

Memorandum 83-103

Subject: Study L-704 - Statutory Short Form of General Power of Attorney

Attached as Exhibit 1 is a letter from Valerie J. Merritt suggesting that the person selling a statutory short form durable power of attorney should provide the purchaser with a copy of the relevant statutory provisions.

To make clear that a copy of the relevant statutory provisions must be provided to the purchaser, the staff has included the following provisions in the proposed legislation:

§ 2456. Text of statutory provisions to be provided with form

2456. (a) A person who sells a statutory short form power of attorney provided for by this chapter to a person who does not have the advice of legal counsel shall provide with the form the text of Section 2455 and Section 2460 to 2473, inclusive.

(b) A person who violates subdivision (a) is liable only in an individual action to the person who purchased the form for damages in an amount equal to the actual damages sustained by that person as a result of such violation, but in no case less than one hundred dollars (\$100). An action to enforce the liability created under this subdivision may be brought within one year from the date the form was sold. Nothing in this section relieves a person of any liability that otherwise exists.

Comment. Section 2456 requires that the purchaser of the form set out in Section 2450 (or a short version of that form) be provided with a copy of the full text of Section 2455 (referred to in the instructions to paragraph 4--special provisions and limitations--of the form) and Sections 2460 to 2473 (relevant to paragraph 3--statement of authority--of the form).

We have already sent the proposed legislation to the Legislative Counsel with the above provision included. We can revise the provision if necessary. However, we need to have the bill as drafted by the Legislative Counsel printed so we can include the text of the bill as so printed in our printed report.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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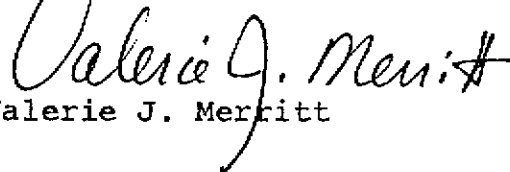
Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
4000 Middlefield Road, #D-2
Palo Alto, California 94306

Dear Mr. DeMouilly:

I am in receipt of the tentative agenda for the meeting of the California Law Revision Commission on November 4 and 5. I believe that two of the studies in the family law area may have implications for estate planning and probate practitioners. Therefore, I would appreciate a copy of each of Study F-631-Marital Property Agreement and Study F-642-Combined Separate and Community Property.

Unfortunately, I did not receive a copy of Study L-704, until the day before the September meeting and therefore did not have time to comment upon it. I was quite concerned to learn today that the Commission approved for printing the recommendation relating to a new statutory form for general powers of attorney. I urge you to reconsider this action, perhaps placing the matter on the agenda for the next meeting. In other areas, the Commission has been concerned with decreasing the public's reliance on lawyers, particularly in areas where the public is already apt to act without the advice of counsel. In the area of general powers of attorney, it is a mistake to create a statutory form which does not specifically inform the consumer as to what powers he is granting or withholding from his agent. If such a form is going to be created, the law should at least require any business which sells or distributes such forms to also make available to the consumer copies of the relevant statutes, i.e., Civil Code Sections 2460 through 2473. Otherwise, the new statutory short form is only useful to a principal who is advised by an attorney. The risk is too great a person will grant powers unintentionally. The existing forms on the market are better protection for the consumer, because they say which powers are granted (and allow the principal to limit those powers by striking out ones not desired).

Very truly yours,



Valerie J. Merritt

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