#L-704 8/18/83

Memorandum 83-78

Subject: Study L-704 - Statutory Short Form of General Power of Attorney

Attached is a draft of legislation that would provide a "statutory short form power of attorney," which could be a durable power of attorney. See Section 2540 on pages 2-4 of the attached draft.

The principal can grant the attorney-in-fact powers concerning all or less than all of the matters listed on page 3 of the attached draft. The draft contains "constructional sections" which spell out in considerable detail the precise powers the attorney-in-fact has if granted one or more of the general grants listed on page 3 of the draft. For example, assume that the authority granted includes authority with respect to "real estate transactions" (listed in paragraph (A) in the portion of the form on page 3 of the draft). The "constructional provision" (Section 2460) gives authority to the attorney-in-fact to do everything listed in the section (see pages 7-9 of the enclosed draft).

With minor modifications, the draft is the same as a New York statute that was originally enacted in 1948 and subsequently recodified in 1963. We have retained the detailed and somewhat verbose constructional provisions of the New York law which describe in great detail the specific grants of authority included within the authority granted in the statutory form with respect to general areas of authority. See Sections 2460-2473 of the draft legislation. You should check these detailed statements to determine whether anything should be added to the detailed statements. We have made some editorial revisions in the provisions of the New York statute and some additions. The additions are noted in the Comments to the various sections. The "WARNING" that must appear on the statutory form is more lengthy than the one that appears in the New York statute. The attached draft does not authorize the making of medical decisions on behalf of the principal. This will be a separate form. See Memorandum 83-61.

The New York form was developed before New York had any statutory provisions authorizing a durable power of attorney. However, the New York form could be modified by the user of the form to give a durable power of attorney by adding a statement on the form that the power of attorney shall not be affected by the subsequent incapacity of the principal. The attached draft includes a provision that the power of

attorney is a durable one but permits the user of the form to make it not a durable one by making a revision in the form.

The staff believes that the attached draft would be a very useful addition to the California law. Not only would it permit use of the statutory short form power of attorney, but a power of attorney that was not on the statutory form could incorporate one or more of the constructional provisions in the statute and thus avoid the need to include in the power of attorney detailed statements of the authority conferred. If the draft is approved, the staff suggests that a recommendation be prepared for review by the Commission with a view to submitting it to the 1984 legislative session.

We have revised Section 2400 of the Civil Code to provide that the new statutory short form power of attorney is the only printed form of durable power of attorney that may be sold in this state for use by a person who does not have legal counsel. Is this a desirable provision?

Respectfully submitted,

John H. DeMoully
Executive Secretary

SECTION 1. Section 2400 of the Civil Code is amended to read:

2400. (a) A durable power of attorney is a power of attorney by which a principal designates another his or her attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent incapacity of the principal," or "This power of attorney shall become effective upon the incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity. For the purposes of this article, a durable power of attorney does not include a proxy given by a person to another person with respect to the exercise of voting rights that is governed by any other statute of California.

(b) ~~A~~ No printed form of a durable power of attorney may be sold in this state for use by a person who does not have the advice of legal counsel unless the form is a statutory short form power of attorney that satisfies the requirements of Chapter 3 (commencing with Section 2450). ~~shall include the following notice in 10/point bold face type:~~

~~WARNING TO PERSON EXECUTING THIS DOCUMENT~~

~~This is an important legal document. It creates a durable power of attorney. Before executing this document, you should know these important facts:~~

~~1. This document may provide the person you designate as your attorney in fact with broad powers to dispose, sell, convey, and encumber your real and personal property.~~

~~2. These powers will exist for an indefinite period of time unless you limit their duration in this document. These powers will continue to exist notwithstanding your subsequent disability or incapacity.~~

~~3. You have the right to revoke or terminate this durable power of attorney at any time.~~

(c) Nothing in subdivision (b) invalidates any transaction in which a third person relied in good faith upon the authority created by the durable power of attorney.

Comment. Section 2400 is amended to replace the warning statement in subdivision (b) with the requirement that the printed form be a statutory short form power of attorney. See Section 2450.

SEC. 2. Chapter 3 (commencing with Section 2450) is added to Title 9 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 3. STATUTORY SHORT FORM POWER OF ATTORNEY

Article 1. General Provisions

968/667/NZ

§ 2450. Statutory short form of general power of attorney

2450. The use of the following form in the creation of a power of attorney is lawful, and when used, the power of attorney shall be construed in accordance with the provisions of this chapter:

STATUTORY SHORT FORM POWER OF ATTORNEY

WARNING. IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A CALIFORNIA LAWYER BECAUSE THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN SECTIONS 2460 TO 2473, INCLUSIVE, OF THE CALIFORNIA CIVIL CODE.

THE POWERS GRANTED BY THIS DOCUMENT WILL EXIST FOR AN INDEFINITE PERIOD OF TIME UNLESS YOU LIMIT THEIR DURATION IN THIS DOCUMENT. THESE POWERS WILL CONTINUE TO EXIST NOTWITHSTANDING YOUR SUBSEQUENT DISABILITY OR INCAPACITY UNLESS YOU INDICATE OTHERWISE IN THIS DOCUMENT.

THIS DOCUMENT MUST BE NOTARIZED TO BE VALID.

YOU HAVE THE RIGHT TO REVOKE OR TERMINATE THIS POWER OF ATTORNEY.

YOU ARE NOT REQUIRED TO USE THIS FORM; YOU MAY USE A DIFFERENT POWER OF ATTORNEY IF THAT IS DESIRED BY THE PARTIES CONCERNED. IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

General Power of Attorney Under California Civil
Code Sections 2450 To 2473, Inclusive

1. I, _____
(insert name and address of the principal)

do hereby appoint _____

_____
(insert name and address of the agent, or each agent if more than one is designated)

as my attorney(s)-in-fact to act for me and in my name as authorized in this document.

2. By this document I intend to create a general power of attorney under Sections 2450 to 2473, inclusive, of the California Civil Code.

3. If I have designated more than one attorney-in-fact, the attorneys-in-fact are to act _____.

(If you designate more than one agent and wish each agent alone to be able to exercise this power, insert in this blank the work "severally." Failure to make any insertion or the insertion of the work "jointly" will require that the agents act jointly.)

4. This power of attorney shall NOT ( ) be affected by my subsequent incapacity.

(If you want this power of attorney to terminate automatically when you lack capacity, strike out the word "NOT" and write your initials in the box following that word.)

