

Memorandum 89-50

Subject: Study L-3019 - Statutory short form power of attorney

Attached is a Tentative Recommendation proposing the enactment of the Uniform Statutory Form Power of Attorney Act to replace the existing California Statutory Short Form Power of Attorney Act.

The Tentative Recommendation summarizes the policy issue presented by this tentative recommendation as follows:

The Law Revision Commission recommends that the Uniform Statutory Form Power of Attorney Act be enacted in California to replace the existing Statutory Short Form Power of Attorney statute. The form provided by the uniform act is simple and easy to understand. This simplicity, together with the advantage of having a uniform form that will receive national acceptance, outweigh any benefit that might be thought to exist because of the broader scope, the additional provisions, and the more complex execution requirements of the existing California statutory short form.

For further discussion, see the preliminary portion of the attached recommendation. The proposed legislation included in the tentative recommendation is the same in substance as the Uniform Act. The existing California statutory short form power of attorney statute is attached to this memorandum in case you want to refer to it.

The staff recommends that the Commission review the Tentative Recommendation and approve it for distribution to interested persons and organizations for review and comment.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

**CHAPTER 3. STATUTORY SHORT FORM
POWER OF ATTORNEY**

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ARTICLE 1. GENERAL PROVISIONS

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§ 2450. Forms; validity; construction; durable power of attorney provisions applicable

The use of the following form in the creation of a power of attorney is lawful, and when used, the power of attorney shall be construed in accordance with the provisions of this chapter and, if the power of attorney is a durable power of attorney, shall be subject to the provisions of Article 3 (commencing with Section 2400) of Chapter 2:

**STATUTORY SHORT FORM POWER
OF ATTORNEY**

(California Civil Code Section 2450)

WARNING. UNLESS YOU LIMIT THE POWER IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER TO ACT FOR YOU IN ANY WAY YOU COULD ACT FOR YOURSELF. FOR EXAMPLE, YOUR AGENT CAN:

- BUY, SELL, AND MANAGE REAL AND PERSONAL PROPERTY FOR YOU. THIS MEANS THAT YOUR AGENT CAN SELL YOUR HOME, YOUR SECURITIES, AND YOUR OTHER PROPERTY.
- DEPOSIT AND WITHDRAW MONEY FROM YOUR CHECKING AND SAVINGS ACCOUNTS.
- BORROW MONEY USING YOUR PROPERTY AS SECURITY FOR THE LOAN.
- PUT THINGS IN AND TAKE THINGS OUT OF YOUR SAFETY DEPOSIT BOX.
- OPERATE YOUR BUSINESS FOR YOU.
- PREPARE AND FILE TAX RETURNS FOR YOU AND ACT FOR YOU IN TAX MATTERS.
- ESTABLISH TRUSTS FOR YOU AND TAKE OTHER ACTIONS FOR YOU IN CONNECTION

WITH PROBATE AND ESTATE PLANNING MATTERS.

—PROVIDE FOR THE SUPPORT AND WELFARE OF YOUR SPOUSE, CHILDREN, AND DEPENDENTS.

—CONTINUE PAYMENTS TO THE CHURCH AND OTHER ORGANIZATIONS OF WHICH YOU ARE A MEMBER AND MAKE GIFTS TO YOUR SPOUSE, DESCENDANTS, AND CHARITIES.

THIS DOCUMENT DOES NOT AUTHORIZE YOUR AGENT TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOU. YOU CAN DESIGNATE AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU ONLY BY A SEPARATE DOCUMENT.

IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A CALIFORNIA LAWYER BECAUSE THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN SECTIONS 2460 TO 2473, INCLUSIVE, OF THE CALIFORNIA CIVIL CODE.

THE POWERS GRANTED BY THIS DOCUMENT WILL EXIST FOR AN INDEFINITE PERIOD OF TIME UNLESS YOU LIMIT THEIR DURATION IN THIS DOCUMENT. THESE POWERS WILL CONTINUE TO EXIST NOTWITHSTANDING YOUR SUBSEQUENT DISABILITY OR INCAPACITY UNLESS YOU INDICATE OTHERWISE IN THIS DOCUMENT.

YOU CAN ELIMINATE POWERS OF YOUR AGENT BY CROSSING OUT ANY ONE OR MORE OF THE POWERS LISTED IN PARAGRAPH 3 OF THIS FORM. YOU CAN WRITE OTHER LIMITATIONS AND SPECIAL PROVISIONS IN PARAGRAPH 4 OF THIS FORM. HOWEVER, IF YOU DO NOT WANT TO GRANT YOUR AGENT THE POWER TO ACT FOR YOU IN ANY WAY YOU COULD ACT FOR YOURSELF, IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A LAWYER INSTEAD OF USING THIS FORM.

THIS DOCUMENT MUST BE SIGNED BY TWO WITNESSES AND BE NOTARIZED TO BE VALID.

YOU HAVE THE RIGHT TO REVOKE OR TERMINATE THIS POWER OF ATTORNEY.

YOU ARE NOT REQUIRED TO USE THIS FORM; YOU MAY USE A DIFFERENT POWER OF ATTORNEY IF THAT IS DESIRED BY THE PARTIES CONCERNED.

IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

1. DESIGNATION OF AGENT.

I _____
(Insert your name and address)

do hereby appoint _____

(Insert name and address of your agent, or each agent if you want to designate more than one)

as my attorney(s) in fact (agent) to act for me and in my name as authorized in this document.

2. CREATION OF DURABLE POWER OF ATTORNEY. By this document I intend to create a general power of attorney under Sections 2450 to 2473, inclusive, of the California Civil Code. Subject to any limitations in this document, this power of attorney is a durable power of attorney and shall not be affected by my subsequent incapacity.

(If you want this power of attorney to terminate automatically when you lack capacity, you must so state in paragraph 4 ("Special Provisions and Limitations") below.)

3. STATEMENT OF AUTHORITY GRANTED. Subject to any limitations in this document, I hereby grant to my agent(s) full power and authority to act for me and in my name, in any way which I myself could act, if I were personally present and able to act, with respect to the following matters as each of them is defined in Chapter 3 (commencing with Section 2450) of Title 9 of Part 4 of Division 3 of the California Civil Code to the

extent that I am permitted by law to act through an agent:

- (1) Real estate transactions.
- (2) Tangible personal property transactions.
- (3) Bond, share, and commodity transactions.
- (4) Financial institution transactions.
- (5) Business operating transactions.
- (6) Insurance transactions.
- (7) Retirement plan transactions.
- (8) Estate transactions.
- (9) Claims and litigation.
- (10) Tax matters.
- (11) Personal relationships and affairs.
- (12) Benefits from military service.
- (13) Records, reports, and statements.
- (14) Full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) shall select.
- (15) All other matters.

(Strike out any one or more of the items above to which you do NOT desire to give your agent authority. Such elimination of any one or more of items (1) to (14), inclusive, automatically constitutes an elimination of item (15). TO STRIKE OUT AN ITEM, YOU MUST DRAW A LINE THROUGH THE TEXT OF THAT ITEM.)

4. SPECIAL PROVISIONS AND LIMITATIONS. In exercising the authority under this power of attorney, my agent(s) is subject to the following special provisions and limitations:

(Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of Section 2455 of the California Civil Code.)

5. EXERCISE OF POWER OF ATTORNEY WHERE MORE THAN ONE AGENT DESIGNATED.

ED. If I have designated more than one agent, the agents are to act _____

(If you designate more than one agent and wish each agent alone to be able to exercise this power, insert in this blank the word "severally." Failure to make an insertion or the insertion of the word "jointly" will require that the agents act jointly.)

6. DURATION.

(The powers granted by this document will exist for an indefinite period of time unless you limit their duration below.)

This power of attorney expires on _____

(Fill in this space ONLY if you want the authority of your agent to terminate before your death.)

7. NOMINATION OF CONSERVATOR OF ESTATE.

(A conservator of the estate may be appointed for you if a court decides that one should be appointed. The conservator is responsible for the management of your financial affairs and your property. You are not required to nominate a conservator but you may do so. The court will appoint the

person you nominate unless that would be contrary to your best interests. You may, but are not required to, nominate as your conservator the same person you named in paragraph 1 as your agent. You may nominate a person as your conservator by completing the space below.)

If a conservator of the estate is to be appointed for me, I nominate the following person to serve as conservator

of the estate _____

(Insert name and address of person nominated as conservator of the estate)

**DATE AND SIGNATURE OF PRINCIPAL
(YOU MUST DATE AND SIGN THIS
POWER OF ATTORNEY)**

I sign my name to this Statutory Short Form Power of Attorney on

_____ at _____, _____
(Date) (City) (State)

(You sign here)

(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS BOTH (1) SIGNED BY TWO ADULT WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE AND (2) ACKNOWLEDGED BEFORE A NOTARY PUBLIC IN CALIFORNIA.)

STATEMENT OF WITNESSES

(READ CAREFULLY BEFORE SIGNING. You can sign as a witness only if you personally know the principal or the identity of the principal is proved to you by convincing evidence.)

(To have convincing evidence of the identity of the principal, you must be presented with and reasonably rely on any one or more of the following:

(1) An identification card or driver's license issued by the California Department of Motor Vehicles that is current or has been issued within five years.

(2) A passport issued by the Department of State of the United States that is current or has been issued within five years.

(3) Any of the following documents if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, and bears a serial or other identifying number:

(a) A passport issued by a foreign government that has been stamped by the United States Immigration and Naturalization Service.

(b) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.

(c) An identification card issued by a state other than California.

(d) An identification card issued by any branch of the armed forces of the United States.)

(Other kinds of proof of identity are not allowed.)

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I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of convincing evidence) to be the principal, that the principal signed or acknowledged this power of attorney in my presence, and that the principal appears to be of sound mind and under no duress, fraud, or undue influence.

Signature: _____

Print Name: _____

Date: _____

Residence Address: _____

Signature: _____

Print Name: _____

Date: _____

Residence Address: _____

**CERTIFICATE OF ACKNOWLEDGEMENT OF
NOTARY PUBLIC**

State of California

ss.

County of _____

On this _____ day of _____, in the year _____, before me, _____

(Insert name of notary public)

personally appeared _____

(Insert name of principal)

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it.

NOTARY SEAL

(Signature of Notary Public)

(Added by Stats.1984, c. 602, § 1. Amended by Stats. 1985, c. 403, § 7.)

Operative effect of Stats.1985, c. 403, see note under § 2400. Former § 2450, repealed in 1929, see Title 10, post.

§ 2451. Warning to person executing document; certificate of principal's lawyer

(a) Except as provided in subdivision (b), a statutory short form power of attorney, to be valid, shall contain, in not less than 10-point bold-face type or a reasonable equivalent thereof, the warning which is printed in capital letters at the beginning of Section 2450.

(b) Subdivision (a) does not apply if the statutory short form power of attorney contains a certificate signed by the principal's lawyer stating in substance: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time when this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney." (*Added by Stats.1984, c. 602, § 1. Amended by Stats.1985, c. 403, § 8.*)

Operative effect of Stats.1985, c. 403, see note under § 2400.
Former § 2451, repealed in 1929, see Title 10, post.

§ 2452. Validity; signatures and acknowledgment

A statutory short form power of attorney is valid only if all the following requirements are satisfied:

- (1) It is signed by the principal.
- (2) It is signed by two adult witnesses, each of whom executes, under penalty of perjury, the declaration in the form set forth in Section 2450.

