



TRUSTS & ESTATES SECTION

THE STATE BAR OF CALIFORNIA

STATUTORY FORM POWER OF ATTORNEY AMENDMENTS

LEGISLATIVE PROPOSAL (T&E-2010-09)

TO: Saul Bercovitch, Legislative Counsel
State Bar Office of Governmental Affairs

FROM: Nancy E. Howard, Jeremy Crickard and Rebecca Schroff, Members, Executive Committee and Estate Planning Subcommittee, Trusts and Estates Section, State Bar of California

DATE: July 15, 2009

RE: Statutory Form Power of Attorney Amendments
A proposal to amend §§ 4260, 4264, 4401, 4407, 4457, 4458, 4460, 4462 and 4465 of the Probate Code.

SECTION ACTION AND CONTACTS:

Date of Approval by Section Executive Committee: March 14, 2009

Approval vote: 25 Yes; 0 No; 2 Abstain

Contacts:	Section Legislative Co-Chairs:
<p>Nancy E. Howard Sheppard, Mullin, Richter & Hampton LLP 333 S. Hope Street, 48th Floor Los Angeles, CA 90071 Phone: (213) 620-1780 Fax: (213) 443-2850 NHoward@sheppardmullin.com</p> <p>Jeremy Crickard Luce, Forward, Hamilton & Scripps, LLP 600 West Broadway, Suite 2600 San Diego, CA 92101 Phone: (619) 699-2587 Fax: (619) 235-1313 jcrickard@luce.com</p> <p>Rebecca Lee Tomlinson Schroff Moore Bryan & Schroff 21515 Hawthorne Blvd., #490 Torrance CA 90503 Phone: (310) 540-8855 becky@mbslawcorp.com</p>	<p>Edward J. Corey, Jr. Weintraub Genshlea & Chediak 400 Capitol Mall, 11th Floor Sacramento, CA 95814 Phone: (916) 558-6017 Fax: (916) 446-1611 ecorey@weintraub.com</p> <p>Richard L. Ehrman Thoits Love Hershberger & McLean 285 Hamilton Avenue, #300 Palo Alto, CA 94301 Phone: (650) 327-4200 Fax: (650) 325-5572 rehрман@thoits.com</p>

SUMMARY OF PROPOSAL:

Special protections in the Probate Code prevent an agent from taking certain potentially abusive actions to dispose of the principal's property during lifetime or at death, unless the power of attorney expressly grants that power to the agent. However those limitations do not currently apply to statutory form powers of attorney. This proposal would extend those same protections to statutory form powers of attorney. It also would clarify, harmonize and remove inconsistencies between statutory form powers of attorney and other powers of attorney regarding these sensitive powers.

ISSUES AND PURPOSE:

Under current law a person may give an agent powers under a general power of attorney through either (1) a specific statutory form set forth in the Probate Code or (2) a power of attorney document that does not use the statutory form.

A power of attorney that is not created by the statutory form grants the agent the broadest possible power to act on behalf of the principal, except as limited by law or by the terms of the power of attorney itself. The law governing such a non-statutory form power of attorney includes special protections limiting certain powers, such as the power to make a gift, the power to name or to change beneficiaries on insurance or annuity contracts or retirement plans, or the power to make a loan to the agent, unless the power of attorney expressly grants those powers to the agent. Thus the agent will not have broad estate planning powers to dispose of the principal's property either during lifetime or at death unless the power of attorney expressly grants those powers to the agent.

A statutory form power of attorney, in contrast, lists certain categories of transactions (such as banking, real estate, or retirement plan transactions). Only the selected categories of powers are granted, but within each category an agent has very broad authority to act. The special protections that limit an agent's authority to take significant estate planning actions do not apply to statutory form powers of attorney.

This creates problems in two ways:

(1) In some cases, the statutory form power of attorney expressly includes powers that could not be given to an agent using a non-statutory form power of attorney unless the powers were spelled out in the power of attorney document itself. For example, §§ 4457(d) and (j) and § 4462(b)¹ allow an agent under a statutory form power of attorney, subject to some restrictions, to designate or change the beneficiary of an insurance policy, an annuity contract or a retirement plan. The agent's powers are only referred to by title in the statutory form (e.g., "Insurance and Annuity Transactions" or "Retirement Plan Transactions"), so a person signing a statutory form power of attorney would not know that the agent had been given the power to change beneficiaries unless the person separately obtained, read and understood a copy of the

¹ All section references are to the California Probate Code unless otherwise noted.

statute. In contrast, the power to designate or change a beneficiary on an insurance policy, annuity or retirement plan is prohibited under § 4264(f) for a non-statutory form power of attorney unless the power to name or change a beneficiary is expressly granted in the power of attorney.