5. I hereby grant to the attorney(s)-in-fact full power and authority to act in my name, place, and stead in any way which I myself could do, if I were personally present and able to act, with respect to the following matters as each of them is defined in Chapter 3 (commencing with Section 2450) of Title 9 of Part 4 of Division 3 of the California Civil Code to the extent that I am permitted by law to act through an agent:

(A) Real estate transactions	( )
(B) Chattel and goods transactions	( )
(C) Bond, share, and commodity transactions	( )
(D) Banking transactions	( )
(E) Business operating transactions	( )
(F) Insurance transactions	( )
(G) Retirement plan transactions	( )
(H) Estate transactions	( )
(I) Claims and litigation	( )
(J) Tax matters	( )
(K) Personal relationships and affairs	( )
(L) Benefits from military service	( )
(M) Records, reports, and statements	( )
(N) Full and unqualified authority to my attorney(s)-in-fact to delegate any or all of the foregoing powers to any person or persons who my attorney(s)-in-fact shall select	( )
(O) All other matters	( )

(Strike out and initial in the opposite box any one or more of the paragraphs above to which you do NOT desire to give the agent authority. Such elimination of any one or more of paragraphs (A) to (N), inclusive, shall automatically constitute an elimination of paragraph (O).)

TO STRIKE OUT ANY PARAGRAPH YOU MUST DRAW A LINE THROUGH THE TEXT OF THAT PARAGRAPH AND WRITE YOUR INITIALS IN THE BOX OPPOSITE.

6. Special provisions and limitations:

_____

_____

_____

_____

(Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of Section 2455 of the California Civil Code.)

I sign my name to this Statutory Short Form Power of Attorney on

_____ at _____, _____.
(Date) (City) (State)

_____
(Signature of Principal)

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of California)
County of _____) SS.

On this _____ day of _____, in the year _____,
before me, _____,
(here insert name of notary public)
personally appeared _____, 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. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

NOTARY SEAL

_____
(Signature of Notary Public)

Comment. Section 2450 is drawn in part from a portion of Section 5-1501 of the New York General Obligations Law. The "Warning" statement is drawn in part from the New York provision, in part from language that formerly appeared in Section 2400, and in part from Probate Code Section 6240 (California Statutory Will).

§ 2451. "Warning" must be printed in bold-face type

2451. A statutory short form power of attorney, to be valid, must contain, in not less than 10-point bold-face type or a reasonable equivalent thereof, the "Warning" which is printed in capital letters at the beginning of Section 2450.

Comment. Section 2451 is comparable to a portion of Section 5-1501 of the New York General Obligations Law.

16897

§ 2452. Acknowledgment by principal required

2452. A statutory short form power of attorney is valid only if its execution is acknowledged by the principal in the manner prescribed for the acknowledgment of a conveyance of real property.

Comment. Section 2452 is comparable to a portion of Section 5-1501 of the New York General Obligations Law.

16898

§ 2453. Agents must act jointly unless otherwise specified

2453. If more than one agent is designated by the principal in a statutory short form power of attorney, the agents in exercising the powers conferred must act jointly unless the principal specifically provides in the statutory short form power of attorney that they are to act severally.

Comment. Section 2453 is the same in substance as a portion of Section 5-1501 of the New York General Obligations Law.

16958

§ 2454. Requirements for power of attorney to be a statutory short form power of attorney

2454. (a) Subject to subdivisions (b), (c), and (d), a power of attorney is a "statutory short form power of attorney," as this phrase is used in this chapter, if it meets all of the following requirements:

(1) It is in writing and is signed by the principal.

(2) It has been acknowledged by the principal in the manner prescribed for the acknowledgment of a conveyance of real property.

(3) It contains the exact wording of paragraph 5 of the form set out in Section 2450.

(b) One or more of paragraphs (A) to (N) may be stricken out and initialed by the principal in paragraph 5 of the form set out in Section 2450, in which case the paragraphs so stricken out and initialed and also paragraph (O) shall be deemed eliminated.

(c) The word "not" in paragraph 4 of the form set out in Section 2450 may be stricken and initialed, in which case the power of attorney is not a durable power of attorney.

(d) A statutory short form power of attorney may contain modifications or additions of the types described in Section 2455.

Comment. Section 2454 is the same in substance as a portion of Section 5-1501 of the New York General Obligations Law except that no provision comparable to subdivision (c) of Section 2454 is found in the New York section.

32800

§ 2455. Modifications of the statutory short form power of attorney

2455. A power of attorney which satisfies the requirements of Section 2454 is not prevented from being a "statutory short form power of attorney," as this phrase is used in this chapter, by the fact that it also contains additional language which does any one or more of the following:

(a) Eliminates from the power of attorney one or more of the powers enumerated in one or more of the constructional sections of this chapter with respect to a paragraph of the statutory short form power of attorney not eliminated therefrom by the principal.

(b) Supplements one or more of the powers enumerated in one or more of the constructional sections in this chapter with respect to a paragraph of the statutory short form power of attorney not eliminated therefrom by the principal, by specifically listing additional powers of the agent.

(c) Makes some additional provision which is not inconsistent with the other provisions of the statutory short form power of attorney.

Comment. Section 2455 is the same in substance of Section 5-1503 of the New York General Obligations Law.

§ 2456. Right to use other power of attorney

2456. Nothing in this chapter affects or limits the use of any other or different power of attorney desired by the parties concerned.

Comment. Section 2456 is the same in substance as a portion of Section 5-1501 of the New York General Obligations Law.

406/465

Article 2. Construction of Grants of General Authority With Respect to Particular Matters

§ 2460. Real estate transactions

2460. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "real estate transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To accept as a gift or as security for a loan, to reject, to demand, to buy, to lease, to receive, or otherwise to acquire, either ownership or possession of any interest in real property.

(2) To sell, to exchange, to convey either with or without covenants, to quit-claim, to release, to surrender, to mortgage, to incumber, to partition or to consent to the partitioning, to revoke, create, or modify a trust, to grant options concerning, to lease or to sublet, or otherwise to dispose of, any interest in real property or to change the form of title of any interest in real property.

(3) To release in whole or in part, to assign the whole or a part of, to satisfy in whole or in part, and to enforce by action, proceeding, or otherwise, any mortgage, incumbrance, lien, or other claim to any interest in real property which exists, or is claimed to exist, in favor of the principal.

(4) To do any act of management or of conservation with respect to any interest in real property owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, the power to do the following:

(A) To insure against any casualty, liability, or loss.

