

First Supplement to Memorandum 90-34

Subject: Study L-3002 - Moving Civil Code Provisions Into the Probate Code

This memorandum presents for Commission consideration the possibility of moving various Civil Code provisions into the new Probate Code. Provisions that might be moved are discussed below.

GIFTS IN VIEW OF DEATH

Memorandum 90-54 proposes moving the provisions relating to gifts in view of death into the Probate Code. We assume that there will be no objections to moving these provisions into the Probate Code. We plan to submit a recommendation that will propose that the existing provisions be revised. We are drafting the revised provisions as Probate Code provisions.

POWERS OF APPOINTMENT; POWERS OF ATTORNEY

Memorandum 90-34 proposes moving the Civil Code provisions relating to powers of attorney and powers of appointment into the Probate Code. This memorandum was discussed at the last meeting, but meeting time ran out before the discussion was completed and no decision was made.

The Executive Committee of the State Bar Section reported in a letter dated March 6, 1990:

We support the moving of the Powers of Appt. provisions of the Civil Code to the Probate Code but not the Durable Powers of Attorney (Property & Health). The powers of attorney provisions are really agency rules and as such belong in the civil code not in the probate code. I have also enclosed a copy of Team 1's report which is for your information only.

Team 1 generally supported the concept of moving provisions relating to powers of appointment and powers of attorney to the Probate Code.

We checked the statutes of a few other large commercial states to see where they compile the powers of attorney provisions in their statutes. Our examination indicates that other states frequently include provisions relating to powers of attorney in the portion of their codes relating to estates and trusts. See Exhibit 2 attached. Accordingly, the staff concludes that a person using the statutes probably will expect to find powers of attorney provisions in the code dealing with estates and trusts.

The durable power of attorney is a generally used instrument in connection with estate planning. Ordinarily, the attorney who prepares a will for a client will also prepare a durable power of attorney for property and one for health care. The attorney who prepares a trust ordinarily will also prepare a durable power of attorney for health care. It would be useful to have the durable power of attorney provisions included in the Probate Code. The staff views the power of attorney more as a fiduciary relationship (similar to a trust or custodianship) than as a general agency relationship.

The staff's concept is that the Probate Code would include statutory provisions covering powers of attorney, both durable and nondurable. The statutory provisions would be complete in themselves. The general agency provisions would remain in the Civil Code, and these provisions would not be applicable to powers of attorney. As you can see from an examination of these provisions, many of them are not appropriate for a power of attorney. See Exhibit 1 (Civil Code §§ 2295-2357). To the extent a general agency provision should apply to a power of attorney, a comparable provision applicable to powers of attorney would be included in the Probate Code.

The staff recognizes that a nondurable power of attorney frequently is used to facilitate a particular transaction. Compiling the power of attorney provisions in the Probate Code will not affect their use for particular transactions. The existing statutory provisions relating to powers of attorney deal largely with durable powers of attorney. But it would not be possible to move only the durable powers of attorney provisions to the Probate Code. This is because some provisions, such as those relating to court enforcement of duties of attorney in fact (Civil Code §§ 2410-2413), apply to both durable and nondurable powers of attorney.

Whether or not the power of attorney provisions are carried over into the Probate Code, there is a need to reorganize the powers of attorney provisions. Even if the Commission determines not to move the provisions to the Probate Code, it might be desirable to draft a reorganized comprehensive statute relating to powers of attorney to be compiled in the Civil Code. The difficulty with this choice is finding a place in the Civil Code to locate the reorganized statute. Also, renumbering the sections relating to various statutory durable power of attorney forms might cause some confusion, although the statute no doubt would be drafted to permit continued use of the forms provided in the existing sections even after those provisions are repealed.

If the Commission decides not to move the powers of attorney provisions to the Probate Code, the staff questions whether it would be desirable to move the powers of appointment statute. The powers of appointment statute is a well organized statute. We are not aware of the need for any revisions in the power of appointment provisions. Moving the statute will require only a renumbering of the sections. We doubt that the benefits of moving the provisions would justify the renumbering of the sections of the existing statute if the Probate Code is not to contain provisions dealing with "Powers" generally.