(2) Even where the statutory form does not expressly give the agent the power to dispose of the principal's property, the powers that are granted to an agent under a statutory form power of attorney are so broad that they might be used to carry out significant transfers. For example, § 4450(b) of the statutory form power of attorney law permits an agent to "contract in any manner with any person" regarding any of the types of transactions that are covered (real property, banking, etc.). The law governing a non-statutory form power of attorney does not allow an agent to make a loan to himself or herself, unless that power is expressly granted. Since those restrictions in the general law do not apply to statutory form powers of attorney, it is not clear whether an agent under the statutory form document could make a loan to himself or herself from the principal's property.

The statutory form power of attorney is sometimes used by lawyers but is more often used without the assistance of a lawyer. The common use of statutory form powers of attorney without legal advice creates both a greater potential for abuse by unscrupulous persons and also a greater chance that the principal may unintentionally grant his or her agent broader powers than the principal realizes or intends. Because of the widespread use of statutory form powers of attorney without legal advice, it is particularly important that the statutory form include protections so that a principal will not grant broad estate planning powers to an agent unless the principal makes clear that he or she intends to do that.

This proposal would make the existing restrictions in the law, which limit an agent's power to carry out significant transfers of the principal's property during life or at death unless that authority is expressly granted in the power of attorney, applicable in the same manner to a statutory form power of attorney. There are changes to conform and coordinate the corresponding provisions in the general and the statutory form power of attorney law. As a result, persons signing statutory form powers of attorney would be protected from granting broad estate planning powers to their agents unless those powers were explicitly stated in the document being signed.

EXPLANATION OF PROPOSED CHANGES:

The specific statutory changes, and a brief explanation of the purpose of each of them, are set forth below. In a few cases, proposed changes are based upon the new Uniform Power of Attorney Act (2006) ("New UPOA Act"), which has been approved by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). This proposal does not recommend adoption of the entire New UPOA Act, but selected provisions of the New UPOA Act are incorporated where they are relevant to these proposed changes and are otherwise consistent with California law.

Changes to § 4260. Application of article

Article 3 (§§ 4260 – 4266), contains a number of general rules that relate to powers of attorney, but § 4260 currently provides that those rules are not applicable to statutory form powers of attorney.

(1) Proposed change to section 4260:

This article ~~does not apply to~~ *applies to all powers of attorney under this division, including without limitation statutory form powers of attorney under Part 3 (commencing with Section 4400), except that Sections 4261 and 4263 do not apply to statutory form powers of attorney under Part 3.*

(2) Explanation of proposed change:

All of Article 3 is made applicable to statutory form powers of attorney. The only exceptions are:

- § 4261, which is a broad grant of authority under a general power of attorney and is inconsistent with the statutory form power of attorney's more limited grant of authority; and
- § 4263, which allows the incorporation of powers from other statutes, which also is inconsistent with the system of self-contained powers in a statutory form power of attorney.

The remaining sections of Article 3 would now apply to statutory form powers of attorney as well as non-statutory form powers of attorney. Those sections are:

- § 4262, which provides that if limited authority is granted to an agent under a power of attorney, the agent has the authority that is granted in the power of attorney and authority incidental, necessary or proper to carry out the authority that is granted;
- § 4264, discussed below;
- § 4265, which provides that a power of attorney may not authorize an agent to make a will for the principal; and
- § 4266, which provides that a grant of authority to an agent does not require that the agent exercise the authority, and that the exercise of authority by the agent is subject to the agent's fiduciary duties.

Changes to § 4264. Acts requiring express authorization in power of attorney

This section lists certain sensitive powers which must be expressly authorized in a power of attorney. It would be made applicable to statutory form powers of attorney as well as non-statutory form powers of attorney.

(1) Proposed change to introductory paragraph of section 4264:

~~A power of attorney may not be construed to grant authority to an attorney-in-fact to perform any of the following acts unless expressly authorized in the power of attorney. An attorney-in-fact under a power of attorney, including without limitation a statutory form power of attorney under Part 3 (commencing with Section 4400), may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants that authority to the attorney-in-fact:~~

(2) Explanation of proposed change:

This section, which limits certain powers that would allow an agent to take significant estate planning actions and that carry an increased risk of abuse, is changed from a rule of construction to an affirmative statement of the requirement that such sensitive powers must be expressly granted in a power of attorney. It is explicitly made applicable to statutory form powers of attorney as well as to other non-statutory form powers of attorney.