(B) To eject, remove, or relieve tenants and other persons from the property and to obtain or to regain possession or to protect the interest in real property by action, proceeding, or otherwise.

(C) To pay, to compromise, or to contest taxes or assessments and to apply for refunds in connection therewith.

(D) To purchase supplies.

(E) To hire assistance or labor.

(F) To make repairs or alterations in the real property or structures or other improvements thereon.

(5) To maintain, to protect, to preserve, to utilize in any way, to subdivide, to develop, to modify, to alter, to replace, to remove, to demolish, to erect, or to install structures or other improvements upon, any real property in which the principal has, or claims to have, any interest and to develop or dedicate such property to public use and to dedicate easements to public use without consideration.

(6) To demand, to receive, and to obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of an interest in real property or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse, or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(7) To participate in any reorganization with respect to real property and to receive and to hold any shares of stock or instrument of similar character received in accordance with the plan of reorganization, and to act with respect thereto, including by way of illustration, but not of restriction, power to sell or otherwise to dispose of the shares, or any of them, to exercise or to sell any option, conversion, or similar right with respect thereto, and to vote thereon in person or by the granting of a proxy.

(8) To agree and to contract, in any manner, and with any person, and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release, or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal.

(9) To execute, to acknowledge, to seal, and to deliver any deed, revocation, declaration or modification of trust, mortgage, lease,

notice, check, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(10) To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any real property transaction or to intervene in any action or proceeding relating thereto.

(11) To hire, to discharge, and to compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records thereof.

(12) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to any interest in real property.

(b) All powers described in this section are exercisable equally with respect to any interest in real property owned by the principal at the time of the giving of the power of attorney or thereafter acquired, and whether located in this state or elsewhere.

Comment. Section 2460 is the same in substance as Section 5-1502A of the New York General Obligations Law. The broader phrase "interest in real property" has been substituted for the phrase "estate or interest in land" which appears in the New York section and other editorial revisions have been made in the New York section.

406/462

§ 2461. Chattel and goods transactions

2461. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "chattel and goods transactions" shall be contrued to mean that the principal authorizes the agent to do all of the following:

(1) To accept as a gift or as security for a loan, to reject, to demand, to buy, to receive, or otherwise to acquire either ownership or possession of, any chattel or goods or any interest in any chattel or goods.

(2) To sell, to exchange, to convey either with or without covenants, to release, to surrender, to mortgage, to encumber, to pledge, to hypothecate, to create a security interest in, to pawn, to revoke,

create, or modify a trust, to grant options concerning, to lease or to sublet to others, or otherwise to dispose of any chattel or goods or any interest in any chattel or goods.

(3) To release in whole or in part, to assign the whole or a part of, to satisfy in whole or in part, and to enforce by action, proceeding, or otherwise, any mortgage, incumbrance, lien, or other claim which exists, or is claimed to exist, in favor of the principal with respect to any chattel or goods or any interest in any chattel or goods.

(4) To do any act of management or of conservation with respect to chattel or goods or to an interest in chattel or goods owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, the power to do the following:

(A) To insure against any casualty, liability, or loss.

(B) To obtain or to regain possession, or to protect the chattel or goods or interest in the chattel or goods, by action, proceeding, or otherwise.

(C) To pay, to compromise, or to contest taxes or assessments and to apply for refunds in connection therewith.

(D) To move from place to place, to store for hire or on a gratuitous bailment, to use, to alter, and to make repairs or alterations of, the chattel or goods or an interest in the chattel or goods.

(5) To demand, to receive, and to obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of a chattel or goods or of an interest in chattel or goods or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse, or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(6) To agree and to contract, in any manner, and with any person and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release, or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal.

(7) To execute, to acknowledge, to seal, and to deliver any conveyance, revocation, declaration, or modification of trust, mortgage,

lease, notice, check, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated by this section.

(8) To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any chattel or goods transaction or to intervene in any action or proceeding relating thereto.

(9) To hire, to discharge, and to compensate any attorney, accountant, expert witness, or other assistant when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records thereof.

(10) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to any chattel or goods or interest in any chattel or goods.

(b) All powers described in this section are exercisable equally with respect to any chattel or goods or interest in any chattel or goods owned by the principal at the time of the giving of the power of attorney or thereafter acquired, and whether located in this state or elsewhere.

Comment. Section 2461 is the same in substance as Section 5-1502B of the New York General Obligations Law.

406/458

§ 2462. Bond, share, and commodity transactions

2462. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "bond, share, and commodity transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To accept as a gift or as security for a loan, to reject, to demand, to buy, to receive, or otherwise to acquire either ownership or possession of, any bond, share, instrument of similar character, commodity interest, or any instrument with respect to a commodity, together with the interest, dividends, proceeds, or other distributions connected therewith.

(2) To sell (including short sales), to exchange, to transfer either with or without a guaranty, to release, to surrender, to hypothecate, to pledge, to revoke, create, or modify a trust, to grant op-

tions concerning, to loan, to trade in, or otherwise to dispose of any bond, share, instrument of similar character, commodity interest, or any instrument with respect to a commodity.

(3) To release in whole or in part, to assign the whole or a part of, to satisfy in whole or in part, and to enforce by action, proceeding, or otherwise, any pledge, incumbrance, lien, or other claim as to any bond, share, instrument of similar character, commodity interest, or any interest with respect to a commodity, when the pledge, incumbrance, lien, or other claim is owned, or claimed to be owned, by the principal.

(4) To do any act of management or of conservation with respect to any bond, share, instrument of similar character, commodity interest, or any instrument with respect to a commodity, owned or claimed to be owned by the principal or in which the principal has or claims to have an interest, including by way of illustration, but not of restriction, the power to do the following:

(A) To insure against any casualty, liability, or loss.

(B) To obtain or to regain possession or to protect the principal's interest therein by action, proceeding, or otherwise.

(C) To pay, to compromise, or to contest taxes or assessments and to apply for refunds in connection therewith.

(D) To consent to and to participate in any reorganization, recapitalization, liquidation, merger, consolidation, sale, or lease, or other change in or revival of a corporation or other association, or in the financial structure of any corporation or other association, or in the priorities, voting rights, or other special rights with respect thereto.

(E) To become a depositor with any protective, reorganization, or similar committee of the bond, share, other instrument of similar character, commodity interest or any instrument with respect thereto, belonging to the principal.

(F) To make any payments reasonably incident to subparagraphs (A) to (E), inclusive.

