

## Memorandum 89-91

Subject: Study L-3013 - Statutory Form Power of Attorney

Attached is a copy of the Commission's *Tentative Recommendation Relating to Uniform Statutory Form Power of Attorney Act* (August 1989). The Tentative Recommendation proposes the adoption in California of the Uniform Statutory Form Power of Attorney Act with the addition to the Uniform Act form of provisions (taken from the statutory form provided by existing California law) permitting the designation of co-agents. The Commission approved the distribution of this tentative recommendation to interested persons for review and comment. In this memorandum, we review the comments received as of September 20, 1989.

**GENERAL REACTION TO TENTATIVE RECOMMENDATION; STAFF RECOMMENDATION**

**General Reaction to Tentative Recommendation.** Thirty-four persons commented on the Tentative Recommendation. Almost half of them approved the Tentative Recommendation as proposed. Most of the others approved the Tentative Recommendation with revisions or additions. The suggested revisions generally would expand the scope of the powers automatically granted to the agent to permit gifts and estate planning actions. Three preferred the existing California form to the Uniform Act form because the existing California form automatically grants the agent broader power (powers to make gifts and to take estate planning actions and to do anything the principal could do). Four objected to the entire concept of a statutory power of attorney form.

**Staff Recommendation.** The main criticism of the Tentative Recommendation is that the powers automatically granted to the agent under the Uniform Act form are narrower than those granted under the existing California form. The person using the Uniform Act form can add specially drafted provisions to grant the agent any additional powers desired. However, as some persons who commented point out, it is not likely that a person using the form without the advice of an attorney will add any specially drafted provisions to grant additional powers.

The staff is of the view that the Tentative Recommendation should be approved as drafted (with the revisions indicated below) for printing and submission to the Legislature. As the Recommendation states, the 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 of the existing California statutory form.

The staff recommends the following revisions in the Tentative Recommendation:

(1) We have discovered one error in the preliminary portion of the Tentative Recommendation that must be corrected: On page 8, line 4, substitute "agent" for "principal". We will check the recommendation with care and correct any other errors before it is printed.

(2) The Tentative Recommendation includes a provision not included in the Uniform Act form. This provision permits designation of co-agents. The co-agents may be required to act jointly or may be permitted to act separately. Irving Kellogg (Exhibit 10) suggests a revision of the instructions concerning this provision. Since the provision in the Tentative Recommendation is not included in the Uniform Act, the staff suggests that his revised instructions be used in the form. To accomplish this staff recommendation, the following would be substituted for the third paragraph (in CAPITOL LETTERS) on page 15 of the Tentative Recommendation:

IF YOU APPOINTED MORE THAN ONE AGENT AND YOU WANT EACH AGENT TO BE ABLE TO ACT ALONE WITHOUT THE OTHER AGENT JOINING, WRITE THE WORD, "SEPARATELY" IN THE BLANK SPACE ABOVE. IF YOU DO NOT INSERT ANY WORD IN THE BLANK SPACE, OR IF YOU INSERT THE WORD, "JOINTLY", THEN ALL YOUR AGENTS MUST ACT OR SIGN TOGETHER.

#### REVIEW OF COMMENTS ON TENTATIVE RECOMMENDATION

The comments the Commission received on the tentative recommendation are reviewed below. We will incorporate any revisions the Commission desires to make in the Recommendation before it is printed.

Approved Tentative Recommendation Without Qualification

The Tentative Recommendation was approved without qualification by the following persons:

Benjamin D. Frantz (Exhibit 1)

Linda Silveria (Exhibit 4) ("I favor the use of the uniform form because clients frequently move to another state without having their estate plan reviewed by a local attorney. While I feel that the present California form has some aspects which are better, these omitted items can be inserted into the form.")

Susan Howie Burriss (Exhibit 7)

Dan L. Kirby (Western Surety Company) (Exhibit 8)

Paul J. Goda, S.J. (Exhibit 12) (but questions why Uniform Act is not as broad as existing California statutory form)

Ruth E. Ratzlaff (Exhibit 15)

Judge Harlan K. Veal (Exhibit 19)

Henry Angerbauer (Exhibit 20)

Alan D. Bonapart (Exhibit 21) ("The advantage of more national uniformity and the opportunity to write documents that supply any 'deficiencies' in the proposed new statutory form outweigh any benefits that might exist in the existing statutory form.")

Ken Cameron (Exhibit 23)

John G. Lyons (Exhibit 28)

Herbert Lazerow (Exhibit 29)

Ruth A. Phelps (Exhibit 31)

Ernest Rusconi (Exhibit 32)

Peggy Jean Meeker (Exhibit 33)

Patricia Jenkins (Exhibit 34)

Objected to Tentative Recommendation on Ground Existing California Form is Superior

The existing California form provides the agent with broader authority than the Uniform Act. Specifically, the California form automatically grants to the agent all powers that can be given to an agent, automatically grants very broad estate planning powers to the agent, and automatically grants the agent 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. The person executing the form can eliminate any or all of these authorizations by appropriate notations on the form. The Uniform Act includes no such automatic authority. Under the Uniform Act, these additional authorizations may be granted only by adding a specially drafted provision to the form expressly granting the additional authority.

The Commission recommendation to adopt the Uniform Act was opposed by the following persons who believe that the broader automatic authority granted by the existing California form is superior:

Jerome Sapiro (Exhibit 2)

Thomas R. Thurmond (Exhibit 3) (approves elimination of "double witness requirement in favor of the more common and equally effective notary acknowledgement" provided in Uniform Act) ("In my experience, the general 'all other matters' clause [and other broader powers granted by the existing California form] serves the interests of most users, who wish to obtain as broad a power as possible.")

Luther J. Avery (Exhibit 10) believes:

. . . the California Statutory Form Power of Attorney is far superior to the Uniform Statutory Form Power of Attorney. If the Uniform Act were enacted, the public would be forced to use attorneys before they could make intelligent use of the power of attorney. Today, if the public wants to grant broad powers to a designated agent, they have the power to do so. [This is because the existing California form automatically grants the agent the broadest powers while the Uniform Act form requires specially drafted additions to grant estate planning powers, trust creation or modification powers, or all other powers that can be granted to an agent.]

. . . I believe the use of the Uniform form would prove to be a trap for the unwary and that the present California form, with its complexity, is a far safer document to make available to the public. The present form raises all the issues and can be understood by a layperson. If the layman does not understand, he can go to a lawyer. The simplicity of the Uniform form will cause the layperson to think the issues have all been considered when they have not.

The staff is satisfied with the Uniform Act form. The advantage of adopting a uniform national form that will be generally acceptable outweighs any benefit of having a form that permits gift giving and estate planning. The need for those additional powers will exist primarily where the principal has an estate that will be subject to federal estate taxes.

Support Adoption of Uniform Act Form as Recommended With Modification

Suggestions that form give powers to make gifts and to take estate planning actions. In addition to the commentators noted above who would keep the existing California form because it provides broader powers to the agent, other commentators were concerned that the Uniform Act form did not give the agent authority to make gifts or to take estate planning actions unless a specifically drafted additional provision was added to the form. The existing California form automatically gives the agent broad authority unless the authority is restricted by writing the restriction into the form.

Robin D. Faisant (Exhibit 9) supports the adoption of the Uniform act, but is concerned that the statutory power of attorney does not include specific authority of the agent to create, modify, or revoke a trust.

Russell G. Allen (Exhibit 25) comments:

I also support the tentative recommendation concerning the statutory form durable power of attorney for asset management. I suggest you consider adding another category of authority -- to make gifts. In particular, I suggest including as a standard provision authority to make inter vivos, annual-exclusion gifts to a class of people that includes the principal's grandparents and all descendants of the principal's grandparents and all spouse's descendants of the principal's grandparents. (I suggest that we not worry about the Internal Revenue Code Section 2041 issues with respect to annual-exclusion gifts.)

I must confess that I struggle with the extent to which we should give the agent powers to make estate planning decisions for the principal beyond annual-exclusion gifts. I find it somewhat anomalous that we restrict an agent's authority in Section 2492(d) with respect to insurance policies but have no similar restriction with respect to Section 2493's authority to disclaim or exercise powers of appointment and 2497's authority with respect to retirement plans. Similarly, I wonder if the failure to address the creation or termination of joint tenancies is intentional or inadvertent. As a general proposition, I would be reluctant to include broad, unsupervised estate planning authority that might be exercised for the benefit of the agent. (Indeed my concern about Section 2041 and self-dealing problems has led me to avoid the current statutory form; I have used an alternative version that does not include the power to make gifts or other estate planning decisions.) Perhaps we should authorize larger gifts and other estate planning acts if

approved by the court having jurisdiction to supervise the actions of the agent.

Michael J. Anderson (Exhibit 27) is in agreement with the Uniform Act except that he would extend the powers specifically provided for in the form to include commonly used estate planning actions:

In respect to the Uniform Statutory Form Power of Attorney Act I am in agreement with that. However, I have several comments. First, could the Statutory Durable Power of Attorney be enacted to allow for the preparation of a Will. In particular a Pour-Over Will in cases where under the Power of Attorney the person is granting the authority to create, modify or revoke a Revocable or Irrevocable Trust.

I would also recommend, that having the authority to create, modify, or revoke a Trust should be one of the given powers as opposed to a power which must be specifically provided for.

Also, under the substituted judgment provisions of the conservatorship code the conservator on behalf of the conservatee could do all these acts under court supervision. If a Power of Attorney is granted to let someone act on your behalf and sign, one of the common estate planning tools used in dealing with the disability of ones client, then I think it should be provided for. It would seem logical that they could be done under a Power of Attorney.

In all other respects I agree with the commission.

Thomas R. Thurmond (Exhibit 3) supports the broader scope of powers under the existing California statute:

(1) . . . The majority of those wishing a general durable power of attorney evidence a desire to make it as broad as possible.

(2) In my experience, the general "all other matters" clause serves the interests of most users, who desire to obtain as broad a power as possible.

(3) I recommend to most of my clients that they specifically arrange for these broad estate planning powers. One of the main reasons for this power is to avoid the trap of an incapacitated person being caught in the web of too-frequent tax law changes. These powers provide a needed safety valve. They should automatically be included in most cases and should be excluded only where expressly directed by the principal.

(4) I would retain the gifting powers for the reasons stated in paragraph (3) above.

Edna R. S. Alvarez (Exhibit 24) states:

I have reviewed the proposal and oppose the adoption of the Commission's recommendation, unless it is modified to include provisions similar to those in the California statutory form which grant broad estate planning powers and broad authority to make gifts and other transfers without consideration. Often times, the most important use of the Durable Power of Attorney for Property is in the modification of, or acceleration of, an estate plan.