NONPROBATE TRANSFER UPON DEATH OF OWNER OR CO-OWNER OF UNITED STATES

BONDS AND OBLIGATIONS

Section 704 of the Civil Code recognizes the pay-on-death provision of United States savings bonds or other bonds or obligations of the United States. The staff recommends that this provision be compiled in the Nonprobate Transfers Division of the Probate Code. Section 704 reads as follows:

704. All United States savings bonds or other bonds or obligations of the United States, however designated, now or hereafter issued, which are registered in the names of two persons as co-owners in the alternative, shall, upon the death of either of the registered co-owners, become the sole and absolute property of the surviving co-owner, unless the Federal laws under which such bonds or other obligations were issued or the regulations governing the issuance thereof, made pursuant to such laws, provide otherwise.

All United States savings bonds or other bonds or obligations of the United States, however designated, now or hereafter issued, which are registered in the name of one person payable on death to a named survivor, shall, upon the

death of the registered owner, become the sole and absolute property of the surviving beneficiary named therein, unless the Federal laws under which such bonds or other obligations were issued or the regulations governing the issuance thereof, made pursuant to such laws, provide otherwise.

This section shall not be construed to mean that prior to the enactment hereof the law of this State was otherwise than as herein provided.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

515
Part 4

AUTHORITY OF AGENTS

Title 9

AGENCY

Chapter	Section
1. Agency in General.....	2295
2. Particular Agencies.....	2382
3. Statutory Short Form Power of Attorney.....	2450
4. Statutory Form Durable Power of Attorney for Health Care.....	2500
5. Miscellaneous Provisions Relating to Pow- ers of Attorney.....	2510

CHAPTER 1. AGENCY IN GENERAL

Article	Section
1. Definition of Agency.....	2295
2. Authority of Agents.....	2304
3. Mutual Obligations of Principals and Third Persons.....	2330
4. Obligations of Agents to Third Persons.....	2342
5. Delegation of Agency.....	2349
6. Termination of Agency.....	2355

ARTICLE 1. DEFINITION OF AGENCY

Section
2295. Agent defined.
2296. Capacity to appoint agent; capacity to be agent.
2297. General and special agents defined.
2298. Actual or ostensible agency.
2299. Actual agency defined.
2300. Ostensible agency defined.

Cross References

Administrative agencies, see Government Code § 11501.
Partner as agent of partnership, see Corporations Code § 15009.
Provisions of this title as subordinate to intention of parties and waiver of benefit thereof, see § 3268.

§ 2295. Agent defined

Agency, what. An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency. (Enacted 1872.)

Cross References

Agency, defined, see Government Code § 11500.
Agent for unauthorized foreign corporation, offense, punishment, see Corporations Code § 2259.
Agents, see § 2019 et seq.

Factors, see §§ 2026 et seq., 2367 et seq.

§ 2296. Capacity to appoint agent; capacity to be agent

Who may appoint, and who may be an agent. Any person having capacity to contract may appoint an agent, and any person may be an agent. (Enacted 1872.)

Cross References

Insane person as party to contract, see §§ 38 to 40, 1556 to 1557.
Minors as parties to contracts, see §§ 33 to 35, 36, 37, 1556 to 1557.

§ 2297. General and special agents defined

Agents, general or special. An agent for a particular act or transaction is called a special agent. All others are general agents. (Enacted 1872.)

§ 2298. Actual or ostensible agency

Agency, actual or ostensible. An agency is either actual or ostensible. (Enacted 1872.)

Cross References

Actual authority, see § 2316.
Ostensible authority, see §§ 2317, 2334.

§ 2299. Actual agency defined

Actual agency. An agency is actual when the agent is really employed by the principal. (Enacted 1872.)

Cross References

Actual authority, see § 2316.

§ 2300. Ostensible agency defined

Ostensible agency. An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him. (Enacted 1872.)

Cross References

Liability for acts under ostensible authority, see § 2334.
Ostensible authority, see § 2317.

ARTICLE 2. AUTHORITY OF AGENTS

Section
2304. Authority conferrable; scope.
2305. Performance of acts required of principal by code.
2306. Defrauding principal; absence of authority.
2307. Creation of agency; manner.
2307.1. Repealed.
2308. Consideration unnecessary.
2309. Oral and written authorizations.
2310. Ratification; manner.
2311. Ratification; part of indivisible transaction.
2312. Ratification; invalidity unless principal had power to confer authority.
2313. Ratification; rights of third persons.
2314. Ratification; rescission.
2315. Measure of authority.
2316. Actual authority defined.
2317. Ostensible authority defined.
2318. Authority as to persons having notice of restrictions.
2319. Necessary authority.
2320. Power to disobey instructions.
2321. Authority partly in general and partly in specific terms; construction.
2322. Authority of agent.