(3) It is acknowledged by the principal before a notary public at any place within this state, and the notary public executes the certificate in the form set forth in Section 2450. (*Added by Stats.1984, c. 602, § 1.*)

Former § 2452, repealed in 1929, see Title 10, post.

§ 2453. Joint exercise of powers conferred

If more than one agent is designated by the principal in a statutory short form power of attorney, the agents in exercising the powers conferred shall act jointly unless the principal specifically provides in the statutory short form power of attorney that they are to act severally. (*Added by Stats.1984, c. 602, § 1.*)

Former § 2453, repealed in 1929, see Title 10, post.

§ 2454. Statutory short form power of attorney; requirements; elimination of items; additions or modifications

(a) Subject to subdivisions (b) and (c), a power of attorney is a "statutory short form power of attorney," as this phrase is used in this chapter, if it meets both of the following requirements:

- (1) It meets the requirements of Sections 2451 and 2452.
- (2) It contains the exact wording of paragraph 3 of the form set forth in Section 2450.

(b) One or more of items (1) to (14), inclusive, may be stricken out by the principal in paragraph 3 of the form set forth in Section 2450, in which case the items so stricken out and also item (15) shall be deemed eliminated.

(c) A statutory short form power of attorney may contain modifications or additions of the types described in Section 2455. (*Added by Stats.1984, c. 602, § 1.*)

Former § 2454, repealed in 1929, see Title 10, post.

§ 2455. Statutory short form power of attorney; additional language

A power of attorney which satisfies the requirements of Section 2454 is not prevented from being a "statutory short form power of attorney," as this phrase is used in this chapter, by the fact that it also contains additional language which does any one or more of the following:

(a) Eliminates from the power of attorney one or more of the powers enumerated in one or more of the constructional sections of this chapter with respect to an item in paragraph 3 of the statutory short form power of attorney not eliminated by the principal.

(b) Supplements one or more of the powers enumerated in one or more of the constructional sections in this chapter with respect to an item in paragraph 3 of the statutory short form power of attorney not eliminated by the principal, by specifically listing additional powers of the agent.

(c) Makes the power of attorney not a durable power of attorney or limits the duration of the power of attorney or prescribes when the power of attorney becomes effective.

(d) Makes some additional provision which is not inconsistent with the other provisions of the statutory short form power of attorney. (*Added by Stats.1984, c. 602, § 1.*)

§ 2456. Application of chapter; use of other forms

Nothing in this chapter affects or limits the use of any other form for a power of attorney. Any form that complies with the requirements of any law other than the provisions of this chapter may be used in lieu of the form set forth in Section 2450. (*Added by Stats.1984, c. 602, § 1.*)

§ 2457. Forms executed on or after January 1, 1986; validity

A statutory short form power of attorney executed on or after January 1, 1986, using a form that complied with Section 2450 as originally enacted is as valid as if it had been executed using a form that complied with Section 2450, as amended. (*Added by Stats.1985, c. 403, § 9.*)

For § 2457, repealed in 1929, see Title 10, post.

§§ 2458, 2459. Repealed

For §§ 2458, 2459, repealed in 1929, see Title 10, post.

ARTICLE 2. CONSTRUCTION OF GRANTS OF GENERAL AUTHORITY WITH RESPECT TO PARTICULAR MATTERS

Section

- 2460. Authorization of real estate transactions.
- 2461. Authorization of tangible personal property transactions.
- 2462. Authorization of bond, share and commodity transactions.
- 2463. Authorization of financial institution transactions.
- 2464. Authorization of business operating transactions.
- 2465. Authorization of insurance transactions.

Part 4

Section

2466. Authorization of retirement plan transactions.
 2467. Authorization of estate transactions.
 2468. Authorization of claims and litigation.
 2469. Authorization respecting tax matters.
 2469.1 to 2469.3. Repealed.
 2470. Authorization respecting personal relationships and affairs.
 2471. Authorization respecting benefits from military service.
 2472. Authorization respecting records, reports, and statements.
 2473. Authority with respect to other matters; exclusion of health care decisions.
 2477 to 2510. Repealed.

§ 2460. Authorization of real estate transactions

(a) In a statutory short form power of attorney, the language conferring general authority with respect to "real estate transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire, either ownership or possession of any interest in real property.

(2) Sell, exchange, convey with or without covenants, quit-claim, release, surrender, mortgage, encumber, partition or consent to the partitioning of, grant options concerning, lease, sublet, or otherwise dispose of, any interest in real property.

(3) Change the form of title of any interest in real property.

(4) Create, modify, or revoke a trust concerning any interest in real property.

(5) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part, or enforce by action, proceeding, or otherwise, any mortgage, encumbrance, lien, or other claim which exists, or is claimed to exist, in favor of the principal with respect to any interest in real property.

(6) Do any act of management or conservation with respect to any interest in real property owned or claimed to be owned by the principal, including by way of illustration, but not of restriction, the power to do the following:

(A) Insure against any casualty, liability, or loss.

(B) Eject, remove, or relieve tenants and other persons from the property, or obtain or regain possession of, or protect the interest in the property, by action, proceeding, or otherwise.

(C) Pay, compromise, or contest taxes or assessments, and apply for refunds in connection therewith.

(D) Purchase supplies.

(E) Hire assistance or labor.

(F) Make repairs or alterations in the real property or structures or other improvements on it.

(7) Maintain, protect, preserve, utilize in any way, subdivide, develop, modify, alter, replace, remove, demolish, erect, or install structures or other improvements upon, any real property in which the principal has, or claims to have, any interest.

(8) Develop or dedicate real property in which the principal has, or claims to have, any interest to public use and dedicate easements to public use, with or without consideration.

(9) Demand, receive, and obtain by action, proceeding, or otherwise, any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of an interest in real property or of one or more of the transactions enumerated in this section; conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(10) Participate in any reorganization with respect to real property and receive and hold any shares of stock or instrument of similar character received in accordance with the plan of reorganization, and act with respect to them, including by way of illustration, but not of restriction, the power to sell or otherwise dispose of the shares, or any of them; exercise or sell any option, conversion, or similar right with respect to them; and vote on them in person or by the granting of a proxy.

(11) Agree and contract, in any manner, with any person, and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section; and perform, rescind, reform, release, or modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal.

(12) Execute, acknowledge, seal, and deliver any deed, revocation, declaration, or modification of trust, mortgage, lease, notice, check, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(13) Prosecute, defend, submit to arbitration, settle, or propose or accept a compromise with respect to, any claim existing in favor of or against the principal based on or involving any real property transaction or intervene in any action or proceeding relating to it.

(14) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(15) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent with respect to any interest in real property.

(b) All powers described in this section are exercisable equally with respect to any interest in real property owned by the principal at the time of the giving of the power of attorney or thereafter acquired, whether located in this state or elsewhere. (*Added by Stats.1984, c. 602, § 1.*)

Former § 2460, repealed in 1929, see Title 10, post.

§ 2461. Authorization of tangible personal property transactions

(a) In a statutory short form power of attorney, the language conferring general authority with respect to "tangible personal property transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire, either ownership or possession of any interest in tangible personal property.

(2) Sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, partition or consent to the partitioning of, grant options concerning, lease, sublet, or otherwise dispose of, any interest in tangible personal property.

(3) Change the form of title to any interest in tangible personal property.

(4) Create, modify, or revoke a trust concerning any interest in tangible personal property.

(5) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part, or enforce by action, proceeding, or otherwise, any mortgage, encumbrance, lien, or other claim which exists, or is claimed to exist, in favor of the principal with respect to any interest in tangible personal property.

(6) Do any act of management or conservation with respect to any interest in tangible personal property owned or claimed to be owned by the principal, including by way of illustration, but not of restriction, the power to do the following:

(A) Insure against any casualty, liability, or loss.

(B) Obtain or regain possession of, or protect the interest in the property, by action, proceeding, or otherwise.

(C) Pay, compromise, or contest taxes or assessments, and apply for refunds in connection therewith.

(D) Hire assistance or labor.

(E) Move from place to place, store for hire or on a gratuitous bailment, use, alter, or make repairs or alterations of, the property.

(7) Demand, receive, and obtain by action, proceeding, or otherwise, any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of an interest in tangible personal property or of one or more of the transactions enumerated in this section; conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(8) Agree and contract, in any manner, with any person, and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated

in this section; and perform, rescind, reform, release, or modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal.

(9) Execute, acknowledge, seal, and deliver any conveyance, revocation, declaration, or modification of trust, mortgage, lease, notice, check, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(10) Prosecute, defend, submit to arbitration, settle, or propose or accept a compromise with respect to, any claim existing in favor of or against the principal based on or involving any tangible personal property transaction or intervene in any action or proceeding relating to it.

(11) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(12) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent with respect to any interest in tangible personal property.

(b) All powers described in this section are exercisable equally with respect to any interest in any tangible personal property owned by the principal at the time of the giving of the power of attorney or thereafter acquired, whether located in this state or elsewhere. (*Added by Stats.1984, c. 602, § 1.*)

Former § 2461, repealed in 1929, see Title 10, post.

§ 2462. Authorization of bond, share and commodity transactions

(a) In a statutory short form power of attorney, the language conferring general authority with respect to "bond, share, and commodity transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise to acquire ownership or possession of, any bond, share, or other instrument of similar character, commodity interest, or any instrument with respect to a commodity, together with the interest, dividends, proceeds, or other distributions connected with it.

(2) Sell (including short sales), exchange, transfer with or without a guaranty, release, surrender, hypothecate, pledge, grant options concerning, loan, trade in, or otherwise dispose of any bond, share, or other instrument of similar character, commodity interest, or any instrument with respect to a commodity.

(3) Create, modify, or revoke a trust concerning any bond, share, or other instrument of similar character, commodity interest, or any instrument with respect to a commodity.

(4) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part, or enforce by action,

proceeding, or otherwise, any pledge, encumbrance, lien, or other claim as to any bond, share, or other instrument of similar character, commodity interest, or any interest with respect to a commodity, when the pledge, encumbrance, lien, or other claim is owned, or claimed to be owned, by the principal.

(5) Do any act of management or conservation with respect to any bond, share, or other instrument of similar character, commodity interest, or any instrument with respect to a commodity, owned or claimed to be owned by the principal or in which the principal has or claims to have an interest, including by way of illustration, but not of restriction, the power to do the following:

(A) Insure against any casualty, liability, or loss.

(B) Obtain or regain possession of, or protect the interest in it by action, proceeding, or otherwise.

(C) Pay, compromise, or contest taxes or assessments, and apply for refunds in connection therewith.

(D) Consent to and participate in any reorganization, recapitalization, liquidation, merger, consolidation, sale, or lease, or other change in or revival of a corporation or other association, or in the financial structure of any corporation or other association, or in the priorities, voting rights, or other special rights with respect to it.

(E) Become a depositor with any protective, reorganization, or similar committee of the bond, share, or other instrument of similar character, commodity interest, or any instrument with respect to a commodity.

(F) Make any payments reasonably incident to subparagraphs (A) to (E), inclusive.

(G) Exercise or sell any option, conversion, or similar right.

(H) Vote in person or by the granting of a proxy, with or without the power of substitution, either discretionary, general, or otherwise, for the accomplishment of any of the purposes enumerated in this section.