John G. Lyons (Exhibit 28), takes the opposite view, supporting the concept that estate planning powers should be granted only if they are referred to specifically:

One desirable result [of enactment of the Tentative Recommendation] would be to eliminate estate planning powers unless they are referred to specifically. Another would be to eliminate authority to make gifts. It seems doubtful that a person giving the power of attorney would contemplate those powers.

As noted above, the staff is satisfied with the Uniform Act form. The advantage of adopting a uniform national form that will be generally acceptable outweighs any benefit of having a form that automatically permits gift giving and estate planning.

Provision for designation of co-agents. The Tentative Recommendation added to the Uniform Act form provisions permitting the designation of co-agents. The added provisions were taken from the existing California form.

Wilbur L. Coats (Exhibit 14) states "I concur with the Act with the exception of adding a provision that will permit designation of co-agents."

My experience has been that these organizations asked to accept the power of an agent are very wary of written general powers. This is especially true of real estate brokers, real property title companies, and banks.

It is my belief that adding a co-agent will create additional difficulty in getting a third party to accept the power. It will be particularly difficult to get a third party to accept the power if co-agents may act separately. The third party is, in my opinion, going to be very wary of accepting the request for action where only one person is acting when two or more agents are cited as having the power to act. The third party will question the authority of a single actor despite the authority set forth in the instrument granting the power to one of the co-agents.

This suggestion is discussed below under the heading "Protection of third persons who rely on power."

Provision for selection of successor agents. Thomas R. Thurmond (Exhibit 3) prefers "a form that enabled the selection of successor agents, each of which could be one or more agents, who could act jointly or severally, as designated. Neither the existing nor the proposed form fulfills these requirements." Adding provisions to the form to permit selection of successor agents would greatly complicate the form. The staff recommends against the addition.

Provision for designation of conservator if conservator to be appointed. The existing California form includes a provision permitting designation of a conservator if a conservator is to be appointed. The Uniform Act form does not contain a comparable provision.

George J. Alexander (Exhibit 13) approves the concept of the uniform act but believes that the provision of existing law for designation of a conservator "is a very important aspect of the protection needed. A durable power made to avoid overreaching by 'near' and 'dear' may be made useless if relatives can get a conservatorship and a conservator who sees things their way. Appointing a trustworthy attorney-in-fact as conservator makes good sense for those who fear such an eventuality."

Thomas R. Thurmond (Exhibit 3) comments:

The cause permitting nomination of a conservator of the estate [under the existing California statute] serves the interests of most persons in selecting the same party as conservator as they have for agent, in the event that they are unable for some reason to avoid a conservatorship. The existing statute should provide space for nomination of successor conservators.

The Commission could add a provision to the Uniform Act form to permit designation of a conservator. However, the staff recommends against this addition, primarily because the addition (with the necessary instructions) would add more than 135 words to the form and would cause it to deviate from the Uniform Act form.

Protection of third persons who rely on power. Some persons commented on the hesitancy of third parties to accept the authority of the agent.

Alvin G. Buchignani (Exhibit 22) comments:

I wholly agree with the need to adopt the Uniform Act relating to the Statutory Form of Power of Attorney.

In my experience, the main problems that are incurred with any power of attorney are those related to the hesitancy of third parties to accept the authority of the agent. Therefore, anything that helps to solve this problem would be most useful.

I would like to see some additional language that provides comfort to third persons, particularly stock transfer agents, banks, and title companies, who accept a power of attorney.

I believe that it would be appropriate to provide assurance to such third parties that they are under no duty to make an independent investigation as to the competency of the principal at the time the power of attorney was executed. If the third party has actual knowledge of facts which tend to cast doubt on the validity of the power of attorney, only then should the third party have a duty to investigate further.

Also, the issue of "stale" powers should be addressed. Perhaps there should be at least a period of year or so during which the power is presumed to be fresh, and after that time there should be a simple means for the agent to establish that the power has not been revoked.

See also the Comment of Wilbur L. Coats (Exhibit 14) set out above expressing concern that adding a provision to permit designation of co-agents will make the power less acceptable to third persons.

The problem of protection of third persons is a general problem for durable powers of attorney, not just those given using the statutory form. The Uniform Act form does include an indemnification provision which provides:

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.

More significant, existing California law includes provisions that protect a third person who acts in reliance upon a durable power of attorney. See Civil Code Sections 2403 (death or incapacity of principal; knowledge; good faith acts), 2404 (affidavit of lack of

knowledge of termination of power), 2512 (liability of person acting in good faith reliance upon power of attorney). These provisions provide adequate protection to third persons who act in good faith reliance upon a power of attorney, and the staff believes that no additional legislation is required.

Provision for springing power. When the Commission was drafting the Tentative Recommendation, it considered whether a provision should be included to provide for an option to grant a "springing power." The Commission decided not to include such a provision, primarily because third person would be less willing to act in reliance upon the form if such a provision were included.

Jeffrey A. Dennis-Strathmeyer (Exhibit 16) "would prefer a form which contained a preprinted option to grant a springing power. I would wild guess that many people who might be tempted to use this form want a springing power and they should be informed somehow that they have that option."

Taking the opposite view is Ruth E. Ratzlaff (Exhibit 15) who states:

In addition, I am happy to see the elimination of the "springing" option. Your footnote 6 indicates that a springing power provision should be used with caution. I and many other attorney would go a bit farther and say that it should never be used. Removing the option from a form that will be used frequently without legal counsel is in the best interest of the persons who will use the form.

Clause governing duration of power. The Uniform Act form does not include a provision governing the duration of the power. The power continues indefinitely unless a special provision is added to limit the duration of the power.

Thomas R. Thurmond (Exhibit 3) comments:

The clause governing the duration of the power covers the needs of most person by allowing an indefinite duration unless the principal designates otherwise. Thus serves as an additional reminder to the principal of the importance and potential long life of this document.

Technical revisions of language and additional paragraphs which a person may wish to add to the form. Irving Kellogg (Exhibit 11) suggests nonsubstantive modifications of the warning statement and

other nonsubstantive revisions in the wording of the form and provides some additional paragraphs which he adds to durable powers. The suggested revisions would improve the form, but (with one exception noted in the preliminary part of this memorandum) the staff recommends against making these revisions because we believe that it is important that the form not deviate from the Uniform Act form. In the preliminary part of this memorandum, the staff did recommend adoption of one of the suggested revisions which involved the instructions relating to a portion of the form not found in the Uniform Act (designation of co-agents).

The additional provisions which Mr. Kellogg adds to durable powers of attorney are useful ones. However, we do not believe that we should deviate from the Uniform Act by including the provisions in the proposed legislation. We could include the provisions in one of the Comments to the proposed legislation as specially drafted provisions that might be added to the statutory form, but we recommend against doing that because the Comments are already rather lengthy.

Designation of Successor Agents. Alvin G. Buchignani (Exhibit 22) comments: "Finally, I believe the issue of successor agents should be covered, including a convenient means for establishing when the initial agent is no longer able or willing to act."

The addition of provisions to cover successor agents would greatly complicate the statutory form. The staff recommends against the addition of these provisions.

Need to refer to particular parcel of property, particular issue of stock, or particular banking institution. Alvin G. Buchignani (Exhibit 22) states: "Specifically, I would like language in the statute to provide that it is not necessary to specifically refer to any particular parcel of real property, or any particular issue of stock or any particular banking institution." This is a general problem with respect to powers of attorney, and the existing law already contains a provision along the lines suggested that applies to all powers of attorney, whether or not durable. See Civil Code Section 2513.

Categories of transactions provided for in Uniform Act Form. Stuart D. Zimring (Exhibit 26) objects generally to statutory forms and

has problems with some of the categories of transactions listed on the Uniform Act form:

. . . I do think the reference to "estate, trust and other beneficiary transactions" might lead some people to believe that a Power of Attorney can be utilized to execute documents, such as a will, which the holder of the power does not in fact have authority to sign. Further, I think the phrase "tax matters" is so overly broad and vague as to be meaningless. If the intent of the document is to authorize the holder of the power to sign tax returns and/or deal with taxing authorities, I doubt seriously that the Internal Revenue Service would accept this Power of Attorney in lieu of its own form. Thus, I would suggest that item "m" be deleted.

The staff recommends against any changes in the categories of transactions provided for in the Uniform Act form.

Language covering toxic waste problems. Rawlins Coffman (Exhibit 18) suggests that there be language in the power of attorney which covers toxic waste problems. "This is new body of law and I have no answers!" This suggestion goes to a matter beyond the scope of the present Tentative Recommendation. The Commission could work on this problem, but the staff recommends against studying the problem at this time.

Acceptance of agency by agent. Rawlins Coffman (Exhibit 18) notes: "In my own practice I often have the 'agent' date and sign an acceptance at the end of the power of attorney." The staff recommends against including a provision for acceptance by the agent since no such provision is included in the Uniform Act.

#### Objects to Entire Concept of Statutory Form

Frank M. Swirles (Exhibit 5) opposes the entire concept of a statutory power of attorney form:

I oppose statutory wills, statutory powers of attorney, and all other statutory efforts to encourage the practice of law without a license. . . . Attorneys should take particular care in drafting such powers, and should take adequate time to explain them to clients, making sure that the consequences are fully appreciated and understood.

David W. Knapp, Sr. (Exhibit 6) believes that the use of a statutory form, like a statutory will, has the effect of making a complicated matter appear too simple to the layman who will not take

the time to study the enlargement of each choice. The layman should have the advice of a lawyer to be certain that the document will carry out the principal's intent.

**Demetrios Dimitriou (Exhibit 17) states:**

It is very difficult to create any sort of standard form because people's needs are different. The biggest problem is the inherent assumption that the "standard" form takes care of all my needs. This type of form never makes clear to the user that only a certain percentage of his or her needs are being addressed. For instance, most spouses will appoint each other as their "agent", therefore shouldn't the form provide for self dealing by the agent in certain circumstances? I would also suggest that the investment powers include "puts and calls" as well as covered and uncovered options since they are vehicles which provide for the possibility of increasing income from investments with little risk of loss, assuming they are properly used.

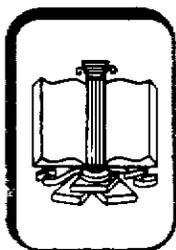
**Stuart D. Zimring (Exhibit 26) states:**

With respect to the recommendations regarding the Uniform Statutory Form Power of Attorney Act, I must say that I have a bias against "legislated" forms in general. I think the California experience with the Statutory Will shows the pitfalls that such legislation can create.

