

Memorandum 94-23

Comprehensive Power of Attorney Law: SB 1907 Amendments

Senate Bill 1907, which would implement the Commission's recommendation proposing the Comprehensive Power of Attorney Law, is set for hearing on Tuesday, May 10. The bill is carried by Senator Tom Campbell, the Commission's new Senate member. As of this writing, the bill faces no opposition, and may be on the consent calendar.

The bill did face significant opposition from the California Bankers Association. The letter of opposition from Maurine Padden, on behalf of CBA, is attached. (See Exhibit pp. 1-4.) A meeting was convened by Jon Glidden on Senator Campbell's staff on April 18 to try to work out CBA's problems, and also any potential concerns of the California Land Title Association. CLTA had hinted at problems, but had never actually voiced official opposition. The meeting was also attended by Don Green on behalf of the State Bar Estate Planning, Trust and Probate Law Section, which supports the bill. The State Bar support letter is attached. (See Exhibit pp. 9-11.)

Amendments were prepared to deal with the concerns raised by CBA. We are informed that CBA will not oppose the bill, and we anticipate that CBA may support the bill. We have not heard of any further opposition from CLTA, and expect that if CBA is happy, CLTA will be, too.

The staff notified the Chairperson of the needed amendments and faxed him a copy. The following amendments will be made this week so that the revised bill can be in print before the hearing:

1. Pre-existing relationship with principal [see Exhibit pp. 3-4]

§ 4300 (amended). Third persons required to respect authority of attorney-in-fact

4300. A third person shall accord an attorney-in-fact acting pursuant to the provisions of a power of attorney the same rights and privileges that would be accorded the principal if the principal were personally present and seeking to act. *However, a third person is not required to honor the attorney-in-fact's authority or conduct business with the attorney-in-fact if the principal cannot require the third person to act or conduct business in the same circumstances.*

<p>Staff Note. CBA has made a major point of this issue through all three negotiation sessions. The language added to Section 4300 is drawn from the California version of the Uniform Statutory Form Power of Attorney Act with some additional references to “business” to make it contextually understandable to the CBA. See Section 4406 in SB 1907 (Civ. Code § 2480.5).</p>

2. Certificate based on Probate Code § 18100.5 [see Exhibit p. 1]

§ 4305 (new). Attorney-in-fact’s certificate (replaces § 4305 in SB 1907)

4305. (a) An attorney-in-fact may present a certificate to any person instead of providing a copy of the power of attorney to establish the existence or terms of the power of attorney. A certificate may be executed by the attorney-in-fact voluntarily or at the request of the person with whom the attorney-in-fact is dealing.

(b) The certificate may confirm the following facts or contain the following information:

- (1) The existence of the power of attorney and date of its execution.
- (2) The identity of the principal and the currently acting attorney-in-fact.
- (3) The authority of the attorney-in-fact.
- (4) The identity of any persons granted authority under the power of attorney to determine whether the principal lacks capacity or whether the power of attorney is in effect.
- (5) If there are multiple attorneys-in-fact, whether all or less than all of the currently acting attorneys-in-fact may exercise the authority under the power of attorney.

(c) The certificate shall contain the following statements:

- (1) That the power of attorney has not been revoked or modified in any manner that would cause the statements contained in the certificate to be incorrect.
- (2) That the certificate is being signed by all of the currently acting attorneys-in-fact.

(d) The certificate shall be in the form of an acknowledged declaration signed by all attorneys-in-fact currently acting under the power of attorney. The certificate shall be either (1) signed by the principal and acknowledged before a notary public or (2) accompanied by a copy of the part of the power of attorney showing its execution in compliance with Section 4121.

(e) The certificate may not be required to contain other provisions of the power of attorney unrelated to the pending transaction.

(f) A person may require that the attorney-in-fact offering the certificate provide copies of those excerpts from the original power of attorney and any modifications that designate the attorney-in-fact and grant authority to the attorney-in-fact to act in the pending transaction.

