

First Supplement to Memorandum 89-103

Subject: Study L-3019 - Uniform Statutory Form Power of Attorney

The attached letter from Alvin G. Buchignani forwards a copy of the article from Money Magazine which was quoted in part in Memorandum 89-103. Buchignani suggests the need for appropriate legislation that requires third parties to honor powers of attorney with sanctions for failure to do so.

In Memorandum 89-103, the staff recommends a provision to impose a sanction for failure to honor a properly drawn statutory form power of attorney and a provision to make clear that a third person who honors a statutory form power of attorney is protected by the existing provisions that protect third persons who rely in good faith on a power of attorney. Accordingly, Memorandum 89-103 covers the subject matter of the attached letter.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Exhibit 53

ALVIN G. BUCHIGNANI
ATTORNEY AT LAW

REV. COMMITTEE

OCT 2 1989

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October 23, 1989

California Law Revision Commission
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Re: Durable Power of Attorney

Ladies & Gentlemen:

I have previously commented on proposed legislation in connection with the durable power of attorney. A recent article in Money Magazine has prompted me to write a further comment.

Note, from the enclosed article, the apparently prevailing problem that banks do not always honor general powers of attorney. This problem could be addressed in California by appropriate legislation that requires the third parties to honor such powers. Perhaps penalties should be imposed on a statutory basis for failure to honor a properly drawn power.

Very sincerely,



Alvin G. Buchignani

AGB/pzg
Enclosure (Copy of Article)
D5

SIC YOUR LAWYER ON THE BANKER WHO QUESTIONED YOUR POWER

by Marlys J. Harris

Q. *Why are comprehensive durable power of attorney instruments, obtained at considerable expense, not honored by many banks and thrifts? Recently, a bank wouldn't honor mine and insisted that its own form be used. Can I compel banks to use my form?*

Sally Walter
Poway, Calif.

A. There's no way to force them, but no reason why they shouldn't honor it either. A durable power of attorney gives you the right to make financial transactions for a friend or relative, so that if he suffers from, say, Alzheimer's disease, you can act on his behalf without getting authorization for every single bank withdrawal or stock sale. But this document, which must be witnessed and notarized, is not enough for banks. They whine that it's long and that, to make sure it applies to them, they have to go to the trouble of *reading* it. Boo-hoo. They also argue that it's easier (for them, of course) to use their own power of attorney. Never mind that your mother or brother lies in a coma and that you have better things to do than drive all over town getting new signatures. So tell the platform officer to get off his buns and call your attorney to check that you are for real. If that doesn't work, get the bank's form signed and move the money to a more understanding bank.



Q. *I have an antique basket-pattern quilt in prime condition. The date, 1868, was stitched in by my great-grandmother. Where can I get the top price?*

Denna Anderson
Eaton, Colo.

A. To a quilter like myself, the temptation to call you to offer, say, \$150 for your "interesting but not too valuable" possession was almost irresistible. Alas, trading on inside information is illegal, so I must tell you that your quilt could be worth as much as \$3,000, depending on the rarity of the basket pattern, the quality of the work-woman-ship, and the harmony of the color scheme. Any historic nuance would add to its price. Example: Grandma sewed it while under siege in a major range war. An appraisal should be your first order of business. Write to the American Quilter's Society (Box 3290, Paducah, Ky. 42001) for a list of its certified quilt appraisers.

They usually charge \$25. If you join the society, you can list your quilt for sale in its catalogue, which is read by thousands of quiltoophiles across the country. You could also try O.J. Pratt, owner of Pacific Auction (9138 N. 95th St., Longmont, Colo. 80501; 303-772-9401). He sells some 1,000 quilts a year and would charge you a 10% commission.

Q. *I am 71 years old and have started making mandatory withdrawals from my Keogh account. I wish to place this account in a revocable trust for my two children. Would this action be taxed?*

Albert D. Deye
Freeport, N.Y.

A. You betcha! The second you withdraw money from a Keogh, it becomes taxable income—even when you are thoughtful enough to put it in

trust for your kids. Sure, the trust allows you to escape gift taxes, but that's small comfort if you're stuck with a fat income tax bill. You might designate your children as joint beneficiaries of your Keogh plan, of course. Then you could continue to make annual withdrawals and even give them to your kids gift-tax-free so long as no child receives more than \$10,000 a year. Your heirs would get whatever was left after you depart (without going through probate). The hitch is that your estate would have to pay income tax on the money plus federal estate tax if your net worth exceeded \$600,000. Face facts: the government always gets its pound of flesh. All you can decide is whether it comes from you now or your heirs later.

Q. *When you sell your house at a profit, you claim a capital gain. So why can't you claim a capital loss and take a deduction if you lose on the sale?*

Lisa Trotta
Dunwoody, Ga.

A. The somewhat puritanical theory that seems to underlie this rule is that you don't lose hard cash on personal property such as your house because presumably you enjoyed it while you used it. Losses on property held solely for business (read "unenjoyable") use, however, may offset capital gains. You could convert your house to business property, but it takes some doing. You must move out, rent the house and make like a landlord. Then after what the IRS calls "a reasonable period of time," you can sell and take a loss. Unfortunately, your loss must be measured against market value at