On the other hand, the "plain English" format of the proposed form goes a long way towards ameliorating the problems the current crop of preprinted Power of Attorney forms have created.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary



McGEORGE SCHOOL OF LAW

UNIVERSITY OF THE PACIFIC 3200 Fifth Avenue, Sacramento, California 95817

WRITER'S DIRECT DIAL NUMBER

CA LAW REV. COMM'N

AUG 26 1989

RECEIVED

August 25, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

Attention: Mr. John H. DeMouilly, Executive Secretary

Subject: Recommendations Relating to  
Uniform Statutory Form Power of Attorney Act  
Repeal Probate Code Section 6402.5

Dear Mr. DeMouilly:

I concur in the recommendations to enact the Uniform  
Statutory form Power of Attorney Act and to repeal Probate Code  
section 6402.5.

Very truly yours,

BDF:mb

JEROME SAPIRO  
ATTORNEY AT LAW  
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1388 SUTTER STREET  
SAN FRANCISCO, CA. 94109-5452  
(415) 928-1515

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Aug. 28, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA, 94303-4739

Re: Tentative Recommendation  
Uniform Statutory Form Power of  
Attorney Act

Hon. Commission Members:

In my opinion this is another example of too much churning by the Commission and its predecessors.

Doing, redoing, and not doing well enough in the first instance seems to be the norm.

I do believe that the California existing statutory form of Power of Attorney is better. There is too much inclination to sacrifice that which we have under the pretext of "uniformity".

For example, at page 8 it is noted that under the proposed form there is no authority to make tax exempt gifts or other gifts for the benefit of the principal's spouse and/or descendants, and that same must be inserted, if wanted. This would seem to be important to call to the attention of the unknowing lay person, giving him or her opportunity to approve same or line it out.

Respectfully

*Jerome Sapiro*  
Jerome Sapiro

JS:mes

## THOMAS R. THURMOND

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CA LAW REV. COMM'N

AUG 29 1989

AUG 29 1989

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August 27, 1989

California Law Revision Commission  
 4000 Middlefield Rd., Ste D-2  
 Palo Alto, CA 94303-4739

Re: (1) Repeal of Probate Code § 6402.5  
 (2) Uniform Statutory Form Power of Attorney Act

Gentlemen:

I offer the following comments on the subject tentative recommendations published in August 1989:

## (1) Repeal of Probate Code § 6402.5

This code section is confusing and hard to apply. In my experience, most persons are not aware of it and would not expect the resulting disposition of their property at death. It is an example of a law written to cover exceptional circumstances that ends up confusing and confounding the general case. It should be repealed as you have recommended.

## (2) Uniform Statutory Form Power of Attorney Act

My comments will follow the numbered paragraphs in the tentative recommendation:

(1) Adding the initialing concept is not an advantage to most users. Those desiring a limited, single-function power are better served by a simpler form, whether obtained from a stationery store or an attorney. The majority of those wishing a general durable power of attorney evidence a desire to make it as broad as possible.

(2) In my experience, the general "all other matters" clause serves the interests of most users, who wish to obtain as broad a power as possible.

(3) I recommend to most of my clients that they specifically arrange for these broad estate planning powers. One of the main reasons for this power is to avoid the trap of an incapacitated person being caught in the web of too-frequent tax law changes. These powers provide a needed safety valve. They should automatically be included in most cases and should be excluded only where expressly directed by the principal.

(4) I would retain the gifting powers for the reasons stated in paragraph (3) above.

(5) My preference would be for a form that enabled the selection of successor agents, each of which could be one or more agents, who could act jointly or severally, as designated. Neither the existing nor the proposed form fulfills these requirements.

(6) (i) The clause governing the duration of the power covers the needs of most persons by allowing an indefinite duration unless the principal designates otherwise. This serves as an additional reminder to the principal of the importance and potential long life of this document.

(ii) The clause permitting nomination of a conservator of the estate serves the interests of most persons in selecting the same party as conservator as they have for agent, in the event that they are unable for some reason to avoid a conservatorship. The existing statute should provide space for nomination of successor conservators.

(7) The proposed statute is an improvement over the existing law in that it eliminates the double witness requirement in favor of the more common and equally effective notary acknowledgment.

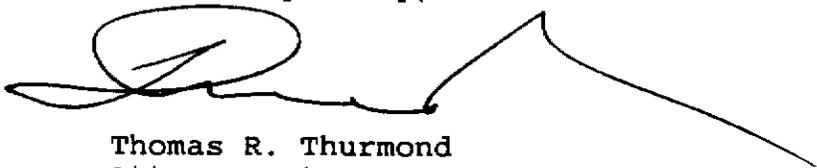
(8) The explanatory warning statement of the proposed form seems simpler, but both appear to be effective statements calculated to impress the potential user.

In conclusion, the tentative recommendation offers some improvements over the existing law, but eliminates more advantages that the present form contains. I would propose that the existing Short Form Power be modified as I have suggested above to include provisions for:

- indication of successor agents and conservators
- notary acknowledgment in lieu of double witnesses

I trust that these comments will prove useful to you. Thank you for the opportunity to continue reviewing your recommendations.

Yours very truly,



Thomas R. Thurmond  
Attorney at Law

TT/hs

**LINDA SILVERIA**  
ATTORNEY AT LAW

LAW REV. COMM'N

AUG 29 1989

RECEIVED

August 28, 1989

California Law Revision Commission  
4000 Middlefield Road #D-2  
Palo Alto, CA 94303-4739

Gentlemen:

I am in receipt of the two Tentative Recommendations which was forwarded to me on August 23, 1989. I would make the following comments:

1. Repeal of Probate Code Section 6402.5 - I agree with this proposal.

2. Uniform Statutory Form Power of Attorney Act - I favor the use of the Uniform form because clients frequently move to another state without having their estate plan reviewed by a local attorney. While I feel that the present California form has some aspects which are better, these omitted items can be inserted into the form.

Thank you for your cooperation.

Very truly yours,



Linda Silveria

Enclosure

-5-

# Frank M. Swirles Law Corporation

POST OFFICE BOX 1490 RANCHO SANTA FE, CALIFORNIA 92067

(619) 756-2080

August 28, 1989

MMW

AUG 30 1989

RECEIVED

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

Re: Tentative Recommendations on  
"In-Law Inheritance"  
and  
Uniform Statutory Form Power of Attorney

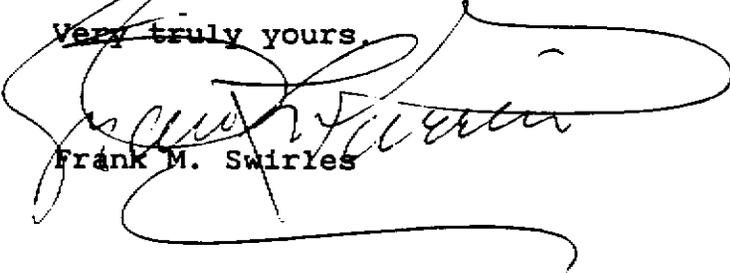
Gentlemen:

Re the "In-Law Inheritance" recommendation, this is to advise that I agree that the code section should be repealed, but I have read your literature thoroughly and find your arguments weak, and your illustrations of the wrong results of the present statute less than meaty. If I were a law maker and this material came across my desk, and if I were to read it, which is not in character for a law maker, I would probably wonder if you people had nothing better do do.

As to the statutory power of attorney form, I disagree with your recommendation. In my view, what you have proposed does not result in any better protection of a lay client. The proposed form is shorter, but no less complex. I oppose statutory wills, statutory powers of attorney, and all the other statutory efforts to encourage the practice of law without a license. The fact that a client can discover what powers he has granted by referring to sections 2485 et seq is of little moment, because 99.99% of clients will not know that, and if they did, they would never bother to look into the matter.

I think clients should be scared to death by powers of attorney rather than encouraged to rush into them. Attorneys should take particular care in drafting such powers, and should take adequate time to explain them to clients, making sure that the consequences are fully appreciated and understood.

Very truly yours,



Frank M. Swirles

DAVID W. KNAPP, SR.  
DAVID W. KNAPP, JR.

LAW OFFICES  
**KNAPP & KNAPP**  
1093 LINCOLN AVENUE  
SAN JOSE, CALIFORNIA 95125  
TELEPHONE (408) 298-3838

RECEIVED  
AUG 30 1989  
RECEIVED

August 29, 1989

California Law Revision Commission  
4000 Middlefield Road Suite D-2  
Palo Alto, CA 94303-4739

Re: REPEAL OF PROBATE CODE SECTION 6402.5  
and UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

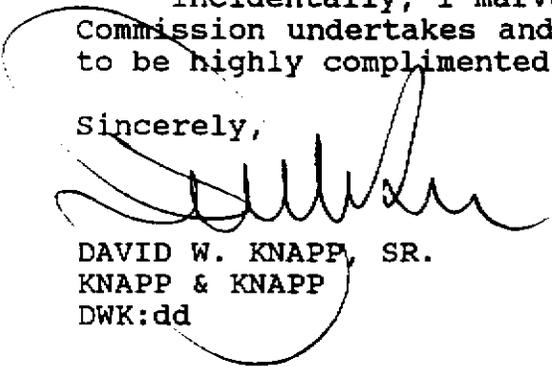
I have read your tentative recommendations on the two (2) above matters with great interest and would make the following comments respectively:

Concerning the repeal of Section 6402.5 it is long, long overdue and said section has added nothing but confusion, delay and ill feelings within the probate administration of many estates for too great a period.

The Uniform Statutory Form Power Of Attorney Act is, in my opinion, like the statutory will, a document that will, by its very makeup, require a myriad of further questions. The client and/or the individual who purchases the same within a bookstore will either inscribe the same as a simple document and will not take the time to study the enlargement of each choice. I would not use the same in my practice in that I want the client to read EVERY POWER he or she is executing (both in my office and later at home as instructed) so that they will be certain of the important decision they have made to allow another the same authority they have. The idea of simplification in the forms used in the practice of the law is meritorious on its face, however in practicality it is my opinion that the practice has made a complicated matter appear too simple to the layman, resulting in too many cases in further difficulties. Let's give it a good old try anyway!

Incidentally, I marvel at the amount of complex matters your Commission undertakes and satisfactorily completes. You are all to be highly complimented.

Sincerely,



DAVID W. KNAPP, SR.  
KNAPP & KNAPP  
DWK:dd

-7-

**BURRIS, PALLEY, MONAHAN & RILEY**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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RICHARD S. BURRIS  
SUSAN HOWIE BURRIS  
WILLIAM J. MONAHAN  
SHEILA M. RILEY  
DAVID B. PALLEY  
J. TIMOTHY MAXIMOFF  
C. BRUCE HAMILTON

REPLY TO SANTA CRUZ COUNTY OFFICE  
24193 SUMMIT ROAD  
LOS GATOS, CA 95030  
TELEPHONE (408) 353-3290  
TELECOPIER (408) 353-1398

LAW REV. COMM'N

August 28, 1989

AUG 30 1989

RECEIVED

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Dear Gentlemen/Ladies:

I wish to continue to receive tentative recommendations concerning estate planning, probate and related matters.