Staff Note. New Sections 4305 and 4306 would replace the sections in the bill (and printed recommendation) and would also supplant the special Uniform Statutory Form Power of Attorney provision for recognition of the agent's authority, set out in Section 4406 in SB 1907 (Civ. Code § 2480.5).

The new sections are based on the trust certificate in Probate Code Section 18100.5 which was enacted on State Bar sponsorship last year after extensive negotiations with the banks. 1993 Cal. Stat. ch. 530, AB 1249 (Horchner). Subdivision (d) is of particular interest to CBA in the interest of resisting fraud. These two sections are similar to an alternative considered by the Commission in September 1993 but not adopted at that time because we had not had any input from the banks.

§ 4306 (new). Reliance on attorney-in-fact's certificate (replaces § 4306 in SB 1907)

4306. (a) A person who acts in reliance on a certificate presented pursuant to Section 4305 without actual knowledge that the statements in the certificate are incorrect is not liable to any person for so acting.

(b) A person who does not have actual knowledge that the statements in the certificate are incorrect may assume without inquiry the existence of the statements in the certificate. Actual knowledge may not be inferred solely from the fact that a copy of all or part of the power of attorney is held by the person relying on the certificate. Any transaction, and any lien created thereby, entered into by the attorney-in-fact and a person acting in reliance on the certificate is enforceable against the principal's property involved. However, if the person has actual knowledge that the attorney-in-fact is acting outside the scope of the authority granted, the transaction is not enforceable against the principal's property.

(c) A person's failure to demand a certificate does not affect the protection provided by this chapter, and no inference as to whether the person has acted in good faith may be drawn from the failure to demand a certificate.

(d) Except in the context of litigation and subject to subdivision (f) of Section 4305, a person making a demand for the power of attorney in addition to a certificate to prove facts set forth in the certificate acceptable to the third party is liable for damages, including attorney's fees, incurred as a result of the refusal to accept the certificate in place of the requested documents, if the court determines that the person acted in bad faith in requesting the documents.

(e) Nothing in this section is intended to create an implication that a person is liable for acting in reliance on a certificate under circumstances where the requirements of this section or Section 4305 are not satisfied.

(f) Nothing in this section limits the rights of the principal or the principal's successors against the attorney-in-fact.

3. Rejection of detrimental donative transfer [see Exhibit pp. 2-3]

§ 4264 (amended). Authority that must be specifically granted

4264. A power of attorney may not be construed to grant authority to an attorney-in-fact to perform any of the following acts unless expressly authorized in the power of attorney:

- (a) Create, modify, or revoke a trust.
- (b) Fund with the principal's property a trust not created by the principal or a person authorized to create a trust on behalf of the principal.
- (c) Make or revoke a gift of the principal's property in trust or otherwise.
- (d) ~~Disclaim a gift or devise of property to or for the benefit of the principal.~~ *Exercise the right to make a disclaimer on behalf of the principal. This subdivision does not limit the attorney-in-fact's authority to refuse acceptance of a detrimental donative transfer to the principal.*
- (e) Create or change survivorship interests in the principal's property or in property in which the principal may have an interest.
- (f) Designate or change the designation of beneficiaries to receive any property, benefit, or contract right on the principal's death.

Staff Note. CBA was concerned about CERCLA liability and tax liability. The intent of this section was to make clear that estate planning powers cannot be exercised without specific authority from the principal (a will can never be executed by an attorney-in-fact). The disclaimer language was drafted in the context of estate planning, wherein it is assumed without discussion that the disclaimed transfer is beneficial to someone, if not the disclaimant. However, with the panic over toxic waste cleanup liability, the disclaimer can serve a different purpose. Hence the amendment.