(G) To exercise or to sell any option, conversion, or similar right.

(H) To vote in person or by the granting of a proxy (with or without the power of substitution), either discretionary, general, or otherwise, for the accomplishment of any of the purposes enumerated in this section.

(5) To carry in the name of a nominee selected by the agent any evidence of the ownership of any bond, share, other instrument of simi-

lar character, commodity interest, or instrument with respect to a commodity, belonging to the principal.

(6) To employ, in any way believed desirable by the agent, any bond, share, other instrument of similar character, commodity interest, or any instrument with respect to a commodity, in which the principal has or claims to have any interest, for the protection or continued operation of any speculative or margin transaction personally begun or personally guaranteed, in whole or in part, by the principal.

(7) To demand, to receive, and to obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any interest in a bond, share, other instrument of similar character, commodity interest, or any instrument with respect to a commodity or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse, or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(8) To agree and to contract, in any manner, and with any broker or other person, and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release, or to modify any such agreement or contract or any other similar agreement made by or on behalf of the principal.

(9) To execute, to acknowledge, to seal, and to deliver any consent, authorization, assignment, revocation, declaration, or modification of trust, notice, waiver of notice, check, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(10) To execute, to acknowledge, and to file any report or certificate required by law or governmental regulation.

(11) To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any bond, share, or commodity transaction or to intervene in any action or proceeding relating thereto.

(12) To hire, to discharge, and to compensate any attorney, accountant, expert witness, or other assistant when the agent believes it

necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records thereof.

(13) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to any interest in any bond, share, or other instrument of similar character, commodity, or instrument with respect to a commodity.

(b) All powers described in this section are exercisable equally with respect to any interest in any bond, share, or other instrument of similar character, commodity, or instrument with respect to a commodity owned by the principal at the time of the giving of the power of attorney or thereafter acquired, whether located in this state or elsewhere.

Comment. Section 2462 is the same in substance of Section 5-1502C of the New York General Obligations Law.

406/252

§ 2463. Banking transactions

2463. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "banking transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To continue, to modify, and to terminate any account (including a deposit account, security account, certificate of deposit, money market account, margin account, common trust fund, mutual fund, treasury bill or note, and any other type of cash fund, cash equivalent or security) or other banking arrangement made by or on behalf of the principal prior to the creation of the agency.

(2) To open either in the name of the agent alone, or in the name of the principal alone, or in both their names jointly, or otherwise, an account of any type in any financial institution selected by the agent and to make any contracts for the procuring of other services made available by any financial institution the agent believes desirable.

(3) To make, to sign, and to deliver checks or drafts for any purpose and to withdraw by check, order, or otherwise any funds or property of the principal deposited with, or left in the custody of, any financial institution, wherever located, either before or after the creation of the agency.

(4) To prepare from time to time financial statements concerning the assets and liabilities or income and expenses of the principal and to deliver statements so prepared to any financial institution or other person the agent believes is reasonably entitled thereto.

(5) To receive statements, vouchers, notices, or other documents from any financial institution and to act with respect thereto.

(6) To enter, establish, close, maintain, and have access to any safe deposit box held in the name of the principal alone or jointly with another person, whether or not the institution renting the box has its own form of power of attorney for such purposes, and to remove all or any of the contents of the box.

(7) To borrow money by bank overdraft or by promissory note of the principal given for such period and at such interest rate as the agent shall select, to give such security out of the assets of the principal as the agent believes desirable or necessary for the borrowing, to pay, to renew, or to extend the time of payment of any note so given or given by or on behalf of the principal, and to procure for the principal a loan from any financial institution by any other procedure made available by the financial institution.

(8) To make, to assign, to indorse, to discount, to guarantee, and to negotiate, for any and all purposes, all promissory notes, bills of exchange, checks, drafts, or other negotiable or nonnegotiable paper of the principal or payable to the principal or to the order of the principal, to receive the cash or other proceeds of any such transactions, and to accept any bill of exchange or draft drawn by any person upon the principal and to pay it when due.

(9) To receive for the principal and to deal in and to deal with any trust receipt, warehouse receipt, or other negotiable or nonnegotiable instrument in which the principal has or claims to have an interest.

(10) To apply for and to receive letters of credit or travelers checks from any financial institution selected by the agent, giving such indemnity or other agreements in connection therewith as the agent believes desirable or necessary.

(11) To consent to an extension in time of payment with respect to any commercial paper or any banking transaction in which the principal has an interest or by which the principal is, or might be, affected in any way.

(12) To pay, to compromise, or to contest taxes or assessments and to apply for refunds in connection therewith.

(13) To demand, to receive, and to obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any banking transaction conducted by the principal, or by the agent in the execution of any of the powers described in this section, or partly by the principal and partly by the agent so acting, to conserve, to invest, to disburse, or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(14) To execute, to acknowledge, to seal, and to deliver any instrument of any kind, in the name of the principal or otherwise, which the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(15) To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any banking transaction or to intervene in any action or proceeding relating thereto.

(16) To hire, to discharge, and to compensate any attorney, accountant, expert witness, or other assistant when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records thereof.

(17) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with any banking transaction which does or might in any way affect the financial or other interests of the principal.

(b) All powers described in this section are exercisable equally with respect to any banking transaction engaged in by the principal at the time of the giving of the power of attorney or thereafter engaged in, and whether conducted in this state or elsewhere.

(c) For the purposes of this section:

(1) "Banking transaction" includes a comparable transaction with any type of financial institution.

(2) "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, commercial banks, building and loan associations, savings and loan companies or associations, credit unions, and industrial loan companies.

Comment. Section 2463 is the same in substance as Section 5-1502D of the New York General Obligations Law except that the phrase "financial institution" has been substituted in Section 2463 for "banker or banking institution" which appears in the New York section and no provision comparable to subdivision (c) of Section 2463 appears in the New York section.

404/939

§ 2464. Business operating transactions

2464. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "business operating transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To the extent that an agent is permitted by law thus to act for a principal, to discharge and to perform any duty or liability and also to exercise any right, power, privilege, or option which the principal has, or claims to have, under any contract of partnership whether the principal is a general, special, or limited partner thereunder, to enforce the terms of any such partnership agreement for the protection of the principal, by action, proceeding, or otherwise, as the agent believes desirable or necessary, and to defend, submit to arbitration, settle, or compromise any action or other legal proceeding to which the principal is a party because of membership in the partnership.