My only comment with regard to the Uniform Statutory Form Power of Attorney Act is that it is long overdue.

Similarly, the repeal of Probate Code Section 6402.5 is also long overdue. I recommend, however, that the transitional provision be amended to include that repeal is applicable to decedents who die before the operative date of the Act if no probate proceeding had been commenced as to that decedent as of the operative date of the Act.

Very truly yours,



SUSAN HOWIE BURRIS

SHB/cc



# Western Surety Company

Office of General Counsel

August 28, 1989

California Law Revision Commission  
4000 Middlefield Road, Ste. D-2  
Palo Alto, CA 94303-4739

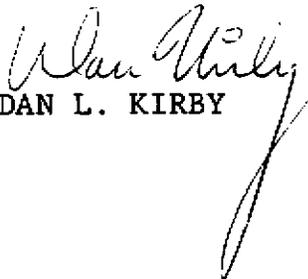
AUG 31 1989

Dear Sir/Madam:

IN REPLY REFER TO:  
Special File CA-4372-F - California Lobbying  
Tentative Recommendations

This is to advise that this Company approves the Tentative Recommendations relating to Uniform Statutory Form Power of Attorney Act and Repeal of Probate Code § 6402.5. Thank you for continuing to send Tentative Recommendations to this Company for review.

Yours very truly,

  
DAN L. KIRBY

DLK:gm

LAW OFFICES OF

ROBIN D. FAISANT

ATTORNEY AND COUNSELLOR AT LAW  
1550 EL CAMINO REAL, SUITE 220  
MENLO PARK, CALIFORNIA 94025

AUG 31 1989

TELECOPIER: (415) 324-1031

TELEPHONE: (415) 328-6333

August 29, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D2  
Palo Alto, CA 94303-4739

Re: Tentative Recommendation  
Uniform Statutory Form Power of Attorney Act

Dear Friends:

This is to advise that I support your recommendation for the adoption of the Uniform Statutory Power of Attorney Act, and your proposal to permit designation of co-agents.

I do have a concern, however, concerning your interpretation that, absent a specific statement, the agent has no power under the Uniform Act to create, modify or revoke a trust. If such is true, the new proposal would deprive California practitioners of a very valuable opportunity to have the agent create a Revocable Trust in the case where it is dictated by the needs of an incompetent principal. This is a power which should be preserved, though perhaps limited so that the trust can benefit only the beneficiaries of the most recent Will, or those persons who would be the principal's heirs in intestacy.

With all good wishes.

Yours very truly,



Robin D. Faisant



NOV 3 1989

Attorneys at Law

August 30, 1989

OUR FILE NUMBER

9911.81-35

601 Montgomery Street  
Suite 900  
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Mr. John H. DeMouilly  
Executive Director  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

Walnut Creek Office:  
500 Ygnacio Valley Road  
Suite 370  
Walnut Creek, CA 94596  
415/256-8200  
Fax: 415/945-8932

UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

Dear Mr. DeMouilly:

A crucial question is whether the new short statutory form would be exclusive. Today, a great volume of transactions are handled using a short form power of attorney in bank account administration and in securities transactions. Moreover, the breadth of power under the present statute CC 2450-2473 is convenient for use.

JAMES R. BANCROFT  
OF COUNSEL

JAMES H. MCALISTER  
LUTHER J. AVERY  
ALAN D. BONAPART  
NORMAN A. ZILBER  
EDMOND G. THIEDE  
ROBERT L. DUNN  
JAMES WISNER  
SANDRA J. SHAPIRO  
GEORGE R. DIRKES  
BOYD A. BLACKBURN, JR.  
DENNIS O. LEUER  
ROBERT L. MILLER  
JOHN S. MCCLINTIC  
ARNOLD S. ROSENBERG  
JOHN R. BANCROFT  
REBECCA A. THOMPSON  
JOHN L. KOENIG  
M. KIMBALL HETTENA  
RONALD S. KRAVITZ  
LAURIE A. LONGIARU  
FORREST E. FANG  
HELEN OLIVE MILOWE  
LEAH R. WEINGER  
DAVID K. KAGAN SERGI

In my opinion, as a practicing lawyer frequently using powers of attorney, the California Statutory Form Power of Attorney is far superior to the Uniform Statutory Form Power of Attorney. If the Uniform Act were enacted, the public would be forced to use attorneys before they could make intelligent use of the power of attorney. Today, if the public wants to grant broad powers to a designated agent, they have the power to do so.

The Uniform Statutory Form Power of Attorney may be more simple than the California form, but the price of that simplicity is that the complexity is left hidden and the issues are not adequately considered. I believe the use of the Uniform form would prove to be a trap for the unwary and that the present California form, with its complexity, is a far safer document to make available to the public. The present form raises all the issues and can be understood by a layperson. If the layman does not understand, he can go to a lawyer. The simplicity of the Uniform form will cause the layperson to think the issues have all been considered when they have not.

Yours sincerely,

Luther J. Avery

LJA:bal  
841.8.commiss

LAW OFFICES

IRVING KELLOGG

CALIFORNIA COMMISSION

AUG 31 1989

821 Monte Leon Drive  
BEVERLY HILLS, CA 90210

• (213) 276-3415 •

August 28, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, Calif. 94303-4739

Re: Uniform Statutory Form Power of Attorney Act.

Dear Commission:

I have reviewed the Form itself before reading the act, and I wanted to send you my comments about the form, and later I shall send you my comments about the act.

1. NOTICE

A. Change the word, Notice, to Warning because this first paragraph is, in my opinion, a Warning and the reader should recognize this at once.

B. Change the sentence structure to active voice instead of using passive voice.

WARNING: THIS DOCUMENT GIVES (instead of the word, grants..which the average person does not understand) YOUR AGENT BROAD POWERS OVER YOUR PROPERTY. CALIFORNIA CIVIL CODE SECTIONS 2475-2499, (THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT) EXPLAINS THOSE POWERS. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, YOU SHOULD GET COMPETENT LEGAL ADVICE. YOU MAY CANCEL THIS POWER OF ATTORNEY AT ANY TIME YOU WISH TO DO SO.

THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU.

INSTRUCTIONS: IF YOU WANT TO GIVE THE FOLLOWING POWERS TO YOUR AGENT, YOU SHOULD WRITE YOUR INITIALS ON THE LINE IN FRONT OF THE LETTER,(N), AND IGNORE THE LINES IN FRONT OF THE OTHER LETTERS.

IF YOU WANT TO GIVE ONE OR MORE, BUT NOT ALL OF THE FOLLOWING POWERS, YOU SHOULD WRITE YOUR INITIALS ON THE LINE IN FRONT EACH POWER THAT YOU ARE GIVING.

IF YOU DO NOT WANT TO GIVE A POWER, DO NOT WRITE YOUR INITIALS ON THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER YOU ARE NOT GIVING.

AUG 31 1989

Letter to Law Revision Commission  
August 28, 1989  
Page 2

SPECIAL INSTRUCTIONS

ON THE FOLLOWING LINES, YOU MAY WRITE OR PRINT SPECIAL INSTRUCTIONS THAT LIMIT OR EXPAND THE POWERS YOU GIVE TO YOUR AGENT.

THIS POWER OF ATTORNEY IS EFFECTIVE AS SOON AS YOU SIGN YOUR NAME ON IT, AND IT WILL CONTINUE UNTIL YOU CANCEL IT OR IT BECOMES VOID, UNLESS YOU WRITE OR PRINT INSTRUCTIONS THAT SAY WHEN IT BECOMES EFFECTIVE.

TO CANCEL THIS POWER OF ATTORNEY IF YOU BECOME INCAPACITATED, CROSS OUT THE PREVIOUS SENTENCE.

IF YOU APPOINTED MORE THAN ONE AGENT AND YOU WANT EACH AGENT TO BE ABLE TO ACT ALONE WITHOUT THE OTHER AGENT JOINING, WRITE THE WORD, "SEPARATELY" IN THE BLANK SPACE ABOVE. IF YOU DO NOT INSERT ANY WORD IN THE BLANK SPACE, OR YOU INSERT THE WORD, "JOINTLY", THEN ALL YOUR AGENTS MUST ACT OR SIGN TOGETHER.

Further, I suggest in the last paragraph, you change the word, "revocation" to "cancellation". My experience has persuaded me that the average person does not understand the word, revocation, but does understand the word, cancellation.

I suggest that you enclose each of the instructions in a box to avoid the Principal, the Agent, or some Third Party from confusing the instructions with the body of the substantive document.

Finally, I have included with this letter some paragraphs that I add to the Durable Powers I ask my clients to sign. The paragraphs are, I believe, self-explanatory.

Sincerely yours,

  
Irving Kellogg

Enclosure

ADDITIONAL PROVISIONS THAT I HAVE ADDED  
TO THIS STATUTORY DURABLE POWER OF ATTORNEY

CA LAW REV. COMM'H

AUG 31 1989

My Attorney-in-Fact may be referred to as my Agent anywhere in this Durable Power of Attorney.

8. PRIORITY OF THIS POWER OF ATTORNEY

My attorney and I have carefully created my total estate plan, including the use of this Power of Attorney. I intend that all my assets and affairs be controlled and administered by my Agent under this document without any court approval, supervision, or involvement. If a conservatorship or guardianship is ever created for either me or my assets, I request the Court to give priority to my Agent's decisions under this document over any contrary decisions by my conservator or guardian.

9. POWER TO FILE ACTIONS

If a third party refuses to comply with a request on my behalf by my Agent, I give to my Agent the power to file any civil action or legal proceeding to compel that third party to comply.

10 INDEMNIFICATION

I indemnify any third party who complies with and relies on this Durable Power of Attorney against any damages suffered by that third party for that compliance and reliance.

Any third party may rely on an affidavit from my Agent that (a) I am still living; (b) this document is still effective and I have not amended or revoked it; and (c) my Agent has the authority under this document to take the action for which the affidavit is prepared.

11 POWER TO MAKE GIFTS

My Agent has the power to make

gifts to my Spouse, if any, to or among my descendants, to or among my relatives, and to or among charities with whom I have had any relationship in the past. Gifts to individuals may be in any amounts, but gifts to my Agent shall not be more than the annual exclusion for gift tax purposes then in effect.

I amend any revocable trust of which I am a Settlor to give my Agent the power to revoke my portion of the trust and its assets in order to provide the assets needed to make the gifts or gifts in this Section 11.