4. No attribution of knowledge between branches [see Exhibit p. 3]

§ 4308 (amended). When third person charged with employee's knowledge

4308. (a) A third person who conducts activities through employees is not charged under this chapter with actual knowledge of any fact relating to a power of attorney, nor of a change in the authority of an attorney-in-fact, unless both of the following requirements are satisfied:

- (a) (1) The information is received at a home office or a place where there is an employee with responsibility to act on the information.
- (b) (2) The employee has a reasonable time in which to act on the information using the procedure and facilities that are available to the third person in the regular course of its operations.
- (b) *Knowledge of an employee in one branch or office of an entity that conducts business through branches or multiple offices is not attributable to an employee in another branch or office.*

5. Agreement not to honor power of attorney [see Exhibit p. 3]

§ 4309 (new). Agreement between principal and third person concerning power of attorney

4309. (a) A principal and a third person may execute a written agreement directing and authorizing the third person to refuse to honor any power of attorney concerning all or part of the principal's property or affairs or any power of attorney with respect to a particular attorney-in-fact. The agreement shall be a separate writing and may not be required by a third person as a routine matter or as a condition of doing business.

(b) An agreement complying with subdivision (a) is enforceable notwithstanding any other section in this chapter.

Comment. Section 4300 is new. This section provides a means for a principal to protect against potential fraud and gives a third person certain authority to resist compliance with powers of attorney described in such a written agreement. Subdivision (b) makes clear that the agreement provides an exception to the rules requiring recognition of the attorney-in-fact's authority. See, e.g., Sections 4300 (third persons required to respect attorney-in-fact's authority), 4306 (reliance on attorney-in-fact's certificate).

See also Sections 4014 ("attorney-in-fact" defined), 4022 ("power of attorney" defined), 4026 ("principal" defined), 4034 ("third person" defined).

There is one non-CBA amendment. Len Pollard, a member of the State Bar Estate Planning, Trust and Probate Law Executive Committee has expressed great concern about not continuing the word "solely" in the basic fiduciary duty section. (See Exhibit pp. 5-8.) The word "solely" was omitted some time ago with the idea that it probably didn't have any effect in practice and was more appropriate in a trust context than in a family power of attorney situation. No one objected until just recently. The State Bar team members who have worked with the Commission on this project have no problem with restoring "solely." The basic duty would then read the same as in the Trust Law. The change may also provide additional comfort to the lobbyists for CBA and CLTA.

Accordingly, Section 4232 has been amended as follows:

§ 4232. Duty of loyalty

4232. (a) An attorney-in-fact has a duty to act *solely* in the interest of the principal and to avoid conflicts of interest.

(b) An attorney-in-fact is not in violation of the duty provided in subdivision (a) solely because the attorney-in-fact also benefits from acting for the principal, has conflicting interests in relation to the property, care, or affairs of the principal, or acts in an inconsistent manner regarding the respective interests of the principal and the attorney-in-fact.

The staff will report on the progress of SB 1907 which is scheduled to be heard on the Tuesday preceding the Commission meeting. If all goes as planned, it will not be necessary to take any additional amendments, but it can be difficult to predict these things.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary



EXHIBIT

California Bankers Association
Established 1891

Study L-3044
Law Revision Commission
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APR 12 1994

File: SB 1907

April 8, 1994

The Honorable Tom Campbell
Member, California State Senate
State Capitol, Room 3048
Sacramento, CA 95814

RE: OPPOSITION TO SB 1907 (CAMPBELL)

Dear Senator Campbell:

On behalf of California Bankers Association, CBA, I regret to inform you that we must **OPPOSE** your SB 1907 which amends the Power of Attorney law and relocates the changes to the Probate Code.