(6) Carry in the name of a nominee selected by the agent any evidence of the ownership of any bond, share, or other instrument of similar character, commodity interest, or instrument with respect to a commodity.

(7) Employ, in any way believed desirable by the agent, any bond, share, or other instrument of similar character, commodity interest, or any instrument with respect to a commodity, in which the principal has or claims to have any interest, for the protection or continued operation of any speculative or margin transaction personally begun or personally guaranteed, in whole or in part, by the principal.

(8) Demand, receive, and obtain by action, proceeding, or otherwise, any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any interest in a bond, share, or other instrument of similar character, commodity interest, or any instrument with respect to a commodity or of one or more of the transactions enumerated in this section; conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to

reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(9) Agree and contract, in any manner, with any broker or other person, and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section; and perform, rescind, reform, release, or modify any such agreement or contract or any other similar agreement made by or on behalf of the principal.

(10) Execute, acknowledge, seal, and deliver any consent, authorization, assignment, revocation, declaration, or modification of trust, notice, waiver of notice, check, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(11) Execute, acknowledge, and file any report or certificate required by law or governmental regulation.

(12) Prosecute, defend, submit to arbitration, settle, or propose or accept a compromise with respect to, any claim existing in favor of or against the principal based on or involving any bond, share, or commodity transaction or intervene in any action or proceeding relating to it.

(13) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(14) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent with respect to any interest in any bond, share, or other instrument of similar character, commodity, or instrument with respect to a commodity.

(b) All powers described in this section are exercisable equally with respect to any interest in any bond, share, or other instrument of similar character, commodity, or instrument with respect to a commodity, owned by the principal at the time of the giving of the power of attorney or thereafter acquired, whether located in this state or elsewhere. (*Added by Stats.1984, c. 602, § 1.*)

Former § 2462, repealed in 1929, see Title 10, post.

§ 2463. Authorization of financial institution transactions

(a) In a statutory short form power of attorney, the language conferring general authority with respect to "financial institution transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Continue, modify, and terminate any account (including a deposit account, security account, certificate of deposit, money market account, margin account, common trust fund, mutual fund, treasury bill or note, and any other type of cash fund, cash equivalent, or security) or other financial arrangement made by or on behalf of the principal before the creation of the agency.

(2) Open either in the name of the agent alone, or in the name of the principal alone, or in both their names jointly, or otherwise, an account of any type in any financial institution selected by the agent; and make any contracts for the procuring of other services made available by any financial institution the agent believes desirable.

(3) Make, sign, and deliver checks or drafts for any purpose; and withdraw by check, order, or otherwise any funds or property of the principal deposited with, or left in the custody of, any financial institution, wherever located, either before or after the creation of the agency.

(4) Prepare from time to time financial statements concerning the assets and liabilities or income and expenses of the principal and deliver statements so prepared to any financial institution or other person the agent believes is reasonably entitled to them.

(5) Receive statements, vouchers, notices, or other documents from any financial institution, and act with respect to them.

(6) Enter, establish, close, maintain, and have access to any safe deposit box held in the name of the principal alone or jointly with another person, whether or not the institution renting the box has its own form of power of attorney for those purposes, and remove all or any of the contents of the box.

(7) Borrow money by overdraft or by promissory note of the principal given for such period and at such interest rate as the agent shall select; give such security out of the assets of the principal as the agent believes desirable or necessary for the borrowing; pay, renew, or extend the time of payment of any note so given or given by or on behalf of the principal; and procure for the principal a loan from any financial institution by any other procedure made available by the financial institution.

(8) Make, assign, endorse, discount, guarantee, and negotiate, for any and all purposes, all promissory notes, bills of exchange, checks, drafts, or other negotiable or nonnegotiable paper of the principal or payable to the principal or to the order of the principal; receive the cash or other proceeds of any of those transactions; and accept any bill of exchange or draft drawn by any person upon the principal and pay it when due.

(9) Receive for the principal and deal in and deal with any trust receipt, warehouse receipt, or other negotiable or nonnegotiable instrument in which the principal has or claims to have an interest.

(10) Apply for and receive letters of credit or travelers checks from any financial institution selected by the agent, giving such indemnity or other agreements in that connection as the agent believes desirable or necessary.

(11) Consent to an extension in time of payment with respect to any commercial paper or any financial institution transaction in which the principal has an interest or by which the principal is or might be affected in any way.

(12) Pay, compromise, or contest taxes or assessments, and apply for refunds in connection therewith.

(13) Demand, receive, and obtain by action, proceeding, or otherwise, any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any financial transaction conducted by the principal, or by the agent in the execution of any of the powers described in this section, or partly by the principal and partly by the agent so acting; conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(14) Execute, acknowledge, seal, and deliver any instrument of any kind, in the name of the principal or otherwise, which the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(15) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, any claim existing in favor of or against the principal based on or involving any financial institution transaction or intervene in any action or proceeding relating thereto.

(16) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(17) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent in connection with any financial institution transaction which does or might in any way affect the financial or other interests of the principal.

(b) All powers described in this section are exercisable equally with respect to any financial transaction engaged in by the principal at the time of the giving of the power of attorney or thereafter engaged in, whether conducted in this state or elsewhere.

(c) For the purposes of this section, "financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, commercial banks, building and loan associations, savings and loan companies or associations, credit unions, and industrial loan companies. (*Added by Stats.1984, c. 602, § 1.*)

§ 2464. Authorization of business operating transactions

(a) In a statutory short form power of attorney, the language conferring general authority with respect to "business operating transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To the extent that an agent is permitted by law thus to act for a principal:

(A) Discharge and perform any duty or liability and also exercise any right, power, privilege, or option which

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the principal has or claims to have under any contract of partnership whether the principal is a general, special, or limited partner.

(B) Enforce the terms of any partnership agreement for the protection of the principal, by action, proceeding, or otherwise, as the agent believes desirable or necessary.

(C) Defend, submit to arbitration, settle, or compromise any action or other legal proceeding to which the principal is a party because of membership in the partnership.

(2) Exercise in person or by proxy or enforce by action, proceeding, or otherwise, any right, power, privilege, or option which the principal has as the holder of any bond, share, or other instrument of similar character, and defend, submit to arbitration, settle, or compromise any action or other legal proceeding to which the principal is a party because of that bond, share, or other instrument of similar character.

(3) With respect to any business which is owned solely by the principal, do all of the following:

(A) Continue, modify, renegotiate, extend, and terminate any contractual arrangements made with any person, firm, association, or corporation by or on behalf of the principal with respect to the business before the creation of the agency.

(B) Determine the policy of the business as to (i) the location of the site or sites to be utilized for its operation, (ii) the nature and extent of the business to be undertaken, (iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising to be employed in its operation, (iv) the amount and types of insurance to be carried, (v) the mode of securing, compensating, and dealing with accountants, attorneys, and other agents and employees required for its operation; agree and contract, in any manner, with any person, and on any terms, which the agent believes desirable or necessary for effectuating these decisions of the agent as to policy; and perform, rescind, reform, release, or modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal.

(C) Change the name or form of organization under which the business is operated, and enter into such partnership agreement with other persons or organize such corporation to take over the operation of the business, or any part thereof, as the agent believes desirable or necessary.

(D) Demand and receive all moneys which are or may become due to the principal, or which may be claimed by the principal or on behalf of the principal, in the operation of the business; control and disburse the funds in the operation of the business in any way which the agent believes desirable or necessary; and engage in any financial institution transactions (as described in Section 2463) the agent believes desirable or necessary for effectuating the execution of any of the powers of the agent described in this subdivision.

(4) Put additional capital into any business in which the principal has an interest; join in any plan of reorganization, consolidation, or merger of that business; sell or liquidate the business at such time and upon such terms as the agent believes desirable; and represent the principal in establishing the value of any business under any buy-out agreement to which the principal is a party.

(5) Prepare, sign, file, and deliver all reports, compilations of information, returns, or other papers with respect to any business operations of the principal, which are required by any governmental agency, department, or instrumentality or which the agent believes desirable or necessary for any purpose, and make any payments with respect to them.

(6) Pay, compromise, or contest taxes or assessments and do any act the agent believes desirable or necessary to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments in connection with business operations of the principal, including the power to attempt to recover, in any manner permitted by law, sums paid before or after the creation of the agency as taxes, fines, penalties, or assessments.

(7) Demand, receive, and obtain by action, proceeding, or otherwise, any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any business operation of the principal; conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(8) Execute, acknowledge, seal, and deliver any deed, assignment, mortgage, lease, notice, consent, agreement, authorization, check, or other instrument which the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(9) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, any claim existing in favor of or against the principal based on or involving any business operation or intervene in any action or proceeding relating thereto.

(10) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(11) In general, and in addition to all the specific acts enumerated in this section, do any other act in connection with any business operated by the principal, which the principal can do through an agent, that the agent believes desirable or necessary for the furtherance or protection of the interests of the principal.

(b) All powers described in this section are exercisable equally with respect to any business in which the principal is interested at the time of the creation of the agency or in which the principal thereafter becomes interested, whether operated in this state or elsewhere. (Added by Stats.1984, c. 602, § 1.)

§ 2465. Authorization of insurance transactions

(a) In a statutory short form power of attorney, the language conferring general authority with respect to "insurance transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Continue, pay the premium or assessment on, modify, rescind, release, or terminate any contract of life, accident, health, disability, or liability insurance, or any combination of that insurance, procured by or on behalf of the principal before the creation of the agency which insures either the principal or any other person, without regard to whether the principal is or is not a beneficiary of it.

(2) Procure new, different, or additional contracts of insurance on the life of the principal or on the life of anyone in whom the principal has an insurable interest or for protecting the principal with respect to ill-health, disability, accident, or liability of any sort; select the amount, the type of insurance contract, and the mode of payment under each policy; pay the premium or assessment on, modify, rescind, release, or terminate, any contract so procured by the agent; and designate the beneficiary of any of those contracts of insurance, except that the agent himself or herself shall not be the beneficiary unless the agent is a spouse, child, grandchild, parent, brother, or sister of the principal.

(3) Apply for and receive any available loan on the security of the contract of insurance, whether for the payment of a premium or for the procuring of cash, or surrender and receive the cash surrender value of it, or exercise any election as to beneficiary or mode of payment, or change the manner of paying premiums, or change or convert the type of insurance contract, with respect to any contract of life, accident, health, disability, or liability insurance as to which the principal has, or claims to have, any one or more of the powers described in this section; and change the beneficiary of any of those contracts of insurance or of annuity contracts in which the principal has an interest, except that the agent himself or herself shall not be the new beneficiary unless the agent is a spouse, child, grandchild, parent, brother, or sister of the principal.

(4) Demand, receive, and obtain by action, proceeding, or otherwise, any money, dividend, or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any contract of insurance or any transaction enumerated in this section; conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(5) Apply for and procure any available governmental aid in the guaranteeing or paying of premiums of any contract of insurance on the life of the principal.

(6) Sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in any contract of insurance.

(7) Pay from those proceeds or otherwise, compromise, contest, or apply for refunds in connection with, any tax or assessment levied by a taxing authority with respect to any contract of insurance or the proceeds thereof or liability accruing by reason of the tax or assessment.

(8) Agree and contract, in any manner, with any person, and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section; and perform, rescind, reform, release, or modify any of those agreements or contracts.