(1) Proposed change to subsection 4264(a):

(a) ~~Create, modify, or revoke a trust~~ *revoke or terminate a trust, in whole or in part. If a power of attorney under this division empowers the attorney-in-fact to modify or revoke a trust created by the principal, the trust may only be modified or revoked by the attorney-in-fact as provided in the trust instrument.*

(2) Explanation of proposed change:

The power to "terminate" a trust is used in the New UPOA Act and is added in the first sentence. The power to "revoke" implies a power over a trust created by a principal, while the power to "terminate" could apply to a power granted under a trust created by another. The language "in whole or in part" is added to make clear that a partial exercise of the power is covered by the statute.

The second sentence makes explicit that the power of an agent to amend or revoke a trust, even if granted in the power of attorney, must also be permitted by the trust instrument. That restriction currently applies to all powers of attorney, as provided in § 15401(c). Section 4465, governing statutory form powers of attorney, repeated this restriction, and the text of that portion of § 4465 is moved to this section, which applies to all powers of attorney.

(1) Proposed change to subsection 4264(d):

(d) ~~Exercise the right to make a disclaimer~~ *reject, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust or other fund on*

behalf of the principal. This subdivision does not limit the attorney-in-fact's authority to disclaim a detrimental transfer to the principal with the approval of the court.

(2) Explanation of proposed change:

The disclaimer language was broadened to conform to the language deleted from § 4458(a) governing statutory form powers of attorney.

Change to § 4401. Form

The entire statutory form power of attorney is set forth in section 4401. A change would be made to the introductory paragraph only.

(1) Proposed change to section 4401 (statutory form):

The following statutory form power of attorney is legally sufficient when the requirements of Section 4402 are satisfied:

UNIFORM STATUTORY FORM POWER OF ATTORNEY

(California Probate Code Section 4401)

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA PROBATE CODE SECTIONS 4400-4465). *THE POWERS GRANTED BY THIS DOCUMENT DO NOT INCLUDE ALL POWERS THAT ARE AVAILABLE UNDER THE PROBATE CODE.* 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.

(2) Explanation of proposed change:

A sentence is added to the required notice in the introductory paragraph of the statutory form, alerting the user that the statutory form power of attorney does not grant the agent all possible powers that are allowed by law. Because the powers that are restricted under § 4264 are particularly sensitive and are subject to possible abuse, we do not recommend listing those powers in the form in a "check-the-box" format. Instead, as with any question about the scope or limits on the agent's powers, the principal is encouraged to seek competent legal advice.

Change to § 4407. Application of division to statutory form power of attorney; conflicting provisions

(1) Proposed change to section 4407:

~~Unless~~ *The provisions of this division apply to statutory form powers of attorney except when there is a conflicting provision in this part, in which case the provision of this part governs,*

~~the other provisions or when a provision of this division apply is expressly made inapplicable to a statutory form power powers of attorney.~~

(2) Explanation of proposed change:

This is a technical change to make clear that an express provision in the power of attorney law (such as the existing or proposed § 4260) may make a particular provision of the general power of attorney law inapplicable to a statutory form power of attorney.

Changes to § 4457. Insurance and annuity transactions; powers granted

Section 4457 lists the powers that are granted under a statutory form power of attorney over insurance and annuity transactions.

(1) Proposed deletion of subsection 4457(d):

~~(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.~~

(2) Explanation of proposed change:

Subsection (d), which automatically gives an agent under a statutory form power of attorney the power to designate a beneficiary of an insurance or annuity contract, is deleted. That is a sensitive power that under § 4264(f) must be expressly granted in the power of attorney.

(1) Proposed deletion of subsection 4457(j):

~~(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).~~

(2) Explanation of proposed change:

Subsection (j), which automatically gives an agent under a statutory form power of attorney the power to change a beneficiary of an insurance or annuity contract, is deleted. That is a sensitive power that under § 4264(f) must be expressly granted in the power of attorney.

Changes to § 4458. Estate, trust and other beneficiary transactions; powers granted

Section 4458 lists the powers that are granted under a statutory form power of attorney over trust and other beneficiary transactions.

(1) Proposed change to subsection 4458(a):

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

(2) Explanation of proposed change:

The automatic power to disclaim (and similar powers) are deleted from § 4458(a), as those are sensitive powers that under § 4264(d) must be expressly granted in the power of attorney.