Our opposition rests on the following grounds:

To the extent that SB 1907 amends existing law governing the Probate Certification of Trust Act contained in Probate Code section 18100.5, we object to the proposed amendments which are inconsistent with existing law amended last year as a result of protracted negotiations between the State Bar Probate Section and California Bankers Association. The bill, which codifies existing law in this area, AB 1249 (Horcher) C. 530, Statutes of 1993 has only been in effect since January 1, 1994 and the amendments that AB 1249 made to existing law were accepted by the author of the bill, Assemblyman Horcher and the sponsor's of the bill, the Probate Section of the State Bar. The purpose of the current amendments to Probate section 18100.5 were:

1. to protect third parties dealing with agents of a principal operating under a probate certificate (probate power of attorney); and,
2. to prevent fraud by unauthorized agents or agents acting outside the scope of their powers to the detriment of principals, beneficiaries and third parties.

To the extent that SB 1907 deviates in substance from the protections of existing law found in Probate Section 18100.5, we oppose such substantive changes. It should be noted that CBA has no objection to relocating the statute within the Probate Code however we must object to the proposed substantive changes which impact the potential liability of third parties. I have enclosed a copy of AB 1249 (Horcher), Chapter 530, Statutes of 1993 for your reference.

In addition, CBA believes the following changes are necessary to SB 1907 to protect third parties and prevent fraud in the new provisions of the bill amending the general Statutory Power of Attorney Act currently found in the Civil Code:

1. Civil Code Section 2356 subdivision (b) should be amended to delete the term "bona fide". Section 2356 (b) provides that a bona fide transaction entered into by the agent acting without actual knowledge that the power of attorney has been revoked is binding on the principal. Since the actual knowledge standard is present in the section, CBA believes it is unnecessary and confusing to require proof of a bona fide transaction. Use of the term bona fide raises issues as to what, in addition to lack of knowledge is needed to bind the principal to the transaction upon which the third party relies.

2. Civil Code Sections 2355 and 2356 should be parallel. Accordingly, CBA suggests removal of the phrase found in Section 2355 "as to every person having notice thereof" and adding a new subdivision (b), comparable to that in Section 2356. Please note that section 2355 does not have a "bona fide" requirement.

3. Add Section 4231(d) as follows:

4231(d). Subsection (c) shall not apply in the case of an attorney-in-fact who related to the principal and who does not receive any compensation for acting as an attorney-in-fact.

4. Amend Section 4237 as follows:

4237. Except as set forth in Section 4231, [a]n attorney-in-fact with special skills has a duty to apply the full extent of those skills.

(Changes adding section 4231(d) and amending section 4237 are necessary to protect a relative of the principal or other person who is performing the function as favor to the principal and not acting in any formal capacity.)

5. Amend Section 4264(d) as follows:

4264(d). Disclaim a gift or devise of property to or for the benefit of the principal, unless the attorney-in-fact reasonably determines that acceptance of the gift or devise may damage the principal or cause the principal to incur liability.

(This provision is necessary to protect against CERCLA liability- because the real property is contaminated by hazardous

substances-or tax liability imposed upon the principal)

6. Add the following provision as a final paragraph to Section 4308:

4308. For purposes of this Chapter, a branch or separate office of financial institution is a separate financial institution for the purpose of determining whether the financial institution has received knowledge pertaining to a power of attorney. Knowledge by an employee in one such branch or office will not be attributed to another.

4. Add a new section 4309 as follows:

4309. A written agreement between a principal and a financial institution which authorizes the institution to refuse a power of attorney is enforceable, notwithstanding Section 4306.

5. Add a new section 4310 as follows:

4310(a). If a power of attorney is revoked or modified in a manner which affects the rights or obligations of third parties, the attorney-in-fact shall promptly notify each affected third party of the death of the principal and, if the power is nondurable, of the incapacity of the principal.

(b) A financial institution which does not receive notice of death, incapacity, modification or revocation shall not be charged with having actual knowledge of such facts under Section 4308.

(These three sections assure that the actual knowledge standard is appropriately applied to financial institutions and also that changes in the effect of the power of attorney is promptly brought to the institutions' attention.)