(9) Execute, acknowledge, seal, and deliver any consent, demand, request, application, agreement, indemnity, authorization, assignment, pledge, notice, check, receipt, waiver, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(10) Continue, procure, pay the premium or assessment on, modify, rescind, release, terminate, or otherwise deal with any contract of insurance, other than those enumerated in paragraph (1) or (2), whether fire, marine, burglary, compensation, disability, liability, hurricane, earthquake, casualty, or other type, or any combination of insurance; and do any act with respect to any of those contracts or with respect to their proceeds or enforcement which the agent believes desirable or necessary for the promotion or protection of the interests of the principal.

(11) Prosecute, defend, submit to arbitration, settle, adjust, and propose or accept a compromise, with respect to any claim existing in favor of or against the principal based on or involving any insurance transaction or intervene in any action or proceeding relating thereto.

(12) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(13) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent in connection with procuring, supervising, managing, modifying, enforcing, and terminating contracts of insurance in which the principal is the insured or is otherwise interested.

(b) All powers described in this section are exercisable with respect to any contract of insurance in which the principal is in any way interested, whether made in this state or elsewhere. (*Added by Stats.1984, c. 602, § 1.*)

§ 2466. Authorization of retirement plan transactions

(a) In a statutory short form power of attorney, the language conferring general authority with respect to "retirement plan transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Select various payment options under any retirement plan in which the principal participates, including plans for self-employed individuals, except that the agent

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himself or herself shall not be the beneficiary unless the agent is a spouse, child, grandchild, parent, brother, or sister of the principal.

(2) Make beneficiary designations under those plans and change any existing beneficiary designations, except that the agent himself or herself shall not be the beneficiary unless the agent is a spouse, child, grandchild, parent, brother, or sister of the principal.

(3) Make voluntary contributions to those plans.

(4) Make "rollovers" of plan benefits into other retirement plans.

(5) Borrow from those plans if authorized by the plan, and sell assets to or purchase assets from the plan if authorized by the plan.

(6) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent with respect to retirement plans in which the principal is interested.

(b) All powers described in this section are exercisable with respect to any retirement plan in which the principal is in any way interested, whether the plan is in this state or elsewhere. (*Added by Stats.1984, c. 602, § 1.*)

Former § 2466, repealed in 1970, see Title 10, post.

§ 2467. Authorization of estate transactions

(a) In a statutory short form power of attorney, the language conferring general authority with respect to "estate transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To the extent that an agent is permitted by law thus to act for a principal, apply for and procure, in the name of the principal, letters of administration, letters testamentary, letters of trusteeship, or any other type of authority, either judicial or administrative, and act as a fiduciary of any sort.

(2) To the extent that an agent is permitted by law thus to act for a principal, represent and act for the principal in all ways and in all matters affecting any estate of a decedent, absentee, minor, or incompetent, or any trust or other fund, out of which the principal is entitled, or claims to be entitled, to some share or payment or with respect to which the principal is a fiduciary.

(3) Accept, reject, receive, receipt for, sell, assign, release, disclaim, renounce, pledge, exchange, or consent to a reduction in or modification of, any share in or payment from any estate, trust, or other fund, with or without consideration.

(4) Demand and obtain by action, proceeding, or otherwise, any money or other thing of value to which the principal is, may become, or may claim to be entitled by reason of the death testate or intestate of any person or of any testamentary disposition or of any trust or by reason of the administration of the estate of a decedent or absentee or of the guardianship of a minor or the conservatorship of an incompetent or the administration of any trust or other fund; initiate, participate in, or

oppose any proceeding, judicial or otherwise, for the ascertainment of the meaning, validity, or effect of any deed, will, declaration of trust, or other transaction affecting in any way the interest of the principal; initiate, participate in, or oppose any proceeding, judicial or otherwise, for the removal, substitution, or surcharge of a fiduciary; and conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(5) Establish any trust with the assets of the principal for the benefit of the principal and the spouse and descendants of the principal, or any one or more of them, upon such terms as the agent determines are necessary or proper; transfer any asset in which the principal has an interest to any such trust or to any trust that the principal has created; and exercise in whole or in part, release, or let lapse any power the principal may have under any trust whether or not created by the principal, including any power of appointment, revocation, or withdrawal, but a trust created by the principal may only be modified or revoked by the agent as provided in the trust instrument.

(6) Purchase for the principal United States treasury bonds redeemable at par value in payment of federal estate taxes; borrow money from any source for that purpose; make, execute, endorse, and deliver promissory notes, bills of exchange, drafts, agreements, or other obligations for those bonds, and as security for them pledge, mortgage, and assign any stock, bonds, securities, insurance values, or other properties, real or personal, in which the principal may have an interest; and arrange for the safekeeping and custody of any of those treasury bonds.

(7) Prepare, sign, file, and deliver all reports, compilations of information, returns, or papers with respect to any interest had or claimed by or on behalf of the principal in any estate, trust, or other fund; and pay, compromise, or contest, and apply for refunds in connection with any tax or assessment with respect to (A) any interest had or claimed by or on behalf of the principal in any estate, trust, or other fund or by reason of the death of any person or (B) any property in which that interest is had or claimed.

(8) Agree and contract, in any manner, with any person, and on any terms, which the agent may select, for the accomplishment of the purposes enumerated in this section; and perform, rescind, reform, release, or modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal.

(9) Execute, acknowledge, verify, seal, file, and deliver any consent, designation, pleading, notice, demand, election, conveyance, release, disclaimer, assignment, check, pledge, waiver, admission of service, notice of appearance, or other instrument the agent believes useful for the

accomplishment of any of the purposes enumerated in this section.

(10) Submit to arbitration, settle, and propose or accept a compromise with respect to, any controversy or claim which affects the estate of a decedent, absentee, minor, or incompetent, or the administration of a trust or other fund, in which the principal has or claims to have an interest; and do any act which the agent believes desirable or necessary in effectuating the compromise.

(11) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(12) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent with respect to the estate of a decedent, absentee, minor, or incompetent, or the administration of a trust or other fund, in any one of which the principal has or claims to have an interest or with respect to which the principal is a fiduciary.

(b) All powers described in this section are exercisable equally with respect to any estate of a decedent, absentee, minor, or incompetent, or the administration of any trust or other fund, in which the principal is interested at the time of the giving of the power of attorney or may thereafter become interested, whether located in this state or elsewhere. (*Added by Stats.1984, c. 602, § 1. Amended by Stats.1986, c. 820, § 10; Stats.1988, c. 113, § 6.*)

Former § 2467, repealed in 1970, see Title 10, post.

§ 2468. Authorization of claims and litigation

(a) In a statutory short form power of attorney, the language conferring general authority with respect to "claims and litigation" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Assert and prosecute before any court, administrative board, department, commissioner, or other tribunal, any cause of action, claim, counterclaim, cross-complaint, offset, or defense, which the principal has, or claims to have, against any individual, partnership, association, corporation, government, or other person or instrumentality, including by way of illustration, and not of restriction, the power to sue for the recovery of real property or of any other thing of value, for the recovery of damages sustained by the principal in any manner, for the elimination or modification of tax liability, for an injunction, for specific performance, or for any other relief.

(2) Bring an action of interpleader or other action to determine adverse claims; intervene or interplead in any action or proceeding; and act in any litigation as amicus curiae.

(3) In connection with any action or proceeding or controversy, at law or otherwise, apply for and, if possible, procure a libel, an attachment, a garnishment,

or other preliminary, provisional, or intermediate relief, and resort to and utilize in all ways permitted by law any available procedure for the effectuation, enforcement, or satisfaction of the judgment, order, or decree obtained.

(4) In connection with any action or proceeding, perform any act that the principal might perform, including by way of illustration, but not of restriction, acceptance of tender, offer of judgment, admission of facts, submission of any controversy on an agreed statement of facts, consent to examination before trial; and generally bind the principal in the conduct of any litigation or controversy as seems desirable to the agent.

(5) Submit to arbitration, settle, and propose or accept a compromise with respect to, any claim existing in favor of or against the principal, or any litigation to which the principal is, may become, or may be designated a party.

(6) Waive the issuance and service of a summons, citation, or other process upon the principal; accept service of process; appear for the principal; designate persons upon whom process directed to the principal may be served; execute and file or deliver stipulations on the principal's behalf; verify pleadings; appeal to appellate tribunals; procure and give surety and indemnity bonds at such times and to such extent as the agent believes desirable or necessary; contract and pay for the preparation and printing of records and briefs; and receive, execute, and file or deliver any consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument which the agent believes desirable or necessary in connection with the prosecution, settlement, or defense of any claim by or against the principal or of any litigation to which the principal is, may become, or may be designated a party.

(7) Appear for, represent, and act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, whether of the principal or of some other person, or with respect to any reorganization proceeding, or with respect to any assignment for the benefit of creditors, receivership, or application for the appointment of a receiver or trustee, which in any way affects any interest of the principal in any real or personal property, bond, share, commodity interest, chose in action, or other thing of value.

(8) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section.

(9) Pay, from funds in the agent's control or for the account of the principal, any judgment against the principal or any settlement which may be made in connection with any transaction enumerated in this section; receive and conserve moneys or other things of value paid in settlement of or as proceeds of any transaction enumerated in this section; and receive, endorse, and deposit checks.

(10) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent in connection with any

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claim by or against the principal or with litigation to which the principal is, may become, or may be designated a party.

(b) All powers described in this section are exercisable equally with respect to any claim or litigation existing at the time of the giving of the power of attorney or thereafter arising, whether arising in this state or elsewhere. (*Added by Stats.1984, c. 602, § 1.*)

Former § 2468, repealed in 1970, see Title 10, post.

§ 2469. Authorization respecting tax matters

In a statutory short form power of attorney, the language conferring general authority with respect to "tax matters" shall be construed to mean that the principal authorizes the agent to do all of the following:

(a) Prepare, sign, and file federal, state, local, and foreign income, gift, or other tax returns of all kinds, FICA returns, payroll tax returns, claims for refunds, requests for extension of time, petitions to the tax court or other courts regarding tax matters, and any other tax related documents, including without limitation receipts, offers, waivers, consents (including, but not limited to, consents and agreements under Internal Revenue Code Section 2032A¹ or any successor section), closing agreements, and any power of attorney form required by the Internal Revenue Service, the California Franchise Tax Board, or any other taxing authority with respect to any tax year between the year of the giving of the power of attorney and the year ending 25 years thereafter.

(b) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service, the California Franchise Tax Board, or other taxing authority.

(c) Exercise any elections the principal may have under federal, state, local, or foreign tax law.

(d) In general, and in addition to all the specific acts enumerated in this section, do any other act, which the principal can do through an agent, to represent the principal in all tax matters and proceedings of all kinds and for all periods before all officers of the Internal Revenue Service, the California Franchise Tax Board, and any other taxing authority, whether in this state or elsewhere. (*Added by Stats.1984, c. 602, § 1.*)

¹ 26 U.S.C.A. § 2032A

Former § 2469, repealed in 1970, see Title 10, post.

§§ 2469.1 to 2469.3. Repealed

For §§ 2469.1 to 2469.3, repealed in 1970, see Title 10, post.

§ 2470. Authorization respecting personal relationships and affairs

(a) In a statutory short form power of attorney, the language conferring general authority with respect to "personal relationships and affairs" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Do all acts necessary for maintaining the customary standard of living of the spouse and children and other dependents of the principal, including by way of illustration, but not of restriction, the power to do the following:

(A) Provide living quarters (i) by purchase, lease, or other contract or (ii) by payment of the operating costs, including interest, amortization payments, insurance, repairs, and taxes, of premises owned by the principal and occupied by the family or dependents of the principal.