12 If I have appointed two persons to serve under this document as my Agents, they must act together and sign together when necessary. But if one dies, resigns, or is unable to act because of incapacity, the other Agent may act alone.

13 My heirs, successors, and assigns are bound by my Agent's acts under this document.



SANTA CLARA UNIVERSITY

SCHOOL OF LAW

August 29, 1989

RECEIVED  
AUG 31 1989  
SANTA CLARA UNIVERSITY

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, Calif. 94303-4739

To whom it may concern:

I write merely to send this indication of approval of the "Tentative Recommendation relating to Uniform Statutory Form Power of Attorney Act."

I do not speak with any expertise with regard to this provision. My interest in the tentative recommendations in this area would be in the area of Durable Powers of Attorney for Health Care, should you take up that subject.

However, I can see the argument made for simplification of the form. I do wonder whether there were any problems with the California form. On pp. 6-7 of the Tentative Recommendation, you describe a contrast between the California statutory form which automatically grants all powers unless lined out and the Uniform statutory form which requires an affirmative act in order to grant a power. Were there any problems with this or is it merely a matter of length and complexity?

I have a similar question with the category of "all other powers" described on the bottom of p. 7 and the top of p. 8. Is there a reason for the Uniform Act not allowing this category.

Sincerely,

Paul J. Goda, S.J.

-15-



## SANTA CLARA UNIVERSITY

SCHOOL OF LAW

AUG 31 1989

GEORGE J. ALEXANDER  
PROFESSOR OF LAW  
(408) 554-4053

August 29, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

Dear Commissioners:

I thank you for forwarding draft copies of the proposed Uniform Statutory Form Power of Attorney Act and the act to repeal §6402.5 of the Probate Code.

I have no opinion concerning the latter.

With respect to the Uniform Law, I think that its passage is, as a general matter, a good idea. I do have several concerns, though. As you may know (see Alexander, Writing a Living Will: Using a Durable Power of Attorney, Praeger Press 1988) I am very concerned that durable powers be as accessible and useful as possible. Among other things, as I have written in the Stanford Law Review and you have cited in your work on health care powers, they provide an alternative to conservatorships. The provision of current law now to be removed which provides a form for the designation of a conservator is a very important aspect of the protection needed. A durable power made to avoid overreaching by "near and dear" may be made useless if the relatives can get a conservatorship and a conservator who sees things their way. Appointing a trustworthy attorney-in-fact as conservator makes good sense for those who fear such an eventuality.

The other matter is probably not a criticism of this draft but is related. Adopting a uniform law for durable powers for asset management is a good idea but not essential. Adopting one for health care powers seems to me urgent. Following California's, in my view, bad example, (you may recall my concerns on that subject when the law was proposed) states have passed all sorts of provisions, restrictions and mutually conflicting form requirements. Many states require differing warning statements. Some require that the state drafted form be used - and there is no common form. As a result, the

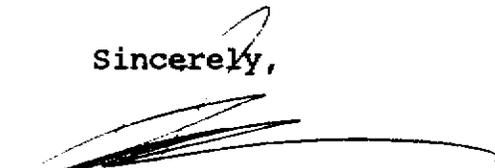
letter to California Law Revision Commission Aug. 29, 1989 pg.2

country risks having these useful documents become worthless as people find themselves incompetent or terminally ill in a state in which they do not reside. As the state which originated both the natural death act provisions and the health care powers, California owes it to the other states to take a leadership position.

My comments concerning health care powers relate to the current proposal to this extent: Ultimately, there should be a single set of uniform forms for both kinds of powers. Passing this set should be seen as merely a step in that direction.

As always, I remain interested in being of whatever help I can in your useful work. Please do not hesitate to call on me as necessary.

Sincerely,



George J. Alexander

GJA:pco

CA LAW REV. COMM'N

AUG 30 1989

SEP 01 1989

RECEIVED

**WILBUR L. COATS**  
ATTORNEY AND COUNSELOR AT LAW

TELEPHONE (619) 748-6512

August 30, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

In re: Repeal of Probate Code Section 6402.5.  
Uniform Statutory Form Power of Attorney Act.

Gentlemen:

I concur with repeal of Prob. Code Sec. 6402.5.

In the matter of the revised Uniform Statutory Form Power of Attorney Act, I concur with the Act with the exception of adding the provision that will permit designation of co-agents.

My experience has been that those organizations asked to accept the power of an agent are very wary of written general powers. This is especially true of real estate brokers, real property title companies, and banks.

It is my belief that adding a co-agent will create additional difficulty in getting a third party to accept the power. It will be particularly difficult to get a third party to accept the power if co-agents may act separately. The third party is, in my opinion, going to be very wary of accepting the request for action where only one person is acting when two or more agents are cited as having the power to act. The third party will question the authority of a single actor despite the authority set forth in the instrument granting the power to one of the co-agents.

Very truly yours,

*Wilbur L. Coats*  
Wilbur L. Coats

RUTH E. RATZLAFF  
Attorney at Law  
925 N Street, Suite 150  
P.O. Box 411  
Fresno, California 93708  
(209) 442-8018

CA LAW REV. COM. 89-91

SEP 01 1989

RECEIVED

August 30, 1989

Re: Tentative recommendation relating to Uniform Statutory Form  
Power of Attorney Act

California Law Revision Commission  
400 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Ladies and Gentlemen:

I have reviewed your tentative recommendation relating to the  
Uniform Statutory Form Power of Attorney Act.

The proposed new uniform act is an excellent idea, and appears to  
correct some of the deficiencies in the existing statutory short  
form power of attorney.

In particular, I am delighted to see the change from requiring  
the principal to line out powers not granted to requiring the  
principal to initial next to powers that are granted. I expect  
many attorneys have seen statutory short form powers of attorney  
with neither the "springing" power language nor the alternative  
lined out, leaving the current effectiveness of power of attorney  
in doubt. I believe the uniform act form corrects that problem.

In addition, I am happy to see the elimination of the "springing"  
option. Your footnote 6 indicates that a springing power  
provision should be used with caution. I and many other  
attorneys would go a bit farther and say that it should never be  
used. Removing the option from a form that will be used  
frequently without legal counsel is in the best interest of the  
persons who will use the forms.

Sincerely,



Ruth E. Ratzlaff

RER/tih

SEP 05 1989

JEFFREY A. DENNIS-STRATHMEYER  
ATTORNEY AT LAW

RECEIVED

POST OFFICE BOX 533 - BERKELEY, CALIFORNIA 94701  
(415) 642-8317

September 2, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Tentative Recommendation relating to Uniform Statutory  
Power of Attorney Act

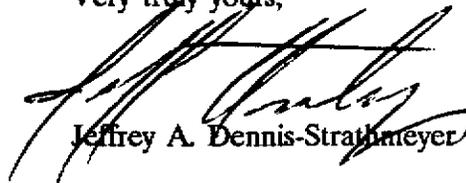
Sirs:

I have briefly reviewed the tentative recommendation. I have not used the existing form for my clients and will not use the new one if it is enacted. Both forms state the conferred powers in the statute rather than in the document, thereby creating too great a risk that the powers do not conform with the principal's intentions. Further, the statutes would seem to limit the ability of courts to construe the powers of the agent. To the extent that the is slightly less of a problem under the more limited "estate" powers of the Uniform Act, I suppose the Uniform Act is an improvement.

Whether we should adopt the Uniform Act for purposes of uniformity would seem to depend on what other states do.

I would prefer a form which contained a preprinted option to grant a springing power. I would wild guess that many people who might be tempted to use this form actually want a springing power and they should be informed somehow that they have that option.

Very truly yours,



Jeffrey A. Dennis-Strathmeyer

SEP 05 1989

RECEIVED

## DEMETRIOS DIMITRIOU

ATTORNEY AT LAW  
 ONE MARKET PLAZA  
 SPEAR STREET TOWER, 40TH FLOOR  
 SAN FRANCISCO, CALIFORNIA 94105  
 (415) 434-1000

September 1, 1989

California Law Revision Commission  
 4000 Middlefield Road, Suite D-2  
 Palo Alto, CA 94303-4739

Re: Unif. Statutory Form Power of Atty. Act

Dear Commissioners:

It is very difficult to create any sort of standard form because people's needs are different. The biggest problem is the inherent assumption that the "standard" form takes care of all of my needs. This type of form never makes clear to the user that only a certain percentage of his or her needs are being addressed. For instance, most spouses will appoint each other as their "agent", therefor shouldn't the form provide for self dealing by the agent in certain circumstances? I would also suggest that the investment powers include "puts and calls" as well as covered and uncovered options since they are vehicles which provide for the possibility of increasing income from investments with little risk of loss, assuming they are properly used.

I also have some question about your changing policy concerning the sending of materials. I appreciate that you are trying to limit your costs. You should not do it at the expense of cutting off commentary, particularly from those who have no axe to grind. Nor should you condition anything on the bases of making comment. I would not like you to think that this letter for instance is being sent simply to have me continue to be on your "free" mailing list. I seldom respond because I either have no strong feeling about the issue addressed or am in agreement with your position. For instance, your "In-Law Inheritance" proposal is fairly innocuous although I think the law as it is at present more closely reflects what people would expect to have happen if their attention were focused on the issue. The problem arises after the fact, when both spouses are no longer living. I perceive you efforts in this area as being essentially harmless tinkering (a legislative malaise). In any event I would be happy to pay a nominal annual fee in support of the costs in mailing to me your tentative recommendations whether I make comment or not.

Yours very Truly,



Demetrios Dimitriou

-21-

POST OFFICE BOX 158

**RAWLINS COFFMAN**  
**ATTORNEY AT LAW**  
RED BLUFF, CALIFORNIA 96060

TELEPHONE 527-2021  
AREA CODE 916

September 1, 1989

CA LAW DIV COMM

SEP 05 1989

RECORDED

California Law Revision Commission  
400 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: August 1989 Tentative Recommendation  
relating to Repeal of Probate Code  
Section 6402.5

August 1989 Tentative Recommendation  
relating to Uniform Statutory Form  
Power of Attorney

Dear Commissioners:

Thank you for keeping me on your mailing list.

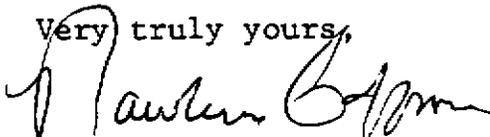
With respect to repealing Probate Code Section 6402.5, all I can say is hurrah! I hope the legislature pays attention. I am with you 100%.

With respect to the Uniform Statutory Form Power of Attorney Action, I have a few comments:

In my own practice I often have the "agent" date and sign an acceptance at the end of the power of attorney.