(2) To exercise in person or by proxy or to enforce by action, proceeding, or otherwise, any right, power, privilege, or option which the principal has as the holder of any bond, share, or other instrument of similar character and to defend, submit to arbitration, settle, or compromise any action or other legal proceeding to which the principal is a party because of any such bond, share, or other instrument of similar character.

(3) With respect to any business enterprise which is owned solely by the principal, to do all of the following:

(A) To continue, to modify, to renegotiate, to extend, and to terminate any contractual arrangements made with any person, firm, associa-

tion, or corporation whatsoever by or on behalf of the principal with respect the enterprise prior to the creation of the agency.

(B) To determine the policy of the enterprise as to the location of the site or sites to be utilized for its operation, as to the nature and extent of the business to be undertaken by it, as to methods of manufacturing, selling, merchandising, financing, accounting, and advertising to be employed in its operation, as to the amount and types of insurance to be carried, as to the mode of securing, compensating, and dealing with accountants, attorneys, servants, and other agents and employees required for its operation, to agree and to contract, in any manner, and with any person and on any terms, the agent believes desirable or necessary for effectuating these decisions of the agent as to policy, and to perform, to rescind, to reform, to release, or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal.

(C) To change the name or form of organization under which the business is operated and to enter into such partnership agreement with other persons or to organize such corporation to take over the operation of such business, or any part thereof, as the agent believes desirable or necessary.

(D) To demand and to receive all moneys which are, or may become, due to the principal, or which may be claimed by the principal or on behalf of the principal, in the operation of the enterprise, and to control and to disburse the funds in the operation of the enterprise in any way which the agent believes desirable or necessary, to engage in any banking transactions (as defined in subdivision (c) of Section 2463) the agent believes desirable or necessary for effectuating the execution of any of the powers of the agent described in this subdivision.

(4) To put additional capital into any business in which the principal has an interest, to join in any plan of reorganization or consolidation merger of such business, to sell or liquidate the business at such time and upon such terms as the agent believes desirable, and to represent the principal in establishing the value of any business under any "buy-out" agreement to which the principal is a party.

(5) To prepare, to sign, to file, and to deliver all reports, compilations of information, returns, or other papers with respect to any business operating transaction of the principal, which are required

by any governmental agency, department, or instrumentality or which the agent believes desirable or necessary for any purpose, and to make any payments with respect thereto.

(6) To pay, to compromise, or to contest taxes or assessments and to do any act the agent believes desirable or necessary to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments in connection with business operations of the principal, including power to attempt to recover, in any manner permitted by law, sums paid before or after the creation of the agency as taxes, fines, penalties, or assessments.

(7) To demand, to receive, and to obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any business operation of the principal, to conserve, to invest, to disburse, or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(8) To execute, to acknowledge, to seal, and to deliver any deed, assignment, mortgage, lease, notice, consent, agreement, authorization, check, or other instrument which the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(9) To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any business operating transaction or to intervene in any action or proceeding relating thereto.

(10) To hire, to discharge, and to compensate any attorney, accountant, expert witness, or other assistant when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records thereof.

(11) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with any business operated by the principal, which the agent believes desirable or necessary for the furtherance or protection of the interests of the principal.

(b) All powers described in this section are exercisable equally with respect to any business in which the principal is interested at the

time of the creation of the agency or in which the principal thereafter becomes interested, and whether operated in this state or elsewhere.

Comment. Section 2464 is the same in substance as Section 5-1502E of the New York General Obligations Law except that paragraph (4) of subdivision (a) has been added to Section 2464.

67705

§ 2465. Insurance transactions

2465. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "insurance transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To continue, to pay the premium or assessment on, to modify, to rescind, to release, or to terminate any contract of life, accident, health, disability, or liability insurance or any combination of such insurance procured by or on behalf of the principal prior to the creation of the agency which insures either the principal or any other person, without regard to whether the principal is or is not a beneficiary thereunder.

(2) To procure new, different, or additional contracts of insurance on the life of the principal or on the life of anyone in whom the principal has an insurable interest or for protecting the principal with respect to ill-health, disability, accident, or liability of any sort, to select the amount, the type of insurance contract, and the mode of payment under each such policy, to pay the premium or assessment on, to modify, to rescind, to release, or to terminate, any contract so procured by the agent, and to designate the beneficiary of any such contract of insurance except that the agent himself or herself cannot be the beneficiary unless the agent is spouse, child, grandchild, parent, brother, or sister of the principal.

(3) To apply for and to receive any available loan on the security of the contract of insurance, whether for the payment of a premium or for the procuring of cash, to surrender and thereupon to receive the cash surrender value, to exercise any election as to beneficiary or mode of payment, to change the manner of paying premiums, and to change or to convert the type of insurance contract, with respect to any contract of life, accident, health, disability, or liability insurance as to which

the principal has, or claims to have, any one or more of the powers described in this section, and to change the beneficiary of any such contract of insurance or annuity contract in which the principal has an interest, except that the agent himself or herself cannot be the new beneficiary unless the agent is spouse, child, grandchild, parent, brother, or sister of the principal.

(4) To demand, to receive, and to obtain by action, proceeding, or otherwise any money, dividend, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any contract of insurance or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse, or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(5) To apply for and to procure any available governmental aid in the guaranteeing or paying of premiums of any contract of insurance on the life of the principal.

(6) To sell, to assign, to hypothecate, to borrow upon, or to pledge the interest of the principal in any contract of insurance.

(7) To pay, from such proceeds or otherwise, to compromise, or to contest, and to apply for refunds in connection with, any tax or assessment levied by a taxing authority with respect to any contract of insurance or the proceeds thereof or liability accruing by reason of such tax or assessment.

(8) To agree and to contract, in any manner, and with any person and on any terms, which the agent may select for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release, or to modify any such agreement or contract.

(9) To execute, to acknowledge, to seal, and to deliver any consent, demand, request, application, agreement, indemnity, authorization, assignment, pledge, notice, check, receipt, waiver, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(10) To continue, to procure, to pay the premium or assessment on, to modify, to rescind, to release, to terminate, or otherwise to deal

with any contract of insurance, other than those enumerated in paragraph (1) or (2), whether fire, marine, burglary, compensation, disability, liability, hurricane, earthquake, casualty, or other type, or any combination of insurance, to do any act or acts with respect to any such contract or with respect to its proceeds or enforcement which the agent believes desirable or necessary for the promotion or protection of the interests of the principal.