(B) Provide normal domestic help for the operation of the household.

(C) Provide usual vacations and usual travel expenses.

(D) Provide for education, including education at vocational and trade schools, training in music, stage, handicrafts, arts, and sports, special training provided at institutions for the mentally or physically handicapped, undergraduate and graduate study in any field at public or private universities, colleges, or other institutions of higher learning, and, in providing for that education, pay for tuition, books, and incidental charges made by the educational institutions, travel costs to and from those institutions, room and board, and a reasonable amount of spending money.

(E) Provide funds for all the current living costs of the spouse, children, and other dependents of the principal, including, among other things, shelter, clothing, food, and incidentals.

(2) Provide, whenever necessary, medical, dental, and psychiatric care, hospitalization, and custodial care for the spouse, children, and other dependents of the principal.

(3) Continue whatever provision has been made by the principal, before or after the creation of the agency, for the spouse, children, and other dependents of the principal, with respect to automobiles or other means of transportation, including by way of illustration, but not of restriction, the power to license, insure, and replace any automobiles owned by the principal and customarily used by the spouse, children, or other dependents of the principal.

(4) Continue whatever charge accounts have been operated by the principal, before or after the creation of the agency, for the convenience of the spouse, children, or other dependents of the principal; open those new charge accounts which the agent believes desirable for the accomplishment of any of the purposes enumerated in this section; and pay the items charged on the accounts by any person authorized or permitted by the principal, before the creation of the agency, to make charges.

(5) Continue the discharge of any services or duties assumed by the principal, before or after the creation of the agency, to any parent, relative, or friend of the principal.

(6) Supervise, enforce, defend, or settle any claim by or against the principal arising out of property damages or personal injuries suffered by or caused by the principal

or arising under such circumstances that the loss resulting therefrom will or may fall on the principal.

(7) Continue payments incidental to the membership or affiliation of the principal in any church, club, society, order, or other organization and continue contributions to it.

(8) Make gifts, grants, or other transfers without consideration to or for the benefit of the spouse or descendants of the principal or a charitable institution, or more than one or all of them, either outright or in trust, including the forgiveness of indebtedness and the completion of any charitable pledges the principal may have made; consent to the splitting of gifts under Internal Revenue Code Section 2513,¹ or successor sections, if the spouse of the principal makes gifts to any one or more of the descendants of the principal or to a charitable institution; pay any gift tax that may arise by reason of those gifts; and loan any of the assets of the principal to the spouse or descendants of the principal, or their personal representatives or a trustee for their benefit, the loan bearing such interest, and to be secured or unsecured, as the agent determines advisable.

(9) Demand, receive, and obtain by action, proceeding, or otherwise, any money or other thing of value to which the principal is, may become, or may claim to be entitled as salary, wages, commission, or other remuneration for services performed, or as a dividend or distribution upon any stock, or as interest or principal upon any indebtedness, or as any periodic distribution of profits from any partnership or business in which the principal has or claims an interest, and endorse, collect, or otherwise realize upon any instrument for the payment so received.

(10) Prepare, execute, and file all tax, social security, unemployment insurance, and information returns required by the laws of the United States, any state or subdivision thereof, or any foreign government; prepare, execute, and file all other papers and instruments which the agent believes desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation; and pay, compromise, or contest, or apply for refunds in connection with, any taxes or assessments for which the principal is or may be liable.

(11) Utilize any asset of the principal for the performance of the powers enumerated in this section, including by way of illustration, and not of restriction, the power to do all of the following:

(A) Draw money by check or otherwise from any deposit of the principal.

(B) Sell any real or personal property, bond, share, commodity interest, chose in action, or other asset of the principal.

(C) Borrow money and pledge as security for the loan any asset, including insurance, which belongs to the principal.

(12) Execute, acknowledge, verify, seal, file, and deliver any application, consent, petition, notice, release, waiver, agreement, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(13) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, any claim existing in favor of or against the principal based on or involving any transaction enumerated in this section or intervene in any action or proceeding relating thereto.

(14) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(15) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent for the welfare of the spouse, children, or dependents of the principal or for the preservation and maintenance of the other personal relationships of the principal to parents, relatives, friends, and organizations.

(b) All powers described in this section are exercisable equally whether the acts required for their execution relate to real or personal property owned by the principal at the time of the giving of the power of attorney or thereafter acquired and whether the acts are performable in this state or elsewhere. (*Added by Stats. 1984, c. 602, § 1.*)

¹ 26 U.S.C.A. § 2513

Former § 2470, repealed in 1970, see Title 10, post.

§ 2471. Authorization respecting benefits from military service

(a) In a statutory short form power of attorney, the language conferring general authority with respect to "benefits from military service" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Execute vouchers in the name of the principal for allowances and reimbursements payable to the principal by the United States or by any state or subdivision thereof, including by way of illustration, and not of restriction, all allowances and reimbursements for transportation of the principal and of the dependents of the principal and for shipment of household effects; and receive, endorse, and collect the proceeds of any check payable to the order of the principal drawn on the treasurer or other fiscal officer or depository of the United States or of any state or subdivision thereof.

(2) Take possession and order the removal and shipment of any property of the principal from any post, warehouse, depot, dock, or other place of storage or safekeeping, governmental or private; and execute and deliver any release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument the agent believes desirable or necessary for that purpose.

POWER OF ATTORNEY FOR HEALTH CARE

(3) Prepare, file, and prosecute the claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is or claims to be entitled under the provisions of any statute or regulation existing at the time of the creation of the agency or thereafter enacted by the United States or by any state or by any subdivision thereof, or by any foreign government, which benefit or assistance arises from or is based upon military service performed before or after the creation of the agency by the principal or by any person related by blood or by marriage to the principal; and execute any receipt or other instrument the agent believes desirable or necessary for enforcement or collection of the claim.

(4) Receive the financial proceeds of any claim of the type described in this section; conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(5) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, any claim existing in favor of or against the principal based on or involving any benefits from military service or intervene in any action or proceeding relating to it.

(6) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section.

(7) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent that the agent believes desirable or necessary to assure to the principal and to dependents of the principal the maximum possible benefit from the military service performed before or after the creation of the agency by the principal or by any person related by blood or marriage to the principal.

(b) All powers described in this section are exercisable equally with respect to any benefits from military service existing at the time of the giving of the power of attorney or thereafter accruing, whether accruing in this state or elsewhere. (Added by Stats.1984, c. 602, § 1.)

Former § 2471, repealed in 1970, see Title 10, post.

§ 2472. Authorization respecting records, reports, and statements

(a) In a statutory short form power of attorney, the language conferring general authority with respect to "records, reports, and statements" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Keep records of all cash received and disbursed for or on account of the principal, of all credits and debits to the account of the principal, and of all transactions affecting in any way the assets and liabilities of the principal.

(2) Prepare, execute, and file all tax, social security, unemployment insurance, and information returns re-

quired by the laws of the United States or any state or subdivision thereof or any foreign government; and prepare, execute, and file all other papers and instruments the agent believes desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation.

(3) Prepare, execute, and file any record, report, or statement the agent believes desirable or necessary for the safeguarding or maintenance of the principal's interest with respect to price, rent, wage, or rationing control or other governmental activity.

(4) Hire, discharge, and compensate any attorney, accountant, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section.

(5) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent in connection with the preparation, execution, filing, storage, or other utilization of any records, reports, or statements of or concerning the principal's affairs.

(b) All powers described in this section are exercisable equally with respect to any records, reports, and statements of or concerning the affairs of the principal existing at the time of the giving of the power of attorney or thereafter arising, whether in this state or elsewhere. (Added by Stats.1984, c. 602, § 1.)

Former § 2472, repealed in 1949, see Title 10, post.

§ 2473. Authority with respect to other matters; exclusion of health care decisions

(a) Except as provided in subdivision (b), in a statutory short form power of attorney, the language conferring general authority with respect to "all other matters" shall be construed to mean that the principal authorizes the agent to act as an alter ego of the principal with respect to any and all possible matters and affairs which are not enumerated in Sections 1460 to 1472, inclusive, and which the principal can do through an agent.

(b) A statutory short form power of attorney under this chapter does not authorize the agent to make health care decisions, as defined in Section 2430, for the principal. (Added by Stats.1984, c. 602, § 1.)

STATE OF CALIFORNIA
Law Revision Commission

Staff Draft

TENTATIVE RECOMMENDATION

relating to

UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

July 1989

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature in 1990. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN SEPTEMBER 15, 1989.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

LETTER OF TRANSMITTAL

This tentative recommendation proposes the enactment of the Uniform Statutory Form Power of Attorney Act. This new uniform act would replace Civil Code Sections 2450-2473 (statutory short form power of attorney). This recommendation is made pursuant to 1980 Cal. Stat. res. ch. 37.

05/12/89

RECOMMENDATION

A durable power of attorney to cover all aspects of property matters may be a lengthy document. To avoid this, the new Uniform Statutory Form Power of Attorney Act¹ provides a short statutory form that gives the agent (attorney in fact) authority to act with respect to one or more of 13 categories of transactions or matters, such as "real property transactions" or "banking and other financial institution transactions."²

The uniform act contains constructional sections that spell out in considerable detail the precise powers the agent has if granted one or more of the general categories of authority listed in the 13 categories in the form.³ For example, if the agent is given authority with respect to "real property transactions" in the statutory form, the details of the authority granted as specified in a more than 350 word statutory statement.⁴

1. The new Uniform Statutory Form Power of Attorney Act (hereinafter referred to as "Uniform Act") was approved and recommended for enactment in all the states by the National Conference of Commissioners on Uniform State Laws in 1988.

2. Uniform Act §1. The categories included in the Uniform Act are:

- (A) Real property transactions.
- (B) Tangible personal property transactions.
- (C) Stock and bond transactions.
- (D) Commodity and option transactions.
- (E) Banking and other financial institutions transactions.
- (F) Business operating transactions.
- (G) Insurance and annuity transactions.
- (H) Estate, trust, and other beneficiary transactions.
- (I) Claims and litigation.
- (J) Personal and family maintenance.
- (K) Benefits from social security, medicare, medicaid, or other governmental programs, or military service.
- (L) Retirement plan transactions.
- (M) Tax matters.
- (N) ALL OF THE POWERS LISTED ABOVE.

3. Uniform Act §§3-16. See also Uniform Act §17 (after acquired property, property located outside state, exercise of power outside state, execution of power outside state).

4. Uniform Act §4.

The uniform act form⁵ contains a space for "special instructions." In this space, the principal can limit the powers that would otherwise be granted with respect to one or more of the categories of powers granted to the agent or can add additional powers that would not otherwise be granted to the agent by the form.