(1) Proposed addition of new subsection 4458(g):

(g) *Disclaim a detrimental transfer to the principal with the approval of the court.*

(2) Explanation of proposed change:

Section 4264(d) expressly allows an agent to disclaim a detrimental transfer with court approval, even though a disclaimer otherwise is a sensitive power that must be expressly granted in the power of attorney document. Because the broad power to disclaim has been removed from the statutory form power of attorney, and because the statutory form power of attorney gives the agent only those powers that are listed in the statute, an agent's limited power to disclaim a detrimental transfer is added here.

Change to § 4460. Personal and family maintenance; powers granted

Section 4460 lists the powers that are granted under a statutory form power of attorney for personal and family maintenance.

(1) Proposed addition of new flush language at the end of section 4460:

An agent's authority with respect to personal and family maintenance under this section (i) is not dependent on any other grant of authority to the agent to make gifts on the principal's behalf, and (ii) is not limited by any limitation that otherwise applies to the agent's authority to make gifts on the principal's behalf.

(2) Explanation of proposed change:

New language is added at the end of § 4460, stating that the powers of personal and family maintenance that are listed in that section are not limited by any authority or lack of authority regarding gifts generally. This is based upon a provision in the New UPOA Act and currently has no counterpart in California law. However, we believe that, even though a payment for family maintenance in some cases may be a taxable gift under federal gift tax law, most laypersons do not think of such family support matters as "gifts" and would expect that such actions are permitted if they check this box, without technical distinctions about whether a particular expenditure is part of a legal support obligation or is a gift.

Change to § 4462. Retirement plan transactions; powers granted

Section 4460 lists the powers that are granted under a statutory form power of attorney over retirement plan transactions.

(1) Proposed deletion of subsection 4462(b):

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

(2) Explanation of proposed change:

Subsection (b), automatically giving an agent under a statutory form power of attorney the power to designate or change a beneficiary under a retirement plan, is deleted. That is a sensitive power that under § 4264(f) must be expressly granted in the power of attorney.

Change to § 4465. Trusts; power to modify or revoke

(1) Proposed deletion of existing section 4465:

~~§ 4465 — Trusts; power to modify or revoke~~

~~A statutory form power of attorney under this part does not empower the agent to modify or revoke a trust created by the principal unless that power is expressly granted by the power of attorney. If a statutory form power of attorney under this part empowers the agent to modify or revoke a trust created by the principal, the trust may only be modified or revoked by the agent as provided in the trust instrument.~~

(2) Explanation of proposed change:

This section is deleted as the substance is included in § 4264(a), which now will apply to both statutory and non-statutory form powers of attorney.

(1) Proposed addition of new section 4465:

§ 4465 *Acts requiring express authorization in statutory form power of attorney*

A statutory form power of attorney under this part does not empower the agent to take any of the actions specified in Section 4264 of the Probate Code unless the statutory form power of attorney expressly grants that authority to the attorney-in-fact.

(2) Explanation of proposed change:

This section is added so that the statutory form power of attorney law, Probate Code §§ 4400 – 4465, will include a reference to the restrictions that are now made applicable to statutory form powers of attorney.

HISTORY:

SB 1907 (Campbell), Chapter 307, Statutes of 1994, revised, recast and transferred to the Probate Code provisions of the Civil Code governing powers of attorney. Legislation similar to this proposed legislation has not been introduced to date.

IMPACT ON PENDING LITIGATION:

There is no known impact on pending litigation.

LIKELY SUPPORT & OPPOSITION:

The Executive Committee of the Trusts and Estates Section (TEXCOM) anticipates that groups and organizations advocating against elder abuse are likely to support. No opposition is anticipated.

FISCAL IMPACT:

There is no anticipated fiscal impact.

GERMANENESS:

The members of the State Bar's Trusts and Estates Section routinely deal with drafting and implementing durable powers of attorneys for clients in connection with their estate planning. Section members are acutely aware of both the value of proper and flexible powers of attorney and the risk of abuse created by overly-broad or ambiguous powers of attorney. The subject matter of the legislation comes within the scope of the interests and knowledge of the Trusts and Estates Section of the State Bar of California.

TEXT OF PROPOSAL:**SECTION 4260 SHOULD BE AMENDED TO READ AS FOLLOWS:****§ 4260. Application of article**

This article ~~does not apply to~~ *applies to all powers of attorney under this division, including without limitation statutory form powers of attorney under Part 3 (commencing with Section 4400), except that Sections 4261 and 4263 do not apply to statutory form powers of attorney under Part 3.*

SECTION 4264 SHOULD BE AMENDED TO READ AS FOLLOWS:**§ 4264. Acts requiring express authorization in power of attorney**

~~A power of attorney may not be construed to grant authority to an attorney in fact to perform any of the following acts unless expressly authorized in the power of attorney. An attorney-in-fact under a power of attorney, including without limitation a statutory form power of attorney under Part 3 (commencing with Section 4400), may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants that authority to the attorney-in-fact:~~

(a) Create, modify, ~~or revoke a trust~~ *revoke or terminate a trust, in whole or in part. If a power of attorney under this division empowers the attorney-in-fact to modify or revoke a*

trust created by the principal, the trust may only be modified or revoked by the attorney-in-fact as provided in the trust instrument.

