. authorizes others to sign documents or do other things on behalf of the entity. *These are not fiduciary powers.*

Nor was it intended that subsections (c), (d) and (e) would apply to a warrant of attorney conferring authority to confess judgment. *This is not a fiduciary power.*

These examples are only illustrative of the types of documents which were not intended to be within the scope of the applicability of subsections (c), (d) and (e). This list should not be considered exhaustive of the documents or situations where the instrument might be called a power of attorney but does not have the attributes of a power of attorney. *However, documents containing the phrase "coupled with an interest" in the power should be considered clear indication that a fiduciary relationship between the principal and the agent was unintended by the parties.*

The use of the phrase "a power or a power of attorney" in the introductory clause of this subsection, while seemingly redundant, is intended to insure the full application of the subsection.

New subsection (e.1) takes effect as of April 12, 2000, which was the effective date of 1999 Act No. 39, the act that added subsections (c), (d) and (e). The rationale is that subsection (e.1) is a curative amendment to correct some unintended interpretations of Act 39. There should not be a "gap" period where this curative amendment does not apply.

(e.2) Limitation on applicability in health care power of attorney.--Subsections (c) and (d) do not apply to a power of attorney which exclusively provides for health care decision making.

Comment: It was not intended that subsections (c) and (d) would apply in this type of power of attorney. New subsection (e.2) takes effect as of April 12, 2000. See the last paragraph of the Comment to subsection (e.1).