California already has legislation substantially similar to the uniform act. Civil Code Sections 2450-2473 provide for a "Statutory Short Form Power of Attorney." The California statute adopts the same scheme as the uniform act--a statutory short form,⁶ together with constructional sections in the statute that spell out the authority granted by each of the general categories listed in the statutory form.⁷ The California statutory form also includes a space for "Special Provisions and Limitations" where the principal can provide special provisions and limitations concerning the exercise of the powers granted.⁸

The uniform act closely follows the general categories in the California statutory form and the constructional provisions of the California statute. However, there are some significant differences between the existing California statute and the uniform act:

(1) All the powers listed on the California statutory form are automatically granted to the agent unless the principal takes affirmative action to *eliminate* one or more powers by drawing a line through each power not to be granted.⁹ By way of contrast, the uniform act requires an affirmative act by the principal in order to *grant* a power to the agent. The uniform act requires that the

5. Uniform Act §1.

6. Civil Code §2450.

7. Civil Code §§2460-2473.

8. Civil Code §2450.

9. Civil Code §2450. The instructions on the form state: "Strike out any one or more of the items above to which you do NOT desire to give your agent authority. . . . TO STRIKE OUT AN ITEM, YOU MUST DRAW A LINE THROUGH THE TEXT OF THAT ITEM."

principal initial the space next to each power to be granted or initial a space indicating that the principal wishes to grant the agent all of the listed powers.¹⁰

(2) The California statutory form contains a category of powers not found in the uniform act form. This category--"all other matters"--adds to the listed powers all additional powers that can be given to an agent.¹¹ These additional powers are automatically given the agent unless the principal draws a line through this category on the statutory form.¹² The uniform act contains no similar category that permits the principal to give the agent all powers that an agent may be given; any powers the principal wishes to give the agent in addition to the specific powers covered by the 13 categories listed in the form can be granted only by adding a specially drafted statement to the form describing the additional powers granted.

(3) The California statutory form automatically grants very broad estate planning powers to the principal.¹³ For example, the authority with respect to "estate transactions" includes the authority to establish a trust with property of the principal "for the benefit of

10. Uniform Act §1. The instructions on the form state:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

11. Civil Code §2473(a) ("the language conferring general authority with respect to 'all other matters' shall be construed to mean that the principal authorizes the agent to act as an alter ego of the principal with respect to any and all possible matters and affairs which are not enumerated [in the sections describing the specific categories of powers] and which the principal can do through an agent"). The authority does not extend to making health care decisions for the principal. Civil Code §2473(b).

12. See text at note 9 supra.

13. These powers may be withheld by drawing a line through the category "estate transactions" or by adding specifically drafted limitations in the portion of the form for "Special Provisions and Limitations." See text at notes 8-9 supra.

the principal and the spouse and descendants of the principal, or any one or more of them, upon such terms as the agent determines are necessary or proper."¹⁴ By way of contrast, under the uniform act, these powers can not be granted to the agent merely by giving the agent authority under the specific categories listed in the statutory form; it is necessary to spell out specifically these powers by a statement added to the form. Absent a specific statement, the agent has no power under the uniform act to create, modify, or revoke a trust.

(4) The California statutory form gives the agent very broad authority to make gifts and other transfers without consideration and to engage in transactions for the benefit of the spouse or descendants of the principal.¹⁵ No similar authority is found in the uniform

14. Civil Code §2467(a)(5). Section 2467 also gives the agent the power to "exercise in whole or in part, release, or let lapse any power the principal may have under any trust whether or not created by the principal, including any power of appointment, revocation, or withdrawal, but a trust created by the principal may only be modified or revoked by the agent as provided in the trust instrument." Other provisions of the California statute also give the agent the power to create, modify, or revoke a trust with respect to specific types of property. Civil Code §§2460(a)(4) (real estate transactions), 2461(a)(4) (tangible personal property transactions), 2462(a)(3) (bond, share, and commodity transactions).

15. Civil Code Section 2470 authorizes the agent to:

(8) Make gifts, grants, or other transfers without consideration to or for the benefit of the spouse or descendants of the principal or a charitable institution, or more than one or all of them, either outright or in trust, including the forgiveness of indebtedness and the completion of any charitable pledges the principal may have made; consent to the splitting of gifts under the Internal Revenue Code Section 2513, or successor sections, if the spouse of the principal makes gifts of any one or more of the descendants of the principal or to a charitable institution; pay any gift tax that may arise by reason of those gifts; and loan any assets of the principal to the spouse or descendants of the principal, or their personal representatives or a trustee for their benefit, the loan bearing such interest, and to be secured or unsecured, as the agent determines advisable.

(15) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do though an agent for the welfare of the spouse, children, or dependents of the principal or for the preservation and maintenance of the other personal relationships of the principal to parents, relatives, friends and organizations.

act. Here again, if it is desired to give broad estate planning powers to the agent, the uniform act requires that a specially drafted statement granting the powers be added to the form. Absent, a specific statement, the agent has only very limited estate planning powers.¹⁶

(5) By way of contrast to the form provided by the uniform act, the California statutory form includes special provisions that make the form lengthy and difficult to understand. The California form, but not the uniform act form, includes provisions (i) permitting the designation of more than one agent and for specifying whether the multiple agents may act severally or must act jointly, (ii) governing the duration of the power of attorney, and (iii) permitting the nomination of a conservator of the estate.¹⁷ These provisions, together with the explanations and instructions concerning them, add considerably to the length and complexity of the form.

(6) The general requirement for a durable power of attorney in California is that the durable power of attorney be "in writing" and include language showing the intent that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity.¹⁸ The California statutory form and the uniform act form

16. Under the uniform act, the agent has limited authority to obtain insurance and to designate insurance beneficiaries (Uniform Act §10), to transfer property of the principal to a revocable trust created by the principal as settlor (Uniform Act §11), and to designate and change beneficiaries under retirement plans (Uniform Act §15).

17. Civil Code §2450. Under the uniform act, the duration of the power of attorney can be limited by a statement included in the "Special Instructions" portion of the form. The uniform act form creates a durable power of attorney unless the principal strikes out the sentence in the form that provides that the power "will continue to be effective even though I become disabled, incapacitated, or incompetent."

18. Civil Code §2400. Section 2400 is part of the Uniform Durable Power of Attorney Act.

both have an additional requirement: The form must be signed and dated by the principal and acknowledged before a notary.¹⁹ The California statute adds an additional requirement that makes execution of the form more difficult and causes confusion.²⁰ Two witnesses are required. The witnesses must be present when the principal signs or acknowledges the form and must personally know the principal or the identity of the principal must be proved to them by "convincing evidence." The form contains a long statement of what constitutes convincing evidence.

(7) The uniform act form includes a more concise statement concerning the consequences of executing the form than the statement in the California form.

The Law Revision Commission recommends that the Uniform Statutory Form Power of Attorney Act be enacted in California to replace the existing Statutory Short Form Power of Attorney statute. The form provided by the uniform act is simple and easy to understand. This simplicity, together with the advantage of having a uniform form that will receive national acceptance, outweigh any benefit that might be thought to exist because of the broader scope, the additional provisions, and the more complex execution requirements of the existing California statutory short form.²¹

19. Civil Code § 2452; Uniform Act §1(b). See also Govt Code §27287 (general requirement that instrument must be acknowledged in order to be recorded).

20. Civil Code §2452(2). See also the instructions on the form itself. Civil Code §2450.

21. Unlike the existing California statutory form, the uniform act does not give the agent significant estate planning powers nor does it authorize gifts or loans to the spouse, children, or descendants of the principal. This is not necessarily a deficiency in the uniform act form. If one desires to give extensive estate planning and gift giving authority to the agent, a power of attorney carefully drafted by a knowledgeable lawyer should be used.

The California form contains other provisions and requirements not found in the uniform act. Any possible benefit of these provisions--designation of more than one agent and nomination of conservator of the estate--and of the additional requirement of two witnesses is outweighed by the complexity and confusion they add to the task of completing and executing the form.

RECOMMENDED LEGISLATION

Civil Code §§2475-2499 (added)

SEC. Chapter 3.5 (commencing with Section 2475) is added to Title 9 of Part 4 of the Civil Code, to read:

CHAPTER 3.5. UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

Article 1. General Provisions

§2475. Statutory form

2475. The following statutory form of power of attorney is legally sufficient when the requirements of Section 2476 are satisfied:

CALIFORNIA STATUTORY POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE CALIFORNIA UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA CIVIL CODE SECTIONS 2475-2499). IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I _____ (insert your name and address)
appoint _____ (insert the name and address of
the person appointed) as my agent (attorney-in-fact) to act for me in
any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF
(N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS,
INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU
MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

- _____ (A) Real property transactions.
- _____ (B) Tangible personal property transactions.
- _____ (C) Stock and bond transactions.
- _____ (D) Commodity and option transactions.
- _____ (E) Banking and other financial institution transactions.
- _____ (F) Business operating transactions.
- _____ (G) Insurance and annuity transactions.

- _____ (H) Estate, trust, and other beneficiary transactions.
- _____ (I) Claims and litigation.
- _____ (J) Personal and family maintenance.
- _____ (K) Benefits from social security, medicare, medicaid, or other governmental programs, or military service.
- _____ (L) Retirement plan transactions.
- _____ (M) Tax matters.
- _____ (N) ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney will continue to be effective even though I become disabled, incapacitated, or incompetent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

The statutory form contains a list of powers. The powers listed relate to various separate classes of activities, except the last, which is inclusive. Health care matters are not included. For a durable power of attorney form for health care matters, see Sections 2500-2508.

Space is provided in the statutory form for special provisions. The statutory form contains only a limited list of powers. If it desired to give the agent the broadest possible powers, language similar to the following can be added under the "Special Instructions" portion of the form:

In addition to all of the powers listed in lines (A) to (M) above, I grant to my agent full power and authority to act for me, in any way which I myself could act if I were personally present and able to act, with respect to all other matters and affairs not listed in lines (A) to (M) above, but this authority does not include authority to make health care decisions.

Neither the form in this section, nor the construction of the form provided by Sections 2485-2499, attempts to allow the grant of the power to make a will or to give the agent extensive estate planning authority, although several of the powers, especially lines (G), (H), and (L) of the statutory form, may be useful in planning the disposition of an estate. An individually tailored power of attorney can be used if the principal wants to give the agent extensive estate planning authority or additional estate planning powers can be granted to the agent by stating those additional powers in the space provided in the form for "Special Instructions." For example, provisions like the following might be included under the special instructions portion of the statutory form:

In addition to the powers listed in lines (A) to (M) above, the agent is empowered to do all of the following:

(1) Establish a trust with property of the principal for the benefit of the principal and the spouse and descendants of the principal, or any one or more of them, upon such terms as the agent determines are necessary or proper, and transfer any property in which the principal has an interest to the trust.

(2) Exercise in whole or in part, release, or let lapse any power the principal may have under any trust whether or not created by the principal, including any power of appointment, revocation, or withdrawal, but a trust created by the principal may only be modified or revoked by the agent as provided in the trust instrument.

(3) Make a gift, grant, or other transfer without consideration to or for the benefit of the spouse or descendants of the principal or a charitable organization, or more than one or all of them, either outright or in trust, including the forgiveness of indebtedness and the completion of any charitable pledges the principal may have made, consent to the splitting of gifts under Internal Revenue Code Section 2513, or successor sections, if the spouse of the principal makes gifts to any one or more of the descendants of the principal or to a charitable institution, and pay any gift tax that may arise by reason of those gifts.

(4) Loan any of the property of the principal to the spouse or descendants of the principal, or their personal representatives or a trustee for their benefit, the loan bearing such interest, and to be secured or unsecured, as the agent determines advisable.

(5) In general, and in addition to all the specific acts enumerated, do any other act which the principal can do though an agent for the welfare of the spouse, children, or dependents of the principal or for the preservation and maintenance of other personal relationships of the principal to parents, relatives, friends, and organizations.