I would hope that there could be language in the power of attorney which covers toxic waste problems. For example, should the agent force a power of sale under a deed of trust involving real property contaminated with toxic waste, the principal, as the new owner, becomes jointly and severally liable with others in the chain of title. How can the principal be protected? Can the agent be exonerated? This is a new body of law and I have no answers!

Very truly yours,



RAWLINS COFFMAN

RC:mb



Harlan K. Veal  
Judge

In Chambers  
Hall of Justice  
Redwood City, California 94063

1 Sept 1989

To: California Law Revision Commission

Re: Tentative Recommendations on:

- 1) Repeal of "In-Law Inheritance" statute
- 2) adoption of "Uniform <sup>Statutory</sup> Power of Attorney act

Pursuant to your letter of 23 Aug 89 and enclosures, I concur in both of the above recommendations.

Please continue sending me future Tentative Recommendations.

Harlan K. Veal

-23-

CA LAW REV. COMM'N

SEP 06 1989

RECEIVED

HENRY ANGERBAUER, CPA  
4401 WILLOW GLEN CT.  
CONCORD, CA 94521

SEP 06 1989

RECEIVED

9/11/89

California Law Revision Commission:

Thank you for permitting me to review  
your two tentative recommendations entitled  
"Repeal of In-law Inheritance and Uniform  
~~Statutory~~ Statutory Form Power of Attorney Act."  
I agree with your tentative recommendations and  
have no comments to make on both of the  
above. Thank you again



REV. COMM'N

SEP 07 1989

RECEIVED

September 6, 1989

OUR FILE NUMBER

A55.2-1

P74.2-11

Attorneys at Law

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415/256-8200  
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California Law Revision Commission  
4000 Middlefield Road  
Suite D-2  
Palo Alto, CA 94303-4739

JAMES R. BANCROFT  
OF COUNSEL

JAMES H. McALISTER  
LUTHER J. AVERY  
ALAN D. BONAPART  
NORMAN A. ZILBER  
EDMOND G. THIEDE  
ROBERT L. DUNN  
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SANDRA J. SHAPIRO  
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RONALD S. KRAVITZ  
LAURIE A. LONGIARU  
FORREST E. FANG  
HELEN OLIVE MILOWE  
LEAH R. WEINGER  
DAVID K. KAGAN SÉRGI

Tentative Recommendations

With respect to your tentative recommendation relating to Repeal of Probate Code Section 6402.5 ("In-Law Inheritance") August 1989, I believe the discussion is persuasive. I agree that the proposed change should be recommended to the Legislature.

With respect to your tentative recommendation relating to the Uniform Statutory Form Power of Attorney Act, August 1989, I agree that the proposed change should be recommended to the Legislature. The advantage of more national uniformity and the opportunity to write documents that supply any "deficiencies" in the proposed new statutory form outweigh any benefits that may exist in the existing statutory form.

Sincerely yours,

Alan D. Bonapart

ADB:adb:ah

cc: Luther J. Avery

**ALVIN G. BUCHIGNANI**  
ATTORNEY AT LAW

SEP 08 1989

RECEIVED

ASSOCIATED WITH  
JEDEIKIN, GREEN, SPRAGUE & BISHOP

300 MONTGOMERY STREET, SUITE 450  
SAN FRANCISCO, CA 94104-1906  
(415) 421-5650

September 7, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303

Re: Tentative Recommendation - Uniform Statutory  
Form Power of Attorney Act

Ladies and Gentlemen,

I wholly agree with the need to adopt the Uniform Act relating to the Statutory Form of Power of Attorney.

In my experience, the main problems that are incurred with any power of attorney are those related to the hesitancy of third parties to accept the authority of the agent. Therefore, anything that helps to solve this problem will be most useful.

I would like to see some additional language that provides comfort to third parties, particularly stock transfer agents, banks, and title companies, who accept a power of attorney.

I believe it would be appropriate to provide assurance to such third parties that they are under no duty to make an independent investigation as to the competency of the principal at the time the power of attorney was executed. If the third party has actual knowledge of facts which tend to cast doubt on the validity of the power of attorney, only then should the third party have a duty to investigate further.

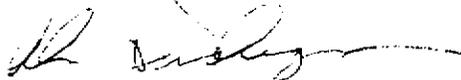
Specifically, I would like language in the statute to provide that it is not necessary to specifically refer to any particular parcel of real property, or any particular issue of stock or any particular banking institution.

September 7, 1989  
Page 2

Also, the issue of "stale" powers should be addressed. Perhaps there should be at least a period of year or so during which the power is presumed to be fresh, and after that time there should be a simple means for the agent to establish that the power has not been revoked.

Finally, I believe the issue of successor agents should be covered, including a convenient means for establishing when the initial agent is no longer able or willing to act.

Very sincerely,



Alvin G. Buchignani

AGB/ep

**KEN CAMERON**  
ATTORNEY AT LAW  
1211 FOURTH STREET, SUITE 200  
SANTA MONICA, CALIFORNIA 90401  
—  
(213) 458-9766  
(213) 451-8678

CA LAW REV. COMMISSION  
**SEP 11 1989**  
RECORDED

September 8, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Comment on Tentative Recommendation Re  
Power of Attorney Act

Gentlemen:

Having read your report, I agree with the recommendation that the Uniform Statutory Form Power of Attorney Act (with described addition to permit designation of co-agents) be enacted in California.

Sincerely yours,

  
KEN CAMERON

KC:lk

SEP 18 1989

RECEIVED

LAW OFFICES OF  
**EDNA R. S. ALVAREZ**  
AVCO CENTER WESTWOOD  
10850 WILSHIRE BOULEVARD  
FOURTH FLOOR  
LOS ANGELES, CALIFORNIA 90024-4318

TELEPHONE (213) 475-5837

FACSIMILE (213) 474-6926

September 13, 1989

John DeMauley  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

RE: TENTATIVE RECOMMENDATION RELATING TO UNIFORM  
STATUTORY FORM POWER OF ATTORNEY ACT

Dear Mr. DeMauley:

I am in receipt of a copy of the above-captioned item which was sent to me for my comments. I have reviewed the proposal and oppose the adoption of the Commission's recommendation, unless it is modified to include provisions similar to those in the California statutory form which grant broad estate planning powers and broad authority to make gifts and other transfers without consideration. Often times, the most important use of the Durable Power of Attorney for Property is in the modification of, or acceleration of, an estate plan.

I would appreciate being kept on your mailing list in regard to matters in the probate field.

Thank you very much.

Yours truly,



EDNA R. S. ALVAREZ

ERSA:jw

misc\cal-099.ltr

**RUSSELL G. ALLEN**  
610 NEWPORT CENTER DRIVE, SUITE 1700  
NEWPORT BEACH, CALIFORNIA 92660-6429  
TELEPHONE (714) OR (213) 669-6901  
FAX (714) 669-6994

REV. COMM'N

SEP 11 1989

RECEIVED

September 6, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

Re: Tentative Recommendations Relating to  
Repeal of Probate Code Section 6402.5  
and the Uniform Statutory Form Power  
of Attorney Act

Dear Ladies and Gentlemen:

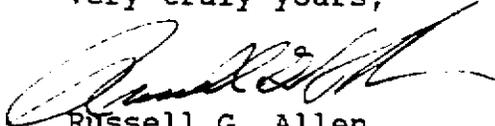
I concur in the recommendation concerning repeal of Section 6402.5. Although I must confess I have had no real-world experience with applying this section, I have had occasion to become concerned about it several times when doing estate plans for clients without close family members. I believe this section is likely to defeat expectations of those who die without a will and impose substantial administrative costs in transferring property from an intestate decedent to his or her heirs.

I also support the tentative recommendation concerning the statutory form durable power of attorney for asset management. I suggest you consider adding another category of authority -- to make gifts. In particular, I suggest including as a standard provision authority to make inter vivos, annual-exclusion gifts to a class of people that includes the principal's grandparents and all descendants of the principal's grandparents and all spouse's descendants of the principal's grandparents. (I suggest that we not worry about the Internal Revenue Code Section 2041 issues with respect to annual-exclusion gifts.)

I must confess that I struggle with the extent to which we should give the agent powers to make estate planning decisions for the principal beyond annual-exclusion gifts. I find it somewhat anomalous that we restrict an agent's authority in Section 2492(d) with respect to insurance policies but have no similar restriction with

respect to Section 2493's authority to disclaim or exercise powers of appointment and 2497's authority with respect to retirement plans. Similarly, I wonder if the failure to address the creation or termination of joint tenancies is intentional or inadvertent. As a general proposition, I would be reluctant to include broad, unsupervised estate planning authority that can be exercised for the benefit of the agent. (Indeed my concern about Section 2041 and self-dealing problems has led me to avoid the current statutory form; I have used an alternative version that does not include the power to make gifts or other estate planning decisions.) Perhaps we should authorize larger gifts and other estate planning acts if approved by the court having jurisdiction to supervise the actions of the agent.

Very truly yours,



Russell G. Allen

RGA/br

SEP 11 1989

RECEIVED

LAW OFFICES OF  
LEVIN, BALLIN, PLOTKIN, ZIMRING & GOFFIN

A PROFESSIONAL CORPORATION

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NORTH HOLLYWOOD, CALIFORNIA 91607-3492

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KIRSTEN HELWEG

HARMON R. BALLIN  
GEORGE M. GOFFIN  
RUTH E. GRAF  
S-G KYRIACOU  
WILLIAM LEVIN  
NANCY O. MARUTANI  
LOAN H. OTSU  
JAY J. PLOTKIN  
STUART D. ZIMRING

September 7, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D2  
Palo Alto, California 94303-4739

Re: Tentative Recommendation relating to Repeal of Probate  
Code Section 6402.5  
Tentative Recommendation relating to Uniform Statutory  
Form Power of Attorney Act

Gentlemen:

Thank you for forwarding me the tentative recommendations  
regarding the repeal of Probate Code Section 6402.5. I  
heartily concur with the Law Revision Commission's recommendation.

With respect to the recommendations regarding the Uniform  
Statutory Form Power of Attorney Act, I must say that I have  
a bias against "legislated" forms in general. I think the  
California experience with the Statutory Will shows the  
pitfalls that such legislation can create.

On the other hand, the "plain English" format of the proposed  
form goes a long way towards ameliorating the problems the  
current crop of preprinted Power of Attorney forms have  
created.

