

Memorandum 89-38

Subject: Study L-1060 - Amendments to Senate Bill 985 (Multiple-Party Accounts)

Attached is a copy of the Recommendation Relating to Multiple-Party Accounts. We are amending Senate Bill 985 to conform to this recommendation. Senate Bill 985 is a spot bill introduced by Senator Beverly at the request of the Commission.

The staff recommends that a revision be made in Section 5204 of the recommended legislation to make the section generally consistent with Civil Code Section 2512. We propose to revise Section 5204, which provides for a special power of attorney for account transactions, to read as follows:

5204. (a) In addition to a power of attorney otherwise authorized by law, a special power of attorney is authorized under this section to apply to one or more accounts at a financial institution. For the purposes of this section, "account" includes checking accounts, savings accounts, certificates of deposit, savings certificates, and any other depository relationship with the financial institution.

(b) The special power of attorney under this section shall:

(1) Be in writing.

(2) Be signed by the person or persons giving the power of attorney.

(3) Explicitly identify the attorney in fact or attorneys in fact, the financial institution, and the account or accounts subject to the power.

(c) Language in substantially the following form is sufficient to create a power of attorney under this section: "Transactions regarding this account/certificate of deposit may be made by the named agent(s). This agency is governed by Section 5204 of the California Probate Code. Under Section 5204, (1) the agent has no present or future ownership or right of survivorship in this account, (2) the agent must keep a record of the transactions and disbursements made under the agency, and (3) the agent may make disbursements from this account only to or for the benefit of the account owner unless the account owner has authorized the disbursement in writing."

(d) The power of attorney granted under this section shall endure as between the grantor and grantee of the power until the earlier to happen of the following:

(1) Revocation by the grantor of the power.

- (2) Termination of the account.
- (3) Death of the grantor of the power.
- (4) Appointment of a guardian or conservator of the estate of the grantor of the power.

(e) A financial institution may rely in good faith upon the validity of the power of attorney granted under this section and ~~shall be held harmless from any liability is not liable to the principal or any other person for doing so if~~ (1) the power of attorney is presented to the financial institution by the attorney in fact named in the power of attorney and (2) the power of attorney appears on its face to be valid. ~~Payment made in reliance upon the validity of the power of attorney granted under this section discharges the financial institution from all claims for the amounts so paid.~~ The protection provided by this subdivision does not extend to payments made after written notice is received by the financial institution as to any of the events of termination of the power under subdivision (d) and the financial institution has had a reasonable time to act on the notice. No other notice or any other information shown to have been available to the financial institution shall affect its right to the protection provided by this subdivision.

(f) The attorney in fact acting under the power of attorney granted under this section shall maintain such books or records as will permit an accounting of the acts of the attorney in fact if an accounting is requested by a legal representative of the grantor of the power.

(g) The attorney in fact acting under a power of attorney granted under this section is liable for any disbursement other than a disbursement to or for the benefit of the grantor of the power, unless the grantor has authorized the disbursement in writing.

(h) Nothing in this section limits the use or effect of any other form of power of attorney for transactions with a financial institution. Nothing in this section is intended to create an implication that a financial institution is liable for acting in reliance upon a power of attorney under circumstances where the requirements of subdivision (e) are not satisfied. Nothing in this section affects any immunity that may otherwise exist apart from this section.

(i) Nothing in this section prevents the attorney in fact from also being designated as a P.O.D. payee.

The amendment is consistent with existing Civil Code Section 2512 which provides:

2512. (a) Except as provided in Section 2438 [immunities of health care provider], a person who acts in good faith reliance upon a power of attorney, whether or not a durable power of attorney, is not liable to the principal or to any other person for so acting if all of the following requirements are satisfied:

(1) The power of attorney is presented to the person by the attorney in fact named in the power of attorney.

(2) The power of attorney appears on its face to be valid.

(3) The power of attorney includes a notary public's certificate of acknowledgment.

(b) Nothing in this section is intended to create an implication that a person is liable for acting in reliance upon a power of attorney under circumstances where the requirements of subdivision (a) are not satisfied. Nothing in this section affects any immunity that may otherwise exist apart from this section.

We have not included in proposed Section 5204 the requirement of Section 2512 that the power of attorney include a notary public's certificate of acknowledgment. This omission recognizes that bank form powers of attorney ordinarily are not acknowledged before a notary public.

If your review of the attached Recommendation discloses any matters you believe should be considered by the Commission, please bring the matters up for discussion at the meeting.

Respectfully submitted,

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Executive Secretary