Section 2478 and the statutory form itself make the power of attorney a durable power of attorney, remaining in effect after the disability of the principal, unless the person executing the form otherwise indicates.

The last paragraph of the text of the statutory form protects a third party who receives a copy of the statutory form power of attorney and acts in reliance on it. The statement in the statutory form--that revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation--is consistent with Sections 2403 (good faith reliance upon power of attorney without actual knowledge of death or incapacity of principal), 2404 (affidavit of lack of knowledge of termination of power). See also Section 2512 (protection of person who acts in good faith reliance upon power of attorney where specified requirements are satisfied). The protection provided by these sections and other immunities that may protect persons who rely on a power of attorney (see subdivision (b) of Section 2512) apply to a statutory form power of attorney.

Neither this section, nor the chapter as a whole, attempt to provide an exclusive method for creating a power of attorney. Other forms may be used and other law employed to create powers of attorney. However, it is hoped that this chapter will be sufficient for most purposes.

For provisions relating to court enforcement of the duties of the agent, see Sections 2410-2423.

The form provided by Section 2475 supersedes former statutory short form power of attorney under former Chapter 3 (commencing with Section 2450). See Section 2450 and the Comment to that section.

§2476. Requirements for statutory power of attorney

2476. A statutory form power of attorney under this chapter is legally sufficient if all of the following requirements are satisfied:

(a) The wording of the form complies substantially with Section 2475.

(b) The form is properly completed.

(c) The signature of the principal is acknowledged.

Comment. Section 2476 is the same in substance as subsection (b) of Section 1 of the Uniform Statutory Form Power of Attorney Act.

§2477. Effect initially line in front of (N) in statutory form

2477. If the line in front of (N) of the statutory form under Section 2475 is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N).

Comment. Section 2477 is the same in substance as subsection (c) of Section 1 of the Uniform Statutory Form Power of Attorney Act.

§2478. Durable power of attorney

2478. A power of attorney legally sufficient under this chapter is durable to the extent that the power of attorney contains language, such as "This power of attorney will continue to be effective even though I become disabled, incapacitated, or incompetent," showing the intent of the principal that the power granted may be exercised notwithstanding later disability, incapacity, or incompetency.

Comment. Section 2478 is the same in substance as of Section 2 of the Uniform Statutory Form Power of Attorney Act. The phrase "to the extent that durable powers are permitted by other law of this State," found in the uniform act, has been omitted as unnecessary. Durable powers of attorney are specifically authorized by Article 3 (commencing with Section 2400) of Chapter 2.

A durable power of attorney under this chapter continues in effect when the principal is disabled, incapacitated, or becomes incompetent. The form in Section 2475 includes a provision for continuance under those circumstances. That provision may be used or stricken at the discretion of the principal. The provision is consistent with Section 2400 (Uniform Durable Power of Attorney Act). See also Sections 2401 (effect of acts by attorney in fact during incapacity of principal), 2403 (good faith reliance upon power of attorney after death or incapacity of principal). As to the effect of appointment of a conservator of the estate, guardian of the estate, or other fiduciary charged with the management of the principal's property, see Section 2402.

§2479. Short title

2479. This chapter may be cited as the California Uniform Statutory Form Power of Attorney Act.

Comment. This chapter is substantially the same as the Uniform Statutory Form Power of Attorney Act (1988). Section 2479 is the same as Section 19 of the uniform act with the addition of the word "California."

§2480. Uniformity of construction

2480. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Comment. Section 2480 is a standard provision in uniform acts and is the same as Section 18 of the Uniform Statutory Form Power of Attorney Act.

§2481. Partial invalidity

2481. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Comment. Section 2481 is a standard provision in uniform acts and is the same as Section 20 of the Uniform Statutory Form Power of Attorney Act.

Article 2. Construction of Powers

Comment. This article (commencing with Section 2485) explains the several powers listed in the statutory form in Section 2475. Section 2485 provides general powers that apply to all of the defined classes of authority listed in lines (A) through (M) of the statutory form, subject to any conditions set by the principal.

The language in Sections 2486 to 2498 makes explicit reference to authority that would be appropriate for each class of transaction. The language in those sections identifies activities that are typical responsibilities for the particular class of transaction.

Any of Sections 2486 to 2498, together with the general authority in Section 2485, gives the agent (attorney in fact) complete power for the class of transactions. The recitation of particular powers in each section explains the scope of the individual section and assures the user of this chapter and the form provided by this chapter that the matters that are the user's particular concern are covered by the chapter. As to use of a power executed outside this state, subsequently acquired property, use of the power with respect to property located outside this state, and exercise of the power outside this state, see Section 2499.

A general effect of this article is that the agent (attorney in fact) can exercise authority subject to the same conditions and limitations as the principal. In a few instances the limiting conditions are made explicit. For example in Section 2491, it is stated that partnership powers are subject to the terms of the partnership agreement. But all authority is subject to conditions of fact and law that exist outside the chapter. For example, a collection agency could not escape regulation by acting under this power of attorney.

§2485. Construction of powers generally

2485. By executing a statutory power of attorney with respect to a subject listed in Section 2475, the principal, except as limited or extended by the principal in the power of attorney, empowers the agent, for that subject, to do all of the following:

(a) Demand, receive, and obtain by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received for the purposes intended.

(b) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction, and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal.

(c) Execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction.

(d) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, a claim existing in favor of or against the principal or intervene in litigation relating to the claim.

(e) Seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney.

(f) Engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant.

(g) Keep appropriate records of each transaction, including an accounting of receipts and disbursements.

(h) Prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation.

(i) Reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney.

(j) In general, do any other lawful act with respect to the subject.

Comment. Section 2485 is the same in substance as Section 3 of the Uniform Statutory Form Power of Attorney Act. See the Comment to this article under the article heading. See also Sections 2410-2423 (court enforcement of duties of attorney in fact).

§2486. Real property transactions

2486. In a statutory power of attorney, the language granting power with respect to real property transactions empowers the agent to do all of the following:

(a) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire, an interest in real property or a right incident to real property.

(b) Sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition, consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease, sublease, or otherwise dispose of, an interest in real property or a right incident to real property.

(c) Release, assign, satisfy, and enforce by litigation or otherwise, a mortgage, deed of trust, encumbrance, lien, or other claim to real property which exists or is asserted.

(d) Do any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned, or claimed to be owned, by the principal, including all of the following:

(1) Insuring against a casualty, liability, or loss.

(2) Obtaining or regaining possession, or protecting the interest or right, by litigation or otherwise.

(3) Paying, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them.

(4) Purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property.

(e) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right.

(f) Participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold shares of stock or obligations received in a plan of reorganization, and act with respect to them, including all of the following:

- (1) Selling or otherwise disposing of them.
- (2) Exercising or selling an option, conversion, or similar right with respect to them.
- (3) Voting them in person or by proxy.
- (g) Change the form of title of an interest in or right incident to real property.
- (h) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

Comment. Section 2486 is the same in substance as Section 4 of the Uniform Statutory Form Power of Attorney Act. See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§2487. Tangible personal property transactions

2487. In a statutory power of attorney, the language granting power with respect to tangible personal property transactions empowers the agent to do all of the following:

(a) Accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property.

(b) Sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, sublease to others, or otherwise dispose of tangible personal property or an interest in tangible personal property.

(c) Release, assign, satisfy, or enforce by litigation or otherwise, a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property.

(d) Do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including all of the following:

(1) Insuring against casualty, liability, or loss.

(2) Obtaining or regaining possession, or protecting the property or interest, by litigation or otherwise.

(3) Paying, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments.

(4) Moving from place to place.

(5) Storing for hire or on a gratuitous bailment.

(6) Using, altering, and making repairs or alterations.

Comment. Section 2487 is the same in substance as Section 5 of the Uniform Statutory Form Power of Attorney Act. See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§2488. Stock and bond transactions

2488. In a statutory power of attorney, the language granting power with respect to stock and bond transactions empowers the agent to do all of the following:

(a) Buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments except commodity futures contracts and call and put options on stocks and stock indexes.

(b) Receive certificates and other evidences of ownership with respect to securities.

(c) Exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

Comment. Section 2488 is the same in substance as Section 6 of the Uniform Statutory Form Power of Attorney Act. See the Comment to this article under the article heading. See also Sections 2400.5 (proxies given by attorney in fact to exercise voting rights), 2485 (construction of powers generally).

§2489. Commodity and option transactions

2489. In a statutory power of attorney, the language granting power with respect to commodity and option transactions empowers the agent to do all of the following:

(a) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated option exchange.

(b) Establish, continue, modify, and terminate option accounts with a broker.

Comment. Section 2489 is the same in substance as Section 7 of the Uniform Statutory Form Power of Attorney Act. See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§2490. Banking and other financial institution transactions

2490. In a statutory power of attorney, the language granting power with respect to banking and other financial institution transactions empowers the agent to:

(a) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal.

(b) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, industrial loan company, brokerage firm, or other financial institution selected by the agent.

(c) Hire a safe deposit box or space in a vault.

(d) Contract to procure other services available from a financial institution as the agent considers desirable.

(e) Withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution.

(f) Receive bank statements, vouchers, notices, and similar documents from a financial institution and act with respect to them.

(g) Enter a safe deposit box or vault and withdraw or add to the contents.

(h) Borrow money at an interest rate agreeable to the agent and pledge as security personal property of the principal necessary in order to borrow, pay, renew, or extend the time of payment of a debt of the principal.

(i) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal's order, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due.

(j) Receive for the principal and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument.

(k) Apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution, and give an indemnity or other agreement in connection with letters of credit.

(l) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

Comment. Section 2490 is the same in substance as Section 8 of the Uniform Statutory Form Power of Attorney Act. See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§2491. Business operating transactions

2491. In a statutory power of attorney, the language granting power with respect to business operating transactions empowers the agent to do all of the following:

(a) Operate, buy, sell, enlarge, reduce, and terminate a business interest.

(b) To the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement:

(1) Perform a duty or discharge a liability and exercise a right, power, privilege, or option that the principal has, may have, or claims to have, under a partnership agreement, whether or not the principal is a partner.

(2) Enforce the terms of a partnership agreement by litigation or otherwise.

(3) Defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of membership in the partnership.

(c) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other instrument of similar character, and defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of a bond, share, or similar instrument.

(d) With respect to a business owned solely by the principal:

(1) Continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity, firm, association,

or corporation by or on behalf of the principal with respect to the business before execution of the power of attorney.

(2) Determine the policy of the business as to (i) the location of its operation, (ii) the nature and extent of its business, (iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation, (iv) the amount and types of insurance carried, and (v) the mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees.

(3) Change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of the business.

(4) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business, and control and disburse the money in the operation of the business.

(e) Put additional capital into a business in which the principal has an interest.

(f) Join in a plan of reorganization, consolidation, or merger of the business.

(g) Sell or liquidate a business or part of it at the time and upon the terms the agent considers desirable.

(h) Represent the principal in establishing the value of a business under a buy-out agreement to which the principal is a party.

(i) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business which are required by a governmental agency or instrumentality or which the agent considers desirable, and make related payments.

(j) Pay, compromise, or contest taxes or assessments and do any other act which the agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

Comment. Section 2491 is the same in substance as Section 9 of the Uniform Statutory Form Power of Attorney Act. See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§2492. Insurance and annuity transactions

2492. In a statutory power of attorney, the language granting power with respect to insurance and annuity transactions empowers the agent to do all of the following:

(a) Continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract.