6. Add a new section 4311 and a new section 4410 as follows:

(a). Nothing in this Chapter shall require a financial institution to open a deposit account or grant a loan to a principal based on a power of attorney if any of the following circumstances exist:

(1) if the power of attorney to be exercised is to open a deposit account and the principal is not currently a depositor of the financial institution or if the power of attorney to be exercised is to grant a loan and the principal is not currently a borrower of the financial institution; or,

The Honorable Tom Campbell
April 8, 1994
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(2) the attorney-in-fact has previously breached any agreement with the financial institution.

(b). A financial institution may require an attorney-in-fact to provide it with the current and permanent residence addresses of the principal before it agrees to act upon the power of attorney.

(c). A written agreement between a principal and a financial institution which authorizes the institution to refuse a power of attorney is enforceable, notwithstanding Section 4406 [this last phrase applies only to the new section 4410.]

(These two sections are necessary to protect against fraud by the agent).

If these amendments are accepted, CBA will remove its opposition to SB 1907. Thank you, in advance, for your consideration in this matter. Do not hesitate to contact me if I can be of further assistance.

Sincerely,



MAURINE C. PADDEN
Vice President/Legislative Counsel

MCP:mm

cc: John Glidden, Consultant, Senator Tom Campbell
Ed Levy, California League of Savings Institutions
Richard Mersereau, California Credit Union League
Craig Page, California Land Title Association
Nat Sterling, California Law Revision Commission

Enclosure

Law Revision Commission
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APR 13 1994

File: _____

April 13, 1994

TO: Stan Ulrich
California Law Revision Commission

FROM: Leonard W. Pollard II

RE: Senate Bill 1907 - Comprehensive Power of
Attorney Law: Proposed Section 4232, Duty of Loyalty

SUMMARY

SB 1907 is the LRC's Comprehensive Power of Attorney Law measure. I am concerned that the duty of loyalty, as stated in the measure, unnecessarily departs from historic law.

- * SB 1907 at section 4232 subsection (a) provides:

"An attorney-in-fact has a duty to act in the interest of the principal, and to avoid conflicts of interest."

- * I propose that section 4232 subsection (a) provide:

"An attorney-in-fact has a duty to act solely in the interest of the principal."

My proposal is consistent with current law. The word "solely" should not be deleted. Some think family members will be the attorneys-in-fact; there will be inherent conflicting interests. This is no reason to alter the duty of loyalty. If a principal appoints an agent in a situation replete with conflicting interests, then the courts review the matter to see if the agent acted in a reasonable manner in light of the conflicting interests. This is current law. There is no reason to deviate from historic language. If different language is used, the courts will correctly presume that the legislature intended to deviate from the historic law, and conceivably alter the burden of producing evidence to the person challenging the fiduciary's act. The flexibility sought to be achieved in section 4232 is fully accomplished by the historic language.

ANALYSES

The Restatement (Second) of Agency § 387, cmt.b (1957)) incorporates the duty of loyalty as recited in trust law. The Restatement (Second) of Trusts, section 170 (1959) states the duty of loyalty as follows:

- (1) The trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary.
- (2) The trustee in dealing with the beneficiary on the trustee's own account is under a duty to the beneficiary to deal fairly with him and to communicate to him all material facts in connection with the transaction which the trustee knows or should know.

Probate Code section 16002 adopts the Restatement of Trusts language:

"[Duty of Loyalty] The trustee has the duty to administer the trust solely in the interest of the beneficiaries."

The October 31, 1990 LRC Memorandum 90-122 at section 4162 dealt with the duty of loyalty as follows:

"When acting under a power of attorney for property, the agent has a duty to act [solely] in the interest of the principal." [Brackets by LRC]

Staff commented that the section may be unrealistic, but is continued since it appears to be existing law. At minimum, Staff thought the word "solely" should probably be deleted. The power of attorney under Missouri law provides that the agent is "under a duty to act in the interest of the principal and to avoid conflicts of interest that impair the ability . . . so to act." (See Mo. Ann. Stat., § 404.714 (1) (Vernon 1990).)

