

01/08/91

First Supplement to Memorandum 90-122

Subject: Study L-3044 - Uniform Statutory Form Power of Attorney

The staff recommends that the following amendment to Civil Code Section 2476 be included in the probate clean up bill this session:

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 coagents. A form does not fail to comply substantially with Section 2475 merely because the form uses the sentence "Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation" in place of the sentence "Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation," in which case the form shall be interpreted as if it contained the sentence "Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation."

(b) The form is properly completed.

(c) The signature of the principal is acknowledged. Notwithstanding Sections 1188 and 1189, the certificate of acknowledgment of notary public required by Section 2475 is sufficient if it is in substantially the form set out in either Section 2475 or Section 1189.

Comment. Section 2476 is amended to make clear that the certificate of acknowledgment of the notary public required in a statutory form power of attorney is sufficient if it is substantially in the form set out in Section 2475 or substantially in the form set out in the general statute governing certificates of acknowledgment (Civil Code Section 1189).

The need for this amendment is discussed below.

Legislation enacted in 1990 changed the form of the certificate of acknowledgment. See Civil Code Sections 1188-1190 (attached as Exhibit 1).

The form of the "Certificate of Acknowledgment of Notary Public" set out in the statutory form for a Statutory Form Power of Attorney (Civil Code Section 2475) does not use the new general form of

acknowledgment. Sheila Slaughter, a representative of the California Land Title Association, has suggested that the statutory form be revised to conform to the new general certificate of acknowledgment.

The certificate of acknowledgment as found in the statutory form power of attorney is as follows:

On this _____ day of _____, 19 _____,
before me, _____
(name of notary public)
personally appeared _____,
(name of principal)
personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person whose name is
subscribed to this instrument, and acknowledged that he or
she executed it.

NOTARY SEAL

(signature of notary public)

In the case of a natural person, there is no significant difference between the certificate set out in the statutory form and the certificate required by the general statute (Civil Code Section 1189).

The staff believes that it would be a serious mistake to require that all existing statutory power of attorney forms be reprinted merely to adopt the language used in Civil Code Section 1189. However, a certificate that uses the language of Civil Code Section 1189 should also be sufficient to satisfy the requirements for the statutory form, even though the certificate does not use the precise language set out in Section 2475.

The staff believes that, under existing law, it is clear that an acknowledgment in the form provided by Civil Code Section 1189 would satisfy the requirements of the statutory form power of attorney. Nevertheless, to avoid any doubt, we recommend that Section 2476 of the Civil Code be amended to read as set out above.

Respectfully submitted,

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Executive Secretary

§ 1188. [Officer must indorse certificate.]

An officer taking the acknowledgment of an instrument shall endorse thereon or attach thereto a certificate substantially in the form prescribed in Section 1189. Amended Stats 1990 ch 1070 § 1 (SB 2251). *Cal Jur 3d Acknowledgments § 25.*

§ 1189. General form of certificate of acknowledgment (a) Any certificate of acknowledgment taken within this state shall be in substantially the following form:

State of California }
County of _____ }

On _____ before me, (here insert name and title of the officer), personally appeared _____

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

(b) Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made.

(c) An acknowledgment provided prior to January 1, 1992, and conforming to applicable provisions of former Sections 1189, 1190, 1190a, 1190.1, 1191, and 1192, as repealed by Chapter 335 of the Statutes of 1990, shall have the same force and effect as if those sections had not be repealed. Added Stats 1990 ch 335 § 2 (AB 2581). Amended Stats 1990 ch 1070 § 2 (SB 2251). *Cal Jur 3d Acknowledgments §§ 22, 26, 27, 34-36, 42; Miller & Starr, Cal Real Estate 2d §§ 6:36, 8:12; Cal Forms-14:3, 14:4, 14:11.*

§ 1190. Certificate of acknowledgment by corporation The certificate of acknowledgment of an instrument executed on behalf of an incorporated or unincorporated entity by a duly authorized person in the form specified in Section 1189 shall be prima facie evidence that the instrument is the duly authorized act of the entity named in the instrument and shall be conclusive evidence thereof in favor of any good faith purchaser, lessee, or encumbrancer. "Duly authorized person," with respect to a domestic or foreign corporation, includes the president, vice president, secretary, and assistant secretary of the corporation. Added Stats 1990 ch 1070 § 3 (SB 2251). *Cal Jur 3d Acknowledgments §§ 26, 27, 34, 35; Miller & Starr, Cal Real Estate 2d §§ 6:36, 8:12; Cal Forms-14:3, 14:12. Repealed Stats 1990 ch 335 § 4 (AB 2581).*