With that caveat, I do think the reference to "estate, trust  
and other beneficiary transactions" may lead some people to  
believe that a Power of Attorney can be utilized to execute

LAW OFFICES OF  
LEVIN, BALLIN, PLOTKIN, ZIMRING & GOFFIN

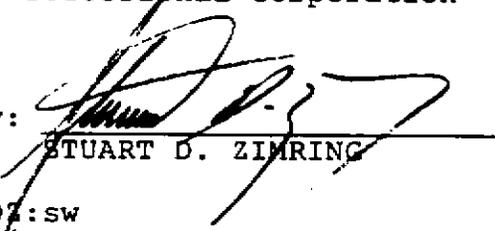
A PROFESSIONAL CORPORATION

California Law Revision Commission  
September 7, 1989  
Page 2

documents, such as a will, which the holder of the power does not in fact have authority to sign. Further, I think the phrase "tax matters" is so overly broad and vague as to be meaningless. If the intent of the document is to authorize the holder of the power to sign tax returns and/or deal with taxing authorities, I doubt seriously that the Internal Revenue Service would accept this Power of Attorney in lieu of its own form. Thus, I would suggest that item "m" be deleted.

Sincerely,

LEVIN, BALLIN, PLOTKIN, ZIMRING & GOFFIN  
A Professional Corporation

By: 

STUART D. ZIMRING

SDZ:sw

**Michael J. Anderson, Inc.**  
A Professional Corporation  
777 Campus Commons Drive, Suite 167  
Sacramento, California 95825  
(916) 921-6921

EX. COMM'N

SEP 13 1989

RECEIVED

Michael J. Anderson

September 12, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

RE: Uniform Statutory Form Power of Attorney Act  
and Repeal of Probate Code Section 6402.5  
("In-Law Inheritance")

Dear Members,

In respect to these two recommendations I am in full support of the one dealing with Repeal of Probate Code Section 6402.5 without comment.

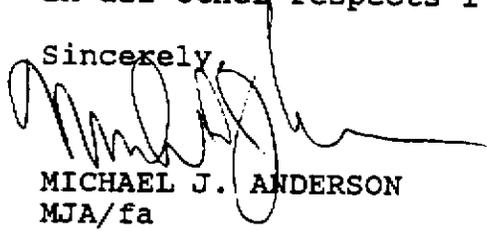
In respect to the Uniform Statutory Form Power of Attorney Act I am in agreement with that. However, I have several comments. First, could the Statutory Durable Power of Attorney be enacted to allow for the preparation of a Will. In particular a Pour-Over Will in cases where under the Power of Attorney the person is granting the authority to create, modify or revoke a Revocable or Irrevocable Trust.

I would also recommend, that having the authority to create, modify, or revoke a Trust should be one of the given powers as opposed to a power which must be specifically provided for.

Also, under the substituted judgment provisions of the conservatorship code the conservator on behalf of the conservatee could do all these acts under court supervision. If a Power of Attorney is a grant to let someone act on your behalf and sign, one of the common estate planning tools used in dealing with the disability of ones client, then I think it should be provided for. It would seem logical that they could be done under a Power of Attorney.

In all other respects I agree with the the commission.

Sincerely,



MICHAEL J. ANDERSON  
MJA/fa

LAW OFFICES OF  
VAUGHAN, PAUL & LYONS  
1418 MILLS TOWER  
220 BUSH STREET  
SAN FRANCISCO 94104  
(415) 392-1423

LA LAW REV. COMM'T

SEP 15 1989

RECEIVED

September 14, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Tentative Recommendation  
relating to Uniform Statutory  
Form Power of Attorney Act

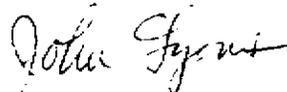
Gentlemen:

I approve the above Recommendation.

One desirable result would be to eliminate estate planning powers unless they are referred to specifically. Another would be to eliminate authority to make gifts. It seems doubtful that a person giving the power of attorney would contemplate those powers.

Additionally, a measure of uniformity with similar provisions in other States is always desirable for construction of various provisions.

Very truly yours,



John G. Lyons

JGL:car



CA LAW REV. COMM'N

SEP 15 1989

RECEIVED

University of San Diego

Institute on International and Comparative Law

September 8, 1989

California Law Revision Commission  
4000 Middlefield Rd. #D-2  
Palo Alto, CA 94303-4739

Dear Sir or Madam:

I have reviewed the 2 drafts you sent on in-law inheritance and powers of attorney for real property matters.

I have no suggestions for improvements on those drafts.

I would, however, appreciate it if you would continue to send me drafts of tentative recommendations for comments.

Sincerely,

Herbert Lazérow  
Professor of Law

HIL:gsc

-36-

Alcalá Park  
San Diego CA 92110-  
2492 USA  
619/260-4597  
619/260-4600 Ext. 4350  
Telex 182800

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Magdalen College  
High Street  
Oxford OX1 4AU  
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Faculty of Law  
University of Warsaw  
Warsaw Poland  
Telex 815439 UW PL

Trinity College  
Dublin 2 Ireland  
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direct (1) 45.08.85.61  
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Hotel Prim  
Versailles 46  
06600 México D.F.  
592-4600

DEPARTMENT OF DEVELOPMENTAL SERVICES

AGNEWS DEVELOPMENTAL CENTER

3500 ZANKER ROAD  
SAN JOSE, CA 95134-2299



SEPTEMBER 12, 1989

CALIFORNIA LAW REVISION COMMISSION  
4000 MIDDLEFIELD ROAD, SUITE D-2  
PALO ALTO, CA 94303-4739

DEAR PERSONS:

I HAVE REVIEWED THE COMMISSION'S TENTATIVE RECOMMENDATIONS RELATING TO THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT AND THE REPEAL OF PROBATE CODE SECTION 6402.5 ("IN-LAW INHERITANCE"). BOTH OF THE RECOMMENDATIONS UNDER CONSIDERATION APPEAR TO HAVE VERY LIMITED APPLICABILITY FOR DEVELOPMENTALLY DISABLED INDIVIDUALS RESIDING AT AGNEWS DEVELOPMENTAL CENTER.

RATHER THAN THE POWER OF ATTORNEY AUTHORIZED BY THE CALIFORNIA CIVIL CODE, SOME FORM OF CONSERVATORSHIP IS OFTEN SOUGHT AND GRANTED FOR DEVELOPMENTALLY DISABLED INDIVIDUALS. LIMITATIONS IN GIVING INFORMED CONSENT WOULD USUALLY PRECLUDE USE OF THE POWER OF ATTORNEY PROCESS BY DEVELOPMENTALLY DISABLED INDIVIDUALS AT AGNEWS DEVELOPMENTAL CENTER. THERE ARE OTHERS, NO DOUBT, WHO ARE DISSUADED BY THE COMPLEXITY OF THE POWER OF ATTORNEY PROCESS.

THE TYPICAL DEVELOPMENTALLY DISABLED INDIVIDUAL AT AGNEWS DOES NOT HAVE A SPOUSE. FEW, IF ANY, HAVE A CHILD AND MOST ARE SURVIVED BY THEIR PARENTS. THIS SAME TYPICAL INDIVIDUAL DIES INTESTATE WITH VERY LIMITED ASSETS.

SINCERELY,

FRED A. SPRAGUE  
TRUST OFFICER

(408) 432-8500  
EXT. 3392

FAS:DD

-37-

SEP 18 1989

R E C E I V E D

(818) 795-8844

Facsimile: (818) 795-9586

**Phelps, Schwarz & Phelps**

Attorneys At Law  
221 East Walnut Street, Suite 136  
Pasadena, California 91101

Edward M. Phelps  
Deborah Ballins Schwarz  
Ruth A. Phelps

September 15, 1989

Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

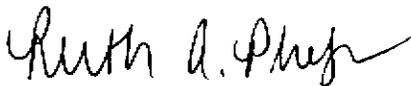
Re: Tentative Recommendations Relating to  
Uniform Statutory Form Power of Attorney Act and  
Repeal of Probate Code Section 6402.5

Dear Sirs/Madame:

I have read both of the tentative recommendations. I approve the one relating to the Uniform Statutory Form Power of Attorney Act since it specifically states that existing powers of attorneys are still effective.

I also approve the tentative recommendation relating to Repeal of Probate Code Section 6402.5. It is difficult to interpret. I had an estate involving ten relatives of the wife, all of them Australians, and eight relatives of a predeceased spouse, all of them Americans. There was no argument as to how the estate should have been divided, and it went very smoothly but it was complicated.

Very truly yours,



Ruth A. Phelps  
PHELPS, SCHWARZ & PHELPS

RAP:sp

SEP 18 1989

RECORDED

**RUSCONI, FOSTER, THOMAS & PIPAL**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

30 KEYSTONE AVENUE

POST OFFICE BOX 10

MORGAN HILL, CALIFORNIA 95037

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ERNEST RUSCONI  
J. ROBERT FOSTER  
GEORGE F. THOMAS, JR.  
DAVID E. PIPAL  
STEVEN R. FERNANDEZ

HOLLISTER OFFICE  
330 TRES PINOS RD. C-8  
POST OFFICE BOX 559  
HOLLISTER, CALIFORNIA 95024  
(408) 637-5181

September 15, 1989

California Law Revision Commission  
4000 Middlefield Road  
Suite D-2  
Palo Alto, CA 94303-4739

Gentlemen:

This is to acknowledge receipt of the two Tentative Recommendations of your Commission which I received in August. Regarding the Uniform statutory power of attorney act, I agree with the Commission's recommendation that we follow the simpler form rather than the Uniform Act.

I have personal experience with the In-Law inheritance provisions of the Code and agree that the application of this statute is difficult and is a waste of judicial resources and time. In short, I agree with your conclusion that §6402.5 of the Probate Code should be repealed.

Sincerely yours,

RUSCONI, FOSTER, THOMAS & PIPAL



ERNEST RUSCONI

ER:lsj

## DEPARTMENT OF VETERANS AFFAIRS

VETERANS HOME OF CALIFORNIA

YOUNTVILLE, NAPA COUNTY, CALIFORNIA 94599

Telephone: (707) 944- 4720



CA LAW REV. COMM'N

SEP 18 1989

RECEIVED

September 15, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

Dear Sir:

I would like to commend the Commission on the contents of the Uniform Statutory Form Power of Attorney Act. This will be of vaule to individuals designating a Power of Attorney.

With reference to sample form on pages 13, 14, and 15. my only concern is the revocation of the Power of Attorney when the designator signs several Power of Attorney forms. In the case of aged veterans I have found they assign Power of Attorney to more than one veterans organization. Does the use of the terms "severally" or "jointly" satisfactorily address this issue or could a line be added making latest (most current date) the Power of Attorney?

Since this most often refers to item (K) should a comment be required to be added in special instructions as to other Power of Attorneys (by name and title) when trying to obtain benefits?

Sincerely,

A handwritten signature in cursive script that reads "Peggy Jane Meeker".

