

#L-500

1/5/81

First Supplement to Memorandum 81-4

Subject: Study L-500 - Durable Powers of Attorney

Attached as Exhibit 1 to this Supplement is a letter from attorney John L. McDonnell, Jr., writing on behalf of the Uniform Probate Code Subcommittee of the State Bar's Estate Planning, Trust and Probate Law Section. This is the letter which was to have been Exhibit 1 to the basic memorandum (Memo 81-4) but was there omitted in the interest of getting that memo in the mail expeditiously.

Exhibit 1 supports the enactment of the Uniform Durable Power of Attorney Act with one modification: that a guardian, conservator, or other fiduciary appointed to manage the principal's property may revoke or amend a power of attorney made by the principal only with prior approval of the court appointing the fiduciary. The staff has already incorporated in proposed Section 2402 of the staff draft attached to the basic memorandum a provision requiring prior court authorization in such a case if the conservatorship proceeding is a California proceeding.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

Exhibit 1

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December 31, 1980

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

Re: Uniform Durable Power of Attorney Act

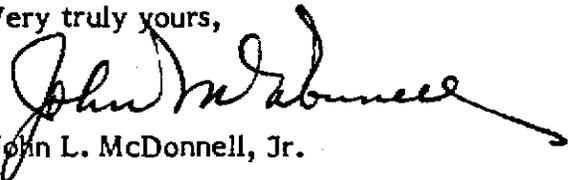
Dear Mr. DeMouilly:

This letter responds to yours of October 3, 1980. After receipt of your inquiry concerning the "disclosure statement" suggested in my letter to you of September 26, 1980, the Uniform Probate Code Subcommittee of the Estate Planning, Trust and Probate Law Section renewed its study of the durable power of attorney section of the Uniform Probate Code. We had two lengthy meetings by telephone conference call, and I participated in a third such conference with members of the Committee on Legal Problems of the Aging of the Legal Services Section. Also, we reviewed the entire history of legislative proposals for a durable power of attorney in California for the last several years, which culminated in the present Civil Code Sections 2307.1 and 2356(a)(3).

As a result of its further study and deliberations, the Subcommittee no longer feels that the amendments proposed as numbers (1) and (3) in my September 26, 1980, letter are necessary. It is our view that the Uniform Durable Power of Attorney Act and related legislation, as set forth in the Law Revision Commission's Tentative Recommendation of February, 1980, should be enacted into law, provided only that the final sentence of proposed Civil Code Section 2402 be changed to read as follows: "The fiduciary has the same power to revoke or amend the power of attorney, with the prior approval of the court appointing the fiduciary, that the principal would have had if he were not disabled or incapacitated."

A representative of the Estate Planning, Trust and Probate Law Section will attend the Law Revision Commission meeting in Los Angeles on January 9, 1981.

Very truly yours,


 John L. McDonnell, Jr.

JLM:iwm

cc: Charles A. Collier, Jr., Esq.

Mary A. Tan Yen

Mary L. Flett

All Members of the Uniform Probate Code Subcommittee