(11) To prosecute, to defend, to submit to arbitration, to settle, to adjust, and to propose or to accept a compromise with respect to any claim existing in favor of, or against, the principal based on or involving any insurance transaction or to intervene in any action or proceeding relating thereto.

(12) To hire, to discharge, and to compensate any attorney, accountant, expert witness, or other assistant when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records thereof.

(13) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with procuring, supervising, managing, modifying, enforcing, and terminating contracts of insurance in which the principal is the insured or is otherwise in any way interested.

(b) All powers described in this section are exercisable with respect to any contract of insurance in which the principal is in any way interested, whether made in this state or elsewhere.

Comment. Section 2465 is the same in substance as Section 5-1502F of the New York General Obligations Law except the paragraph (2) of subdivision (a) authorizes contracts of insurance on the life of anyone in whom the principal has an insurable interest and the last portion of paragraph (3) of subdivision (a) is extended to cover changing the beneficiary of an annuity contract in which the principal has an interest.

404/977

§ 2466. Retirement plans

2466. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "retirement plan transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To select various payment options under any retirement plan in which the principal participates, including plans for self-employed

individuals, except that the agent himself or herself cannot be the beneficiary unless the agent is spouse, child, grandchild, parent, brother, or sister of the principal.

(2) To make beneficiary designations under such plans and change any existing beneficiary designations, except that the agent himself or herself cannot be the beneficiary unless the agent is spouse, child, grandchild, parent, brother, or sister of the principal.

(3) To make voluntary contributions to such plans.

(4) To make so-called "roll-overs" of plan benefits into other retirement plans.

(5) To borrow from such plans if authorized by the plan and to sell assets to or purchase assets from the plan if authorized by the plan.

(6) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with retirement plans in which the principal is interested.

(b) All powers described in this section are exercisable with respect to any retirement plan in which the principal is in any way interested, whether the plan is in this state or elsewhere.

Comment. Section 2466 has no conterpart in the New York law.

404/947

§ 2467. Estate transactions

2467. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "estate transactions" shall be construed to mean that the principal authorizes the agent to do any of the following:

(1) To the extent that an agent is permitted by law thus to act for a principal, to apply for and to procure, in the name of the principal, letters of administration, letters testamentary, letters of trusteeship, or any other type of authority, either judicial or administrative, to act as a fiduciary of any sort.

(2) To the extent that an agent is permitted by law thus to act for a principal, to represent and to act for the principal in all ways and in all matters affecting any estate of a decedent, absentee, minor, or incompetent, or any trust or other fund, out of which the principal is

entitled, or claims to be entitled, to some share or payment or with respect to which the principal is a fiduciary.

(3) To accept, to reject, to receive, to receipt for, to sell, to assign, to release, to disclaim, to renounce, to pledge, to exchange, or to consent to a reduction in or modification of, any share in or payment from any estate, trust, or other fund, with or without consideration.

(4) To demand and to obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, or may become, or may claim to be entitled by reason of the death testate or intestate of any person or of any testamentary disposition or of any trust or by reason of the administration of the estate of a decedent or absentee or of the guardianship of a minor or the conservatorship of an incompetent or the administration of any trust or other fund, to initiate, to participate in and to oppose any proceeding, judicial or otherwise, for the ascertainment of the meaning, validity, or effect of any deed, will, declaration of trust, or other transaction affecting in any way the interest of the principal, to initiate, to participate in, and to oppose any proceeding, judicial or otherwise, for the removal, substitution, or surcharge of a fiduciary, to conserve, to invest, to disburse, or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(5) To establish any trust with the assets of the principal for the benefit of the principal and the spouse and descendants of the principal, or any one or more of them, upon such terms as the agent determines are necessary or proper, to transfer any asset in which the principal has an interest to any such trust or to any trust that the principal has created, and to exercise (in whole or in part), to release, or to let lapse any power the principal may have under any trust whether or not created by the principal, including any power of appointment, revocation, or withdrawal.

(6) To purchase for the principal United States of American treasury bonds of the kind which are redeemable at par in payment of federal estate taxes, to borrow money from any source for such purpose, to make, to execute, to endorse, and to deliver promissory notes, bills of exchange, drafts, agreements, or other obligations for such bonds and as security therefor, to pledge, to mortgage, and to assign any stock, bonds, securi-

ties, insurance values, or other properties, real or personal, in which the principal may have an interest, and to arrange for the safekeeping and custody of any such treasury bonds.

(7) To prepare, to sign, to file, and to deliver all reports, compilations of information, returns, or papers with respect to any interest had or claimed by or on behalf of the principal in any estate, trust, or other fund, to pay, to compromise, or to contest, and to apply for refunds in connection with, any tax or assessment, with respect to (A) any interest had or claimed by or on behalf of the principal in any estate, trust, or other fund or by reason of the death of any person or (B) any property in which such interest is had or claimed.

(8) To agree and to contract, in any manner, and with any person and on any terms, which the agent may select, for the accomplishment of the purposes enumerated in this section, and to perform, to rescind, to reform, to release, or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal.

(9) To execute, to acknowledge, to verify, to seal, to file, and to deliver any consent, designation, pleading, notice, demand, election, conveyance, release, disclaimer, assignment, check, pledge, waiver, admission of service, notice of appearance, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(10) To submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any controversy or claim which affects the estate of a decedent, absentee, minor, or incompetent, or the administration of a trust or other fund, in any one of which the principal has, or claims to have, an interest, and to do any and all acts which the agent believes desirable or necessary in effectuating the compromise.

(11) To hire, to discharge, and to compensate any attorney, accountant, expert witness, or other assistant when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records thereof.

(12) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to the estate of a decedent, absentee, minor, or incompetent, or the administration of a trust or other fund,

in any one of which the principal has, or claims to have, an interest, or with respect to which the principal is a fiduciary.

(b) All powers described in this section are exercisable equally with respect to any estate of a decedent, absentee, minor, or incompetent, or the administration of any trust or other fund, in which the principal is interested at the time of the giving of the power of attorney or may thereafter become interested, and whether located in this state or elsewhere.

Comment. Section 2467 is the same in substance as Section 5-1502G of the New York General Obligations Law except that paragraphs (5) and (6) of subdivision (a) are not included in the New York law.