Section

- 2323. Sale of personal property; included authority.
- 2324. Sale of real estate; included authority.
- 2325. General agent; authority to receive price.
- 2326. Special agent; authority to receive price.

§ 2304. Authority conferrable; scope

What authority may be conferred. An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention. (Enacted 1872.)

Cross References

Conformity to authority, see § 2019.
Employment of subagents, see § 2349 et seq.

§ 2305. Performance of acts required of principal by code

Agent may perform acts required of principal by Code. Every act which, according to this Code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears. (Enacted 1872.)

Cross References

Conformity to authority, see § 2019.

§ 2306. Defrauding principal; absence of authority

Agent cannot have authority to defraud principal. An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals, to be a fraud upon the principal. (Enacted 1872.)

Cross References

Actual authority, see § 2316.
Ostensible authority, see § 2317.

§ 2307. Creation of agency; manner

Creation of agency. An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification. (Enacted 1872.)

§ 2307.1. Repealed by Stats.1981, c. 511, § 1

Application of repeal of this section, see note under § 2356.
See, now, § 2400 et seq.

§ 2308. Consideration unnecessary

Consideration unnecessary. A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal. (Enacted 1872.)

§ 2309. Oral and written authorizations

Form of authority. An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing. (Enacted 1872.)

Cross References

Conformity to authority, see § 2019.
Contracts required to be in writing, see § 1624.
Enforceability of oral contract required to be in writing, see § 1623.
Execution of writing, see Code of Civil Procedure § 1933.

Power of attorney to execute a mortgage, see § 2933.

§ 2310. Ratification; manner

Ratification of agent's act. A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof. (Enacted 1872.)

§ 2311. Ratification; part of indivisible transaction

Ratification of part of a transaction. Ratification of part of an indivisible transaction is a ratification of the whole. (Enacted 1872.)

Cross References

Ratification of voidable contracts, see § 1588.

§ 2312. Ratification; invalidity unless principal had power to confer authority

When ratification void. A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act. (Enacted 1872.)

§ 2313. Ratification; rights of third persons

Ratification not to work injury to third persons. No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent. (Enacted 1872.)

§ 2314. Ratification; rescission

Rescission of ratification. A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise. (Enacted 1872.)

Cross References

Consent, see § 1565 et seq.

§ 2315. Measure of authority

Measure of agent's authority. An agent has such authority as the principal, actually or ostensibly, confers upon him. (Enacted 1872.)

Cross References

Actual agency, see § 2299.
Effect of agent's authorized acts upon principal, see § 2330.
Ostensible agency, see § 2300.

§ 2316. Actual authority defined

Actual authority, what. Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess. (Enacted 1872.)

MUTUAL OBLIGATIONS

Cross References

Actual agency, see § 2299.

§ 2317. Ostensible authority defined

Ostensible authority, what. Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess. (Enacted 1872.)

Cross References

Ostensible agency, see § 2300.

§ 2318. Authority as to persons having notice of restrictions

Agent's authority as to persons having notice of restrictions upon it. Every agent has actually such authority as is defined by this Title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority. (Enacted 1872.)

Cross References

Actual authority conferred by law, see § 2319 et seq.
Notice, see §§ 18, 19.

§ 2319. Necessary authority

Agent's necessary authority. An agent has authority:

1. To do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and,
2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made. (Enacted 1872.)

Cross References

Effect of agent's acts upon principal, see § 2330.

§ 2320. Power to disobey instructions

Agent's power to disobey instructions. An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal. (Enacted 1872.)

Cross References

Effect of agent's acts upon principal, see § 2330.

§ 2321. Authority partly in general and partly in specific terms; construction

Authority to be construed by its specific, rather than by its general terms. When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned. (Enacted 1872.)