Peggy Jane Meeker, Chief  
Medical Administrative Service

PJM:mac

-40-

*Patricia Harsh Jenkins*

*Attorney at Law*

*2049 Century Park East, Suite 1200*

*Los Angeles, California 90067*

*(213) 277-3360*

CA LAW REV. COMMISSION

SEP 20 1989

RECEIVED

September 17, 1989

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303

Re: Tentative Recommendations

Dear Sir/Madam:

I have reviewed the tentative recommendations for repeal of Probate Code Section 6402.5 and adoption of the Uniform Statutory Form Power of Attorney Act. I support both recommendations.

I would like to continue to receive Commission mailings at my home address, 12631 Milton Street, Los Angeles, CA 90066. Thank you.

Very truly yours,

*Patricia Jenkins*  
Patricia Jenkins

PHJ:mm

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

relating to

### Uniform Statutory Form Power of Attorney Act

August 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 29, 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, California 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.



## 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 Act<sup>1</sup> 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."<sup>2</sup>

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.<sup>3</sup> For example, if the agent is given authority with respect to "real property transactions" in the statutory form, the details of the authority granted are specified in a more than 350 word statutory statement.<sup>4</sup>

The Uniform Act form<sup>5</sup> contains a space for "special instructions." In this space, the principal can insert language

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 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.

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.

5. Uniform Act § 1.

that makes the power a “springing power,” that is a power that does not become operative until the occurrence of some future event, such as the incapacity of the principal.<sup>6</sup> In addition, using 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,<sup>7</sup> together with constructional sections in the statute that spell out the authority granted by each of the general categories listed in the statutory form.<sup>8</sup> 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.<sup>9</sup>

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

---

6. A springing power provision should be used with caution. A power of attorney that is a springing power may not be acceptable to a person to whom the power of attorney is presented absent satisfactory proof that the event that causes the power to become effective has actually occurred.

7. Civil Code § 2450.

8. Civil Code §§ 2460-2473.

9. Civil Code § 2450.

drawing a line through each power not granted.<sup>10</sup> 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 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.<sup>11</sup>

(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.<sup>12</sup> These additional powers are automatically given the agent unless the principal draws a line through this category on the statutory form.<sup>13</sup> 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

---

10. 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.”

11. 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.

12. 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).

13. See text at note 10 supra.

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.<sup>14</sup> 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 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."<sup>15</sup> 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.<sup>16</sup> No similar authority is found in the Uniform Act. Here again, if it is

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14. 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 9-10 *supra*.

15. 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).

16. Civil Code Section 2470(a) 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 Internal Revenue Code Section 2513, or successor sections, if the

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.<sup>17</sup>

(5) The California statutory form, but not the Uniform Act form, includes provisions permitting the designation of more than one agent and for specifying whether the multiple agents may act severally or must act jointly.

(6) By way of contrast to the form provided by the Uniform Act, the California statutory form includes additional provisions that make the form lengthy and difficult to understand. The California statutory form, but not the Uniform Act form, includes provisions (i) governing the duration of the power of attorney and (ii) permitting the nomination of a conservator of the estate.<sup>18</sup> These provisions, together with the explanations and instructions concerning them, add considerably to the length and complexity of the form.

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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.

(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.

17. 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).

18. 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."

(7) The general requirements for a durable power of attorney in California are 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.<sup>19</sup> The California statutory form and the Uniform Act form both have an additional requirement: The form must be signed and dated by the principal and acknowledged before a notary.<sup>20</sup> The California statute adds an additional requirement that makes execution of the form more difficult and causes confusion.<sup>21</sup> 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.

(8) 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 (with one addition described below) 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

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

20. Civil Code § 2452; Uniform Act §1(b). See also Gov't Code § 27287 (general requirement that instrument must be acknowledged in order to be recorded).

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

complex execution requirements of the existing California statutory short form.

The Commission recommends that provisions drawn from the existing California Statutory Short Form Power of Attorney statute be added to the Uniform Act form to permit designation of co-agents.<sup>22</sup>

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22. A provision also should be added to the statute to make clear that the Uniform Act form is not invalid merely because it does not include a provision that permits designation of co-agents.

In addition, to conform to the California Uniform Durable Power of Attorney Act (Civil Code § 2400), the word "incapacitated" should be substituted for "disabled, incapacitated, or incompetent" in the text of the Uniform Act form and in the instruction that follows the text.

## RECOMMENDED LEGISLATION

### CHAPTER 3.5. UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

(This chapter is added to the Civil Code)

#### Article 1. General Provisions

- § 2475. Statutory form
- § 2476. Requirements for statutory power of attorney
- § 2477. Effect of initialing line in front of (N) in statutory form
- § 2478. Durable power of attorney
- § 2479. Short title
- § 2480. Uniformity of construction
- § 2481. Partial invalidity

#### Article 2. Construction of Powers

- § 2485. Construction of powers generally
- § 2486. Real property transactions
- § 2487. Tangible personal property transactions
- § 2488. Stock and bond transactions
- § 2489. Commodity and option transactions
- § 2490. Banking and other financial institution transactions
- § 2491. Business operating transactions
- § 2492. Insurance and annuity transactions
- § 2493. Estate, trust, and other beneficiary transactions
- § 2494. Claims and litigation
- § 2495. Personal and family maintenance
- § 2496. Benefits from social security, medicare, medicaid, and other governmental programs, or military service
- § 2497. Retirement plan transactions
- § 2498. Tax matters
- § 2499. After acquired property; property located outside this state; power exercised outside this state; power of attorney executed outside this state

#### 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:

**UNIFORM STATUTORY FORM POWER OF  
ATTORNEY**

**(California Civil Code § 2475)**

**NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE 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 \_\_\_\_\_

(your name and address)

**appoint** \_\_\_\_\_

(name and address of the person appointed, or of each person appointed if you want to designate more than one)

**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.

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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 incapacitated.**

**STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME INCAPACITATED.**

**EXERCISE OF POWER OF ATTORNEY WHERE MORE THAN ONE AGENT DESIGNATED**

**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 THE BLANK SPACE THE WORD "SEVERALLY." FAILURE TO MAKE AN INSERTION OR THE INSERTION OF THE WORD "JOINTLY" WILL REQUIRE THAT THE AGENTS ACT JOINTLY.**

**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.**

**Signed this \_\_\_ day of \_\_\_\_\_, 19\_\_**

\_\_\_\_\_  
(your signature)

\_\_\_\_\_  
(your social security number)

**State of \_\_\_\_\_**

**County of \_\_\_\_\_**

**CERTIFICATE OF ACKNOWLEDGMENT OF  
NOTARY PUBLIC**

State of California )

) ss.

County of )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ before  
me, \_\_\_\_\_ personally appeared

(name of notary public)

\_\_\_\_\_, personally known to

(name of principal)

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)

BY ACCEPTING OR ACTING UNDER THE  
APPOINTMENT, THE AGENT ASSUMES THE  
FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES  
OF AN AGENT.

**Comment.** Section 2475 is the same in substance as subsection (a) of Section 1 of the Uniform Statutory Form Power of Attorney Act (1988) with the addition of provisions to permit designation of co-agents. The added provisions are drawn from the former Statutory Short Form Power of Attorney statute. See former Section 2450. The acknowledgment portion of the form has been revised to be consistent with the form used under California law. The word "incapacitated" has been substituted for the words "disabled, incapacitated, or incompetent" used in the Uniform Act. This substitution conforms the statutory form to the California version of the Uniform Durable Power of Attorney Act. See Section 2400.

Section 2475 provides the text of the form that is sufficient and necessary to bring this chapter into operation. A form used to create a power of attorney subject to this chapter should use the language provided in Section 2475. Minor variances in wording will not take it

out of the scope of the chapter. Nor does the omission of the provisions relating to designation of co-agents take the form out of the scope of this chapter. See Section 2476(a). The statutory form can be used in whole or part instead of individually drafted forms or forms adapted from a form book.

After the introductory phrase, the term "agent" is used throughout the Uniform Act in place of the longer and less familiar "attorney in fact." Special effort is made throughout the Uniform Act to make the language as informal as possible without impairing its effectiveness.

The statutory form contains a list of powers. The powers listed relate to various separate classes of activities, except the last, which includes all the others. 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 is 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 constructional provisions in Sections 2485-2499, attempt 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; 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 through 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.

It should be noted that a trust may not be modified or revoked by an attorney in fact under a power of attorney unless it is expressly permitted by the trust instrument. See Prob. Code § 15401(b).

Section 2478 and the statutory form itself make the power of attorney a durable power of attorney, remaining in effect after the incapacity 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, attempts 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, this chapter should 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 the 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 form 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. A form does not fail to comply substantially with Section 2475 merely because the form does not include the provisions of Section 2475 relating to designation of co-agents.

(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 (1988) with the addition of the second sentence of subdivision (b). (The official text of the Uniform Act does not include provisions for designation of co-agents.) The added sentence makes clear that use of a form that complies with the requirements of the official text of the Uniform Act satisfies the requirements of this section, even though the form used does not include the provisions included in Section 2475 for designation of co-agents.

**§ 2477. Effect of initialing 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 (1988).

### **§ 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 incapacitated," showing the intent of the principal that the power granted may be exercised notwithstanding later incapacity.

**Comment.** Section 2478 is the same in substance as of Section 2 of the Uniform Statutory Form Power of Attorney Act (1988). 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. The words "incapacitated" and "incapacity" are used in Section 2478 to conform to the form used in Section 2475 and to Section 2400 (California version of the Uniform Durable Power of Attorney Act).

A durable power of attorney under this chapter continues in effect when the principal becomes incapacitated. 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 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.

**§ 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 (1988).

**§ 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 (1988).

**Article 2. Construction of Powers**

**Comment.** This article (commencing with Section 2485) explains the 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 2486-2498 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 2486-2498, 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, after-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. See also Prob. Code § 15401 (modifying or revoking trust).

**§ 2485. Construction of powers generally**

2485. By executing a statutory form 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 (1988). 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 form 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 or right.

**Comment.** Section 2486 is the same in substance as Section 4 of the Uniform Statutory Form Power of Attorney Act (1988). 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 form 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 (1988). 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 (1988). 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 form 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 (1988). 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 form 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 (1988). 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 form 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 (1988). 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 form 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 (1988). 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 form 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 (1988). 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 form 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 (1988). 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 form 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 (1988). 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 form 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 (1988). 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 form 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 (1988). 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 form 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 executed 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 (1988). 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 statutory form 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 acquired at times 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 (1988). See also Section 2513 (no need to describe each item or parcel of property).

## CONFORMING REVISIONS

**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 when used 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 older forms.

**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 form 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 (1988). 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 different section given the same number.