(b) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment.

(c) Pay the premium or assessment on, modify, rescind, release, or terminate a contract of insurance or annuity procured by the agent.

(d) Designate the beneficiary of the contract, but the agent may be named a beneficiary of the contract, or an extension, renewal, or substitute for it, only to the extent the agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney.

(e) Apply for and receive a loan on the security of the contract of insurance or annuity.

(f) Surrender and receive the cash surrender value.

(g) Exercise an election.

(h) Change the manner of paying premiums.

(i) Change or convert the type of insurance contract or annuity as to any insurance contract or annuity with respect to which the principal has or claims to have a power described in this section.

(j) Change the beneficiary of a contract of insurance or annuity, but the agent may not be designated a beneficiary except to the extent permitted by subdivision (d).

(k) Apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal.

(l) Collect, sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in a contract of insurance or annuity.

(m) Pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

Comment. Section 2492 is the same in substance as Section 10 of the Uniform Statutory Form Power of Attorney Act. See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally). Section 2492 covers, but is not limited to, life, accident, health, disability, or liability insurance and fire, marine, burglary, compensation, disability, liability, hurricane, earthquake, and casualty insurance.

§2493. Estate, trust, and other beneficiary transactions

2493. In a statutory power of attorney, the language granting power with respect to estate, trust, and other beneficiary transactions, empowers the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including the power to do all of the following:

(a) Accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund.

(b) Demand or obtain by litigation or otherwise money or other thing of value to which the principal is, may become, or claims to be entitled by reason of the fund.

(c) Initiate, participate in, and oppose litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal.

(d) Initiate, participate in, and oppose litigation to remove, substitute, or surcharge a fiduciary.

(e) Conserve, invest, disburse, and use anything received for an authorized purpose.

(f) Transfer an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance, and other property, to the trustee of a revocable trust created by the principal as settlor.

Comment. Section 2493 is the same in substance as Section 11 of the Uniform Statutory Form Power of Attorney Act. See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§2494. Claims and litigation

2494. In a statutory power of attorney, the language with respect to claims and litigation empowers the agent to do all of the following:

(a) Assert and prosecute before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, cross-complaint, or offset, and defend against an individual, a legal entity, or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief.

(b) Bring an action to determine adverse claims, intervene in litigation, and act as amicus curiae.

(c) In connection with litigation:

(1) Procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect, enforce, or satisfy a judgment, order, or decree.

(2) Perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation.

(d) Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation.

(e) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.

(f) Act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization proceeding, or with respect to an assignment for the benefit of creditors, receivership, or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value.

(g) Pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

Comment. Section 2494 is the same in substance as Section 12 of the Uniform Statutory Form Power of Attorney Act. Subdivision (f) is clarified by adding a reference to an assignment for the benefit of creditors. See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§2495. Personal and family maintenance

2495. In a statutory power of attorney, the language granting power with respect to personal and family maintenance empowers the agent to do all of the following:

(a) Do the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract, or paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals.

(b) Provide for the individuals described in subdivision (a) all of the following:

(1) Normal domestic help.

(2) Usual vacations and travel expenses.

(3) Funds for shelter, clothing, food, appropriate education, and other current living costs.

(c) Pay for the individuals described in subdivision (a) necessary medical, dental, and surgical care, hospitalization, and custodial care.

(d) Continue any provision made by the principal, for the individuals described in subdivision (a), for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them.

(e) Maintain or open charge accounts for the convenience of the individuals described in subdivision (a) and open new accounts the agent considers desirable to accomplish a lawful purpose.

(f) Continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization and continue contributions to those organizations.

Comment. Section 2495 is the same in substance as Section 13 of the Uniform Statutory Form Power of Attorney Act. See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§2496. Benefits from social security, medicare, medicaid, and other governmental programs, or military service

2496. In a statutory power of attorney, the language granting power with respect to benefits from social security, medicare, medicaid or other governmental programs, or military service, empowers the agent to do all of the following:

(a) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in subdivision (a) of Section 2495, and for shipment of their household effects.

(b) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose.

(c) Prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation.

(d) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive.

(e) Receive the financial proceeds of a claim of the type described in this section, conserve, invest, disburse, or use anything received for a lawful purpose.

Comment. Section 2496 is the same in substance as Section 14 of the Uniform Statutory Form Power of Attorney Act. The phrase "or civil," which appears in the introductory clause of the uniform act provision, has been omitted, since that phrase does not appear in the statutory form. See also the Comment to this article under the article heading and Section 2485 (construction of powers generally).

§2497. Retirement plan transactions

2497. In a statutory power of attorney, the language granting power with respect to retirement plan transactions empowers the agent to do all of the following:

(a) Select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals.

(b) Designate beneficiaries under those plans and change existing designations.

(c) Make voluntary contributions to those plans.

(d) Exercise the investment powers available under any self-directed retirement plan.

(e) Make "rollovers" of plan benefits into other retirement plans.

(f) If authorized by the plan, borrow from, sell assets to, and purchase assets from the plan.

(g) Waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

Comment. Section 2497 is the same in substance as Section 15 of the Uniform Statutory Form Power of Attorney Act. See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§2498. Tax matters

2498. In a statutory power of attorney, the language granting power with respect to tax matters empowers the agent to do all of the following:

(a) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act returns, and

other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under Internal Revenue Code Section 2032A or any successor section), closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and to the tax year in which the power of attorney was given and any subsequent tax year.

(b) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority.

(c) Exercise any election available to the principal under federal, state, local, or foreign tax law.

(d) Act for the principal in all tax matters for all periods before the Internal Revenue Service and any other taxing authority.

Comment. Section 2498 is the same in substance as Section 16 of the Uniform Statutory Form Power of Attorney Act. At the end of subdivision (a), reference is made to "a tax year upon which the statute of limitations has not run and to the tax year in which the power of attorney was given and any subsequent tax year" This replaces the reference in the uniform act to "a tax year upon which the statute of limitations has not run and the following 25 tax years." This substitution is consistent with the power granted by subdivision (d) which extends to "all tax matters for all periods" and is not limited to particular tax years. See also the Comment to this article under the article heading and Section 2485 (construction of powers generally).

§2499. After acquired property; property located outside this state; power exercised outside this state; power of attorney executed outside this state

2499. The powers described in this article are exercisable equally with respect to an interest the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state, and whether or not the powers are exercised or the power of attorney is executed in this state.

Comment. Section 2499 makes the power of attorney explicitly effective for property and in places that might otherwise be subject to dispute. The section is the same in substance as Section 17 of the Uniform Statutory Form Power of Attorney Act. See also Section 2513 (no need to describe each item or parcel of property).

CONFORMING AMENDMENTS AND REPEALS

Civil Code §2450-2473 (repealed)

SEC. ____ Chapter 3 (commencing with Section 2450) of Title 9 of Part 4 of the Civil Code is repealed.

Comment. Chapter 3 (commencing with Section 2450) is superseded by the Uniform Statutory Form Power of Attorney Act (Sections 2475-2499). However, a form that complied with the repealed chapter may continue to be used after the repeal takes effect. See Section 2450 (added by the act that repealed former Chapter 3) and the Comment to that section.

Civil Code §2450 (added)

SEC. ____ Chapter 3 (commencing with Section 2450) is added to Title 9 of Part 4 of the Civil Code, to read:

CHAPTER 3. STATUTORY SHORT FORM POWER OF ATTORNEY

§2450. Use of statutory form provided by repealed statute

2450. A statutory short form power of attorney executed before, on, or after the repeal of Chapter 3 (commencing with Section 2450) by the act that enacted this section, using a form that complied with Section 2450 as originally enacted by Chapter 602 of the Statutes of 1984, or as amended by Chapter 403 of the Statutes of 1985, is as valid as if Chapter 3 (commencing with Section 2450) had not been repealed by the act that enacted this section.

Comment. Section 2450 permits continued use of the form formerly prescribed for a statutory short form power of attorney under Section 2450 as enacted by Chapter 602 of the Statutes of 1984 or as amended by Chapter 403 of the Statutes of 1985, even after the repeal of the provisions formerly found in this chapter. See also former Section 2457. Accordingly, after the repeal of the provisions formerly found in this chapter takes effect, either the form set forth in former Section 2450 as original enacted or the form set forth in Section 2450 as amended may continue to be used. This avoids the need to discard existing printed forms and protects the unwary person who uses a printed form prepared pursuant to the former provisions of this chapter. However, it is anticipated that the new form provided pursuant to the Uniform Statutory Form Power of Attorney Act (Section 2475) will soon replace the form formerly provided for in this chapter.

Civil Code §2510 (amended). Warning statement

2510. (a) This section does not apply to either any of the following:

(1) A durable power of attorney for health care.

(2) A Statutory Short Form Power of Attorney that satisfies the requirements of ~~Chapter 3--(commencing with Section 2450)~~ Section 2450 .

(3) A statutory power of attorney that satisfies the requirements of the Uniform Statutory Form Power of Attorney Act (Sections 2475 to 2499, inclusive).

(b) A printed form of a durable power of attorney that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall contain, in not less than 10-point boldface type or a reasonable equivalent thereof, the following warning statement:

WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document. It creates a durable power of attorney. Before executing this document, you should know these important facts:

This document may provide the person you designate as your attorney in fact with broad powers to manage, dispose, sell, and convey your real and personal property and to borrow money using your property as security for the loan.

These powers will exist for an indefinite period of time unless you limit their duration in this document. These powers will continue to exist notwithstanding your subsequent disability or incapacity.

You have the right to revoke or terminate this power of attorney.

If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

(c) Nothing in subdivision (b) invalidates any transaction in which a third person relied in good faith upon the authority created by the durable power of attorney.

Comment. Section 2510 is amended to add paragraph (3) to subdivision (a) to recognize the Uniform Statutory Form Power of Attorney Act. For the California version of this uniform act, see Civil Code Sections 2475-2499. The uniform act has its own warning statement. See Section 2475.

Paragraph (2) of subdivision (a) is revised to reflect the repeal of the former statute authorizing a "statutory short form power of attorney." However, despite the repeal, Section 2450 permits continued use of the form formerly prescribed for a statutory short form power of attorney under Section 2450 as enacted by Chapter 602 of the Statutes of 1984 or as amended by Chapter 403 of the Statutes of 1985. Since that form also had its own warning statement, paragraph (2) is continued in a revised form.

Civil Code §2511 (amended). Convincing evidence of identity of principal

2511. For the purposes of the declaration of witnesses required by Section 2450--or 2500, "convincing evidence" means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person signing or acknowledging the power of attorney as principal is not the individual he or she claims to be and any one of the following:

(a) Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five years:

(1) An identification card or driver's license issued by the California Department of Motor Vehicles.

(2) A passport issued by the Department of State of the United States.

(b) Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, bears a serial or other identifying number, and, in the event that the document is a passport, has been stamped by the United States Immigration and Naturalization Service:

(1) A passport issued by a foreign government.

(2) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.

(3) An identification card issued by a state other than California.

(4) An identification card issued by any branch of the armed forces of the United States.

Comment. Section 2511 is amended to delete the reference to Section 2450 found in the introductory clause of Section 2511. Section 2450 has been repealed and replaced by a new section given the same number.