34267

§ 2468. Claims and litigation

2468. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "claims and litigation" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To assert and to prosecute before any court, administrative board, department, commissioner, or other tribunal, any cause of action, claim, counterclaim, cross-complaint, offset, or defense, which the principal has, or claims to have, against any individual, partnership, association, corporation, government, or other person or instrumentality, including, by way of illustration and not of restriction, power to sue for the recovery of real property or of any other thing of value, for the recovery of damages sustained by the principal in any manner, for the elimination or modification of tax liability, for an injunction, for specific performance, or for any other relief.

(2) To bring an action of interpleader or other action to determine adverse claims, to intervene or to interplead in any action or proceeding, and to act in any litigation as amicus curiae.

(3) In connection with any action or proceeding or controversy, at law or otherwise, to apply for and, if possible, to procure a libel, an attachment, a garnishment, or other preliminary, provisional, or intermediate relief and to resort to and to utilize in all ways permitted by law any available procedure for the effectuation, enforcement, or satisfaction of the judgment, order, or decree obtained.

(4) In connection with any action or proceeding, at law or otherwise, to perform any act which the principal might perform, including by way of illustration and not of restriction, acceptance of tender, offer of judgment, admission of any facts, submission of any controversy on an agreed statement of facts, consent to examination before trial, and generally to bind the principal in the conduct of any litigation or controversy as seems desirable to the agent.

(5) To submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of or against the principal, or any litigation to which the principal is, or may become, or be designated a party.

(6) To waive the issuance and service of a summons, citation or other process upon the principal, to accept service of process, to appear for the principal, to designate persons upon whom process directed to the principal may be served, to execute and to file or deliver stipulations on the principal's behalf, to verify pleadings, to appeal to appellate tribunals, to procure and to give surety and indemnity bonds at such times and to such extent as the agent believes desirable or necessary, to contract and pay for the preparation and printing of records and briefs, to receive and to execute and to file or deliver any consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument which the agent believes desirable or necessary in connection with the prosecution, settlement, or defense of any claim by or against the principal or of any litigation to which the principal is or may become or be designated a party.

(7) To appear for, to represent, and to act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, whether of the principal or of some other person, with respect to any reorganization proceeding, or with respect to any assignment for the benefit of creditors or receivership or application for the appointment of a receiver or trustee which, in any way, affects any interest of the principal in any real property, chattel, bond, share, commodity interest, chose in action or other thing of value.

(8) To hire, to discharge, and to compensate any attorney, accountant, expert witness, or other assistant when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section.

(9) To pay, from funds in the agent's control or for the account of the principal, any judgment against the principal or any settlement which may be made in connection with any transaction enumerated in this section, and to receive and conserve any moneys or other things of value paid in settlement of or as proceeds of one or more of the transactions enumerated in this section, and to receive, endorse, and deposit checks.

(10) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with any claim by or against the principal or with litigation to which the principal is or may become or be designated a party.

(b) All powers described in this section are exercisable equally with respect to any claim or litigation existing at the time of the giving of the power of attorney or thereafter arising, and whether arising in this state or elsewhere.

Comment. Section 2468 is the same in substance as Section 5-1502H of the New York General Obligations Law.

15781

§ 2469. Tax matters

2469. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "tax matters" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To prepare, sign, and file federal, state, local, and foreign income, gift, or other tax returns of all kinds, FICA returns, payroll tax returns, claims for refunds, requests for extension of time, petitions to the tax court or other courts regarding tax matters, and any and all other tax related documents, including without limitation receipts, offers, waivers, consents (including, but not limited to consents and agreements under Internal Revenue Code Section 2032A, or any successor section thereto), closing agreements, and any power of attorney form required by the Internal Revenue Service, the California Franchise Tax Board, or any other taxing authority with respect to any tax year between the year of the giving of the power of attorney and the year ending 25 years thereafter.

(2) To pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal

Revenue Service, the California Franchise Tax Board, or other taxing authorities.

(3) To exercise any elections the principal may have under federal, state, local, or foreign tax law.

(4) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, to represent the principal in all tax matters and proceedings of all kinds and for all periods before all officers of the Internal Revenue Service, the California Franchise Tax Board, and any other taxing authority whether in this state or elsewhere.

Comment. Section 2469 is a new provision. No comparable provision is found in the New York statute dealing only with tax matters, but various provisions of the New York statute which are found in this chapter deal with tax matters that arise in connection with various kinds of transactions.

32815

§ 2470. Personal relationships and affairs

2470. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "personal relationships" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To do all acts necessary for maintaining the customary standard of living of the spouse and children and other dependents of the principal, including by way of illustration and not by way of restriction, power to provide living quarters by purchase, lease, or by other contract, or by payment of the operating costs, including interest, amortization payments, repairs, and taxes, of premises owned by the principal and occupied by the family or dependents of the principal, to provide normal domestic help for the operation of the household, to provide usual vacations and usual travel expenses, to provide for education (including education at vocational and trade schools, training in music, stage, handicrafts, arts, and sports, special training provided at institutions for the mentally or physically handicapped, undergraduate and graduate study in any field at public or private universities, colleges, or other institutions of higher learning) and in providing for such education to pay for tuition, books, and incidental charges made by

the educational institutions, travel costs to and from such institutions, room and board, and a reasonable amount of spending money, and to provide funds for all the current living costs of the spouse, children, and other dependents of the principal, including, among other things, shelter, clothing, food, and incidentals.

(2) To provide, whenever necessary, medical, dental, and psychiatric care, hospitalization, and custodial care for the spouse, children, and other dependents of the principal.

(3) To continue whatever provision has been made by the principal, prior to the creation of the agency or thereafter, for the spouse, children, and other dependents of the principal, with respect to automobiles or other means of transportation, including by way of illustration but not by way of restriction, power to license, to insure, and to replace any automobiles owned by the principal and customarily used by the spouse, children, or other dependents of the principal.

(4) To continue whatever charge accounts have been operated by the principal prior to the creation of the agency or thereafter, for the convenience of the spouse, children, or other dependents of the principal, to open such new charge accounts as the agent believes desirable for the accomplishment of any of the purposes enumerated in this section, and to pay the items charged on the accounts by any person authorized or permitted by the principal to make such charges prior to the creation of the agency.

(5) To continue the discharge of any services or duties assumed by the principal, prior to the creation of the agency or thereafter, to any parent, relative, or friend of the principal.

(6) To supervise and to enforce, to defend or to settle any claim by or against the principal arising out of property damages or personal injuries suffered by or caused by the principal or arising under such circumstances that the loss resulting therefrom will or may fall on the principal.

(7) To continue payments incidental to the membership or affiliation of the principal in any church, club, society, order, or other organization or to continue contributions thereto.