- (b) Fund with the principal's property a trust not created by the principal or a person authorized to create a trust on behalf of the principal.
- (c) Make or revoke a gift of the principal's property in trust or otherwise.
- (d) Exercise the right to ~~make a disclaimer~~ *reject, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust or other fund* on behalf of the principal. This subdivision does not limit the attorney-in-fact's authority to disclaim a detrimental transfer to the principal with the approval of the court.
- (e) Create or change survivorship interests in the principal's property or in property in which the principal may have an interest.
- (f) Designate or change the designation of beneficiaries to receive any property, benefit, or contract right on the principal's death.
- (g) Make a loan to the attorney-in-fact.

SECTION 4401 SHOULD BE AMENDED TO READ AS FOLLOWS:

§ 4401. Form

The following statutory form power of attorney is legally sufficient when the requirements of Section 4402 are satisfied:

UNIFORM STATUTORY FORM POWER OF ATTORNEY

(California Probate Code Section 4401)

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA PROBATE CODE SECTIONS 4400-4465). *THE POWERS GRANTED BY THIS DOCUMENT DO NOT INCLUDE ALL POWERS THAT ARE AVAILABLE UNDER THE PROBATE CODE.* 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 civil or military service.
- _____ (L) Retirement plan transactions.
- _____ (M) Tax matters.
- _____ (N) ALL OF THE POWERS LISTED ABOVE.

YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

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

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

This power of attorney will continue to be effective even though I become 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 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 OF YOUR AGENTS MUST ACT OR SIGN TOGETHER.

I agree that any third party who receives a copy of this document may act under it. A third party may seek identification. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge 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 _____, 20____

(your signature)

State of _____ County of _____

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

SECTION 4407 SHOULD BE AMENDED TO READ AS FOLLOWS:

§ 4407. Application of division to statutory form power of attorney; conflicting provisions

~~Unless~~ *The provisions of this division apply to statutory form powers of attorney except when there is a conflicting provision in this part, in which case the provision of this part governs, the other provisions or when a provision of this division apply is expressly made inapplicable to a statutory form power powers of attorney.*

SECTION 4457 SHOULD BE AMENDED TO READ AS FOLLOWS:

§ 4457. Insurance and annuity transactions; powers granted

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~~e) Surrender and receive the cash surrender value.
- (~~g~~f) Exercise an election.
- (~~h~~g) Change the manner of paying premiums.
- (~~i~~h) 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).~~(ki)~~ Apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal.

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

~~(mk)~~ 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.

SECTION 4458 SHOULD BE AMENDED TO READ AS FOLLOWS:

§ 4458. Estate, trust and other beneficiary transactions; powers granted

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, *or* 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.

(g) *Disclaim a detrimental transfer to the principal with the approval of the court.*

SECTION 4460 SHOULD BE AMENDED TO READ AS FOLLOWS:

§ 4460. Personal and family maintenance; powers granted

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.

An agent's authority with respect to personal and family maintenance under this section (i) is not dependent on any other grant of authority to the agent to make gifts on the principal's behalf, and (ii) is not limited by any limitation that otherwise applies to the agent's authority to make gifts on the principal's behalf.

SECTION 4462 SHOULD BE AMENDED TO READ AS FOLLOWS:

§ 4462. Retirement plan transactions; powers granted

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.~~
 ——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.

SECTION 4465 SHOULD BE AMENDED TO READ AS FOLLOWS:

§ 4465 Trusts; ~~power to modify or revoke~~

~~A statutory form power of attorney under this part does not empower the agent to modify or revoke a trust created by the principal unless that power is expressly granted by the power of attorney. If a statutory form power of attorney under this part empowers the agent to modify or revoke a trust created by the principal, the trust may only be modified or revoked by the agent as provided in the trust instrument.~~

Acts requiring express authorization in statutory form power of attorney

A statutory form power of attorney under this part does not empower the agent to take any of the actions specified in Section 4264 of the Probate Code unless the statutory form power of attorney expressly grants that authority to the attorney-in-fact.