§ 2322. Authority of agent

An authority expressed in general terms, however broad, does not authorize an agent to do any of the following:

- (a) Act in the agent's own name, unless it is the usual course of business to do so.
- (b) Define the scope of the agency.
- (c) Violate a duty to which a trustee is subject under Section 16002, 16004, 16005, or 16009 of the Probate Code. (Enacted 1872. Amended by Stats.1986, c. 820, § 9; Stats.1988, c. 113, § 5.)

Cross References

Set off against principal where agent acts for himself, see § 2336.

§ 2323. Sale of personal property; included authority

What included in authority to sell personal property. An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property. (Enacted 1872.)

Cross References

Warrant by auctioneer, see § 2362.

§ 2324. Sale of real estate; included authority

What included in authority to sell real property. An authority to sell and convey real property includes authority to give the usual covenants of warranty. (Enacted 1872.)

Cross References

Implied covenants, see § 1113.

§ 2325. General agent; authority to receive price

Authority of general agent to receive price of property. A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price. (Enacted 1872.)

Cross References

Collection of negotiable instruments, see § 2021.
General agent, defined, see § 2297.

§ 2326. Special agent; authority to receive price

Authority of special agent to receive price. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards. (Enacted 1872.)

Cross References

Special agent, defined, see § 2297.

ARTICLE 3. MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS

Section

2330. Principal's rights and liabilities from acts of agent within scope of authority.
2331. Incomplete execution of authority.
2332. Notice to principal or agent as notice to the other.
2333. Principal's obligation where authority exceeded.
2334. Principal bound by acts under ostensible authority.
2335. Exclusive credit to agent; exoneration of principal.

Section

2336. Rights of person dealing with agent without knowledge of agency.
 2337. Instrument within scope of agency intended to bind principal.
 2338. Responsibility for agent's negligence or omission.
 2339. Responsibility for agent's other wrongs.

Cross References

- Authority of agents, see § 2304 et seq.
 Definition of agency, see § 2295 et seq.
 Delegation of agency, see § 2349.
 Obligations of agents to third parties, see § 2342 et seq.
 Termination of agency, see § 2355.

§ 2330. Principal's rights and liabilities from acts of agent within scope of authority

Principal, how affected by acts of agent within the scope of his authority. An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal. (Enacted 1872.)

Cross References

- Actual agency, definition, see § 2299.
 Actual authority, definition, see § 2316.
 Ostensible agency, definition, see § 2300.
 Ostensible authority, definition, see § 2317.

§ 2331. Incomplete execution of authority

Principal, when bound by incomplete execution of authority. A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise. (Enacted 1872.)

§ 2332. Notice to principal or agent as notice to the other

Notice to agent, when notice to principal. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other. (Enacted 1872.)

§ 2333. Principal's obligation where authority exceeded

Obligation of principal when agent exceeds his authority. When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized. (Enacted 1872.)

Cross References

- Ratification of agent's acts, see § 2310 et seq.

§ 2334. Principal bound by acts under ostensible authority

A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without want of ordinary care, incurred a liability or parted with value, upon the faith thereof. (Enacted 1872. Amended by Stats. 1905, c. 457, § 1.)

Cross References

- Ostensible agency, definition, see § 2300.
 Ostensible authority, definition, see § 2317.

§ 2335. Exclusive credit to agent; exoneration of principal

When exclusive credit is given to agent. If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible. (Enacted 1872.)

Cross References

- Liability of agent for personally extended credit, see § 2343.

§ 2336. Rights of person dealing with agent without knowledge of agency

Rights of person who deals with agent without knowledge of agency. One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency. (Enacted 1872.)

§ 2337. Instrument within scope of agency intended to bind principal

Instrument intended to bind principal does bind him. An instrument within the scope of his authority by which an agent intends to bind his principal, does bind him if such intent is plainly inferable from the instrument itself. (Enacted 1872.)

§ 2338. Responsibility for agent's negligence or omission

Principal's responsibility for agent's negligence or omission. Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his willful omission to fulfill the obligations of the principal. (Enacted 1872.)

Cross References

- Damages for torts, see § 3333.
 Negligence, see § 1714.

§ 2339. Responsibility for agent's other wrongs

Principal's responsibility for wrongs willfully committed by the agent. A principal is responsible for no other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service. (Enacted 1872.)

Cross References

Ratification, see § 2310 et seq.