The LRC Staff apparently felt the word "solely" would be unduly restrictive in use of a power of attorney. Staff anticipated that family members would be the primary agents under the power of attorney, and family members may have inherent conflicts of interest with the principal. By custom and practice in our society, the executor and trustee are also frequently family members, who are beneficiaries under the instruments they administer. These two positions are impressed with the traditional duty of loyalty and function adequately under current law.

Why should an agent (attorney-in-fact) be subjected to a lesser duty of loyalty. If anything, the danger of self-dealing is tremendously enhanced in the power of attorney context. The acts of the agent will seldom see the light of day. This is so particularly under a durable power, where the principal lacks capacity. Family members frequently are reluctant to challenge the suspected improper acts of another family member who is Mother's or Grandmother's attorney-in-fact. Once courage is mustered to challenged perceived acts of self-dealing, the inquiry will explore gray areas of fact, alleged directions from the principal, and disguised self-dealing. (Mother told me to pay off the \$30,000 construction loan on my home; we added a new living room where she liked to sit when she visited twice a month. Mother was only using her money to do the things she wanted to do, before she died.)

Strict rules circumscribe the activities of a fiduciary. There are three reasons for these rules:

- (1) It is difficult, if not impossible, for a person to act impartially in a matter in which they have an interest;
- (2) Fiduciary relationships lend themselves to exploitation;
- (3) The chance of discovering the fiduciary's exploitation is remote.

As Lord Hardwicke was quoted in 1798:

"Where a trustee has an advantage to himself, it is a great temptation to him to be negligent; acting in a manner that does not quite fix an imputation on him. His conduct may be so covered, that it may be difficult to fix direct fraud upon him." (Ves. Jr. 740, 750 (1798).)

The historic duty of loyalty places the burden on the fiduciary to show there has been no self-dealing. The need for this continued rule is actually enhanced in the context of the power of attorney.

The duty of loyalty operates in equity. The existence of a breach depends upon the facts and circumstances of each case. The fiduciary may be appointed to act in a situation replete with conflicting interests. In that situation, created by the principal herself, the issue is whether the fiduciary acted in a reasonable manner in light of the conflicting interests. (Copley v. Copley (1981) 126 Cal.App.3d 248, 278-280.)

The LRC may look to *Getty v. Getty* (1988) 205 Cal.App.3d 134, saying that the courts may not allow a fiduciary to act where there is a conflicting interest. In that case, the court appointed a "trustee ad litem" to represent the trust in certain litigation. The trustee had sold his personal shares of Getty Oil Company and the trust shares of Getty Oil Company to Texaco. Other trust beneficiaries sought to void the sale of Getty Oil Company's stock to Texaco. The trustee's personal interests and conduct were aligned against the interests of the beneficiaries, who were seeking to preserve the trust assets. The court's appointment of a "trustee ad litem" is the proper result. The appointment of a "trustee ad litem" in the *Getty* case does not demonstrate the need for a lesser duty of loyalty for an attorney-in-fact. In the *Estate of Gilliland* (1977) 73 Cal.App.3d 515, the court declined to remove the trustee, even though the entire corpus of the trust was closely-held stock in a corporation in which the trustee was shareholder and salaried president; the decedent trustor, said the court, was aware of this conflict, and no actual dishonesty was alleged.

CONCLUSION

In conclusion, the historic duty of loyalty accommodates the LRC's intentions. Elimination of the word "solely" may be construed to lessen or, in fact, actually shift the burden away from the attorney-in-fact, who is otherwise required to show that the transaction was in the best interest of the principal.

I cannot think of a "safe harbor" which can be allowed to shift the burden of producing evidence to the party attacking the attorney-in-fact's transaction. This is particularly so where the principal may lack capacity, and would be incapable of consent or acquiescence. The principal simply must be able to trust the fiduciary; and the fiduciary must stand ready to show her action was not a breach of that trust.

LEONARD W. POLLARD II

LWP:vam



THE STATE BAR OF CALIFORNIA

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