

Memorandum 91-25

Subject: Study L-3046 - Recognition of Agent's Authority Under Uniform Statutory Power of Attorney (Clarification of Standard)

The Commission may recall from consideration of the comments on the *Tentative Recommendation Relating to Recognition of Agents' Authority Under the Uniform Statutory Form Power of Attorney* that the California Land Title Association (CLTA) had some problems with the proposal. In response to concerns of CLTA during the 1990 legislative session, the Commission adopted the principle that a third person should not be under any extra compulsion to deal with an agent than with the principal.

We have continued to work with CLTA in an effort to resolve the problems and remove potential objections to this part of the Commission's recommendations to the Legislature. Today, we were informed by Sheila S. Dey, Legislative Counsel to CLTA, that the following revised language would be acceptable:

SEC. . Section 2480.5 is added to the Civil Code, to read:

2480.5. (a) If a third person to whom a properly executed statutory form power of attorney under this chapter is presented refuses to honor the agent's authority under the power of attorney within a reasonable time, the third person may be compelled to honor the agent's authority under the power of attorney, in an action for this purpose brought against the third person, ~~to the same extent as the principal would be able to compel the third person to honor the authority of the principal acting in the principal's own behalf~~ except that the third person may not be compelled to honor the agent's authority if the principal could not compel the third person to act in the same circumstances.

(b) If an action is brought under this section, the court shall award attorney's fees to the agent if the court finds that the third person acted unreasonably in refusing to accept the agent's authority under the statutory form power of attorney.

(c) For the purpose of subdivision (b) and without limiting other grounds that may constitute a reasonable refusal to accept an agent's authority under a statutory form power of attorney, a third person does not act unreasonably

in refusing to accept the agent's authority if the refusal is authorized or required by a provision of a state or federal statute or regulation.

(d) Notwithstanding subdivision (c), a third person's refusal to accept an agent's authority under a statutory form power of attorney under this chapter is unreasonable if the only reason for the refusal is that the power of attorney is not on a form prescribed by the third person to whom the power of attorney is presented.

(e) The remedy provided in this section is cumulative and nonexclusive.

Comment. Section 2480.5 is a new provision not found in the Uniform Statutory Form Power of Attorney Act (1988). Subdivisions (a) and (b) are drawn in part from Probate Code Section 13105(b) (compelling payment or delivery under affidavit procedure for collection or transfer of personal property of small estate). See also Section 2404 (affidavit of lack of knowledge of termination of power of attorney).

Subdivision (a) permits an agent to bring an action to compel a third person to honor a statutory form power of attorney only to the extent that the principal, disregarding any legal disability, could bring an action to compel the third person to act. Under this rule, a third person who could not be forced to do business with the principal consequently may not be forced to deal with the agent. However, a third person who holds property of the principal, who owes a debt to the principal, or who is obligated by contract to the principal may be compelled to accept the agent's authority.

In addition, as provided in subdivision (b), if the refusal to deal with the agent is found to be unreasonable, the third person will also be liable for attorney's fees incurred in the action to compel compliance. The determination of reasonableness depends on the particular circumstances of each case. A person to whom the power of attorney is presented may, for example, act reasonably in refusing to accept the agent's authority where it is not clear that the power of attorney grants the agent authority with respect to the particular transaction. Likewise, a third person may reasonably refuse to honor the power of attorney if, for example, the person is not reasonably satisfied as to the identity of the agent or has information that would lead a reasonable person to question the validity of the power of attorney. See also Section 2512 (protection of person relying in good faith).

Subdivision (c) provides some specific guidelines as to the meaning of the reasonableness rule in subdivision (b) as it relates to the liability for attorney's fees. However, subdivision (d) makes clear that an institution's preference for its own power of attorney form is never a reasonable ground for refusing to accept the authority of an agent under a properly executed and effective statutory form power of attorney.

The general provisions governing judicial proceedings concerning powers of attorney under Sections 2410-2423 apply to the remedies set forth in Section 2480.5. See Sections 2412(e), 2480(b).

The staff proposes approval of this revised language. If the Commission approves, we will seek to have the revised language amended into the probate bill.

Respectfully submitted,

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