ARTICLE 4. OBLIGATIONS OF AGENTS TO THIRD PERSONS

Section

- 2342. Warranty of authority.
- 2343. Responsibility to third persons.
- 2344. Surrender of property to third persons.
- 2345. Applicability of law of persons.

Cross References

Authority of agents, see § 2304 et seq.
 Definition of agency, see § 2295 et seq.
 Delegation of agency, see § 2349 et seq.
 Mutual obligations of principals and third persons, see § 2330 et seq.
 Termination of agency, see § 2355.

§ 2342. Warranty of authority

Warranty of authority. One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes. (Enacted 1872.)

§ 2343. Responsibility to third persons

Agent's responsibility to third persons. One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no others:

1. When, with his consent, credit is given to him personally in a transaction;
2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or,
3. When his acts are wrongful in their nature. (Enacted 1872.)

§ 2344. Surrender of property to third persons

Obligation of agent to surrender property to third person. If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefor, if, after notice from the owner, he delivers it to his principal. (Enacted 1872.)

§ 2345. Applicability of law of persons

Agent not having capacity to contract. The provisions of this Article are subject to the provisions of Part 1, Division First, of this Code. (Enacted 1872.)

ARTICLE 5. DELEGATION OF AGENCY

Section

- 2349. Authority to delegate powers.
- 2350. Unauthorized sub-agent; relationship of parties.
- 2351. Authorized sub-agent; relationship of parties.

§ 2349. Authority to delegate powers

Agent's delegation of his powers. An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical;
2. When it is such as the agent cannot himself, and the sub-agent can lawfully perform;
3. When it is the usage of the place to delegate such powers; or,
4. When such delegation is specially authorized by the principal. (Enacted 1872.)

§ 2350. Unauthorized sub-agent; relationship of parties

Agent's unauthorized employment of sub-agent. If an agent employs a sub-agent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter. (Enacted 1872.)

§ 2351. Authorized sub-agent; relationship of parties

Sub-agent rightfully appointed, represents principal. A sub-agent, lawfully appointed, represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the sub-agent. (Enacted 1872.)

ARTICLE 6. TERMINATION OF AGENCY

Section

- 2355. Means of termination.
- 2356. Agency not coupled with an interest; bona fide transactions; proxies.
- 2357. Absentee principal; knowledge.

§ 2355. Means of termination

An agency is terminated, as to every person having notice thereof, by any of the following:

- (a) The expiration of its term.
- (b) The extinction of its subject.
- (c) The death of the agent.
- (d) The agent's renunciation of the agency.
- (e) The incapacity of the agent to act as such.
- (f) The divorce, dissolution, annulment, or adjudication of the nullity of marriage of, or the judicial or legal separation of, principal and attorney in fact, or commencement by the attorney in fact of an action for such relief, in the case of a power of attorney, if the attorney in fact was the spouse of the principal, and the principal has become an absentee as defined in Section 1403 of the Probate Code, unless the power of attorney expressly provides otherwise in writing. (Enacted 1872. Amended by Stats.1972, c. 988, § 1; Stats.1980, c. 246, § 1; Stats.1983, c. 99, § 5.)

Cross References

Conservatorship of absentee, see Probate Code § 1803.

§ 2356. Agency not coupled with an interest; bona fide transactions; proxies

(a) Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated by any of the following:

- (1) Its revocation by the principal.
- (2) The death of the principal.
- (3) The incapacity of the principal to contract.

(b) Notwithstanding subdivision (a), any bona fide transaction entered into with such agent by any person acting without actual knowledge of such revocation, death, or incapacity shall be binding upon the principal, his or her heirs, devisees, legatees, and other successors in interest.

(c) Nothing in this section shall affect the provisions of Section 1216.

(d) With respect to a power of attorney, the provisions of this section are subject to the provisions of Articles 3 (commencing with Section 2400) and 5 (commencing with Section 2430) of Chapter 2.

(e) With respect to a proxy given by a person to another person relating to the exercise of voting rights, to the extent the provisions of this section conflict with or contravene any other provisions of the statutes of California pertaining to the proxy, the latter provisions shall prevail. (*Enacted 1872. Amended by Stats.1943, c. 413, § 1; Stats.1972, c. 988, § 2; Stats.1979, c. 234, § 2; Stats.1980, c. 246, § 2; Stats.1981, c. 511, § 2; Stats.1983, c. 1204, § 1.*)

Section 5 of Stats.1981, c. 511, provided:

"(a) Except as provided in subdivision (b), Sections 1, 2, 3, 4, and 4.5 of this act do not apply to a power of attorney created prior to the operative date of this act. Such a power of attorney is governed by the law that would apply had this act not been enacted.