(8) To make gifts, grants, or other transfers without consideration to or for the benefit of the spouse or descendants of the principal or a charitable institution, or more than one or all of them, either outright

or in trust, including the forgiveness of indebtedness and the completion of any charitable pledges the principal may have made and to consent to the splitting of gifts under Internal Revenue Code Section 2513, or successor sections thereto, if the spouse of the principal makes gifts to any one or more of the descendants of the principal or to a charitable institution, to pay any gift tax that may arise by reason of such gifts, and to loan any of the assets of the principal to the spouse or descendants of the principal, or their personal representatives or a trustee for their benefit and such loan shall bear such interest, and shall be secured or unsecured, as the agent determines advisable.

(9) To demand, to receive, and to obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, or may become, or may claim to be entitled as salary, wages, commission, or other remuneration for services performed, or as a dividend or distribution upon any stock, or as interest or principal upon any indebtedness, or any periodic distribution of profits from any partnership or business in which the principal has or claims an interest, and to endorse, collect, or otherwise realize upon any instrument for the payment so received.

(10) To prepare, to execute, and to file all tax, social security, unemployment insurance, and information returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government, to prepare, to execute, and to file all other papers and instruments which the agent believes desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation, and to pay, to compromise, or to contest, or to apply for refunds in connection with, any taxes or assessments for which the principal is or may be liable.

(11) To utilize any asset of the principal for the performance of the powers enumerated in this section, including by way of illustration and not by way of restriction, power to draw money by check or otherwise from any deposit of the principal, to sell any real property, chattel, bond, share, commodity interest, chose in action, or other asset of the principal, to borrow money and to pledge as security for the loan, any asset, including insurance, which belongs to the principal.

(12) To execute, to acknowledge, to verify, to seal, to file, and to deliver any application, consent, petition, notice, release, waiver,

agreement, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(13) To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any transaction enumerated in this section or to intervene in any action or proceeding relating thereto.

(14) To hire, to discharge, and to compensate any attorney, accountant, expert witness, or other assistant when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records thereof.

(15) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, for the welfare of the spouse, children, or dependents of the principal or for the preservation and maintenance of the other personal relationships of the principal to parents, relatives, friends, and organizations.

(b) All powers described in this section are exercisable equally whether the acts required for their execution shall relate to real or personal property owned by the principal at the time of the giving of the power of attorney or thereafter acquired and whether such acts are performable in this state or elsewhere.

Comment. Section 2470 is the same in substance as Section 5-1502I of the New York General Obligations Law except that paragraph (8) of subdivision (a) of Section 2470 is not included in the New York section.

32813

§ 2471. Benefits from military service

2471. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "benefits from military service" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or by any state or subdivision thereof to the principal, including by way of illustration and not of restriction, all allowances and reimbursements for transportation of the principal and of the dependents of the principal and for

shipment of household effects, and to receive, to indorse, and to collect the proceeds of any check payable to the order of the principal drawn on the treasurer or other fiscal officer or depositary of the United States or of any state or subdivision thereof.

(2) To take possession and to order the removal and shipment of any property of the principal from any post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and to execute and to deliver any release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument the agent believes desirable or necessary for that purpose.

(3) To prepare, to file, and to prosecute the claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is, or claims to be, entitled under the provisions of any statute or regulation existing at the time of the creation of the agency or thereafter enacted by the United States or by any state or by any subdivision thereof, or by any foreign government, which benefit or assistance arises from or is based upon military service performed prior to or after the creation of the agency by the principal or by any person related by blood or by marriage to the principal, and to execute any receipt or other instrument the agent believes desirable or necessary for the enforcement or for the collection of the claim.

(4) To receive the financial proceeds of any claim of the type described in this section, to conserve, to invest, to disburse, or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(5) To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any benefits from military service or to intervene in any action or proceeding relating thereto.

(6) To hire, to discharge, and to compensate any attorney, accountant, expert witness, or other assistant when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section.

(7) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can

do through an agent, and which the agent believes desirable or necessary, to assure to the principal, and to dependents of the principal, the maximum possible benefit from the military service performed prior to or after the creation of the agency by the principal or by any person related by blood or marriage to the principal.

(b) All powers described in this section are exercisable equally with respect to any benefits from military service existing at the time of the giving of the power of attorney or thereafter accruing, and whether accruing in this state or elsewhere.

Comment. Section 2471 is the same in substance as Section 5-1502J of the New York General Obligations Law.

32806

§ 2472. Records, reports, and statements

2472. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "records, reports, and statements" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To keep records of all cash received and disbursed for or on account of the principal, of all credits and debits to the account of the principal, and of all transactions affecting in any way the assets and liabilities of the principal.

(2) To prepare, to execute, and to file all tax, social security, unemployment insurance, and information returns required by the laws of the United States or any state or of any subdivision thereof or any foreign government and to prepare, to execute, and to file all other papers and instruments the agent believes desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation.

(3) To prepare, to execute, and to file any record, report, or statement the agent believes desirable or necessary for the safeguarding or maintenance of the principal's interest with respect to price, rent, wage or rationing control, or other governmental activity.

(4) To hire, to discharge, and to compensate any attorney, accountant, or other assistant when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section.

(5) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with the preparation, execution, filing, storage, or other utilization of any records, reports, or statements of or concerning the principal's affairs.

(b) All powers described in this section are exercisable equally with respect to any records, reports, and statements of or concerning the affairs of the principal existing at the time of the giving of the power of attorney or thereafter arising, and whether in this state or elsewhere.

Comment. Section 2472 is the same in substance as Section 5-1502K of the New York General Obligations Law.

32805

§ 2473. All other matters

2473. (a) Except as provided in subdivision (b), in a statutory short form power of attorney, the language conferring general authority with respect to "all other matters" shall be construed to mean that the principal authorizes the agent to act as an alter ego of the principal with respect to any and all possible matters and affairs which are not enumerated in Sections 1460 to 1472, inclusive, and which the principal can do through an agent.

(b) A statutory short form power of attorney under this chapter does not authorize the agent to make health care decisions, as defined in Section 2430, for the principal.

Comment. Subdivision (a) of Section 2473 is the same in substance of Section 5-1502L of the New York General Obligations Law. Subdivision (b) is consistent with Section 2433 (printed form of a durable power of attorney for health care sold in this state for use by a person who does not have the advice of legal counsel shall provide no other authority than the authority to make health care decisions on behalf of the principal).