"(b) If under the applicable choice of law rules the validity of a durable power of attorney executed outside this state is to be determined under the law of this state, the validity of the durable power of attorney shall be determined under Article 3 (commencing with Section 2400) of Chapter 2 of Title 9 of Part 4 of Division 3 of the Civil Code, whether the power was executed prior to or after the operative date of this act."

Cross References

Absentee, see Probate Code § 1403.
Lack of knowledge of acts or status of absentee principal, see § 2357.
Proxies, see Corporations Code §§ 604, 705.

§ 2357. Absentee principal; knowledge

For the purposes of subdivision (b) of Section 2356 and Sections 2403 and 2404, in the case of a principal who is an absentee as defined in Section 1403 of the Probate Code, a person shall be deemed to be without actual knowledge of:

(a) The principal's death or incapacity while the absentee continues in missing status and until the person receives notice of the determination of the death of the absentee by the secretary concerned or the head of the department or agency concerned or the delegate of the secretary or head.

(b) Revocation by the principal during the period described in subdivision (a). (*Added by Stats.1981, c. 511, § 3.*)

Application of 1981 addition, see note under § 2356.

CHAPTER 2. PARTICULAR AGENCIES

Article	Section
1. Auctioneers	2362
2. Factors	2367
2.5. Agency Relationships In Residential Real Property Transactions	2373
3. Uniform Durable Power of Attorney Act ...	2400
4. Court Enforcement of Duties of Attorney In Fact	2410
5. Durable Power of Attorney for Health Care ...	2430

ARTICLE 1. AUCTIONEERS

Section

2362. Authority from seller.
2363. Authority from bidder.

Cross References

Bulk transfers, auction sales, see Commercial Code §§ 6105, 6107, 6108.
Obtaining money, property or signature by mock auction; punishment, see Penal Code § 535.
Sale by auction, see Commercial Code § 2328.
Unlawfully acting as auctioneer, misdemeanor, see Penal Code § 436.

§ 2362. Authority from seller

Auctioneer's authority from the seller. An auctioneer, in the absence of special authorization or usage to the contrary, has authority from the seller, only as follows:

1. To sell by public auction to the highest bidder;
2. To sell for cash only, except such articles as are usually sold on credit at auction;
3. To warrant, in like manner with other agents to sell, according to Section 2323;
4. To prescribe reasonable rules and terms of sale;
5. To deliver the thing sold, upon payment of the price;
6. To collect the price; and,
7. To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes. (*Enacted 1872.*)

Cross References

Proxies, see Corporations Code §§ 604, 705.

§ 2363. Authority from bidder

Auctioneer's authority from the bidder. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as prescribed in the Title on Sale. (*Enacted 1872.*)

COMPILATION OF POWER OF ATTORNEY PROVISIONS IN CODES OF OTHER STATES

Pennsylvania compiles powers of attorney in its Title on Decedents, Estates and Fiduciaries. The topics covered in the portion that covers powers of attorney are:

- 53. Pennsylvania Uniform Gifts to Minors Act.
- 55. Incompetents [guardians].
- 56. Powers of Attorney.
- 57. Absentees and Presumed Decedents.
- 61. Estates.
- 71. Trust Estates.

Michigan includes provisions relating to powers of attorney in the portion of the code covering protective and guardianship proceedings (following the provisions relating to independent probate).

Massachusetts compiles provisions relating to powers of attorney in the title "Descent and Distribution, Wills, Estates of Deceased Persons and Absentees, Guardianship, Conservatorship and Trusts." The powers of attorney provisions are compiled in the title following the provisions relating to probate of estates. The provisions compiled in the area where the powers of attorney provisions are compiled are:

- 201. Guardians and Conservators.
- 201A. Uniform Transfers to Minors Act.
- 201B. Uniform Durable Power of Attorney Act.
- 201C. Statutory Custodianship Trusts.

No effort was made to examine the statutes of all states; only the statutes of a few of the larger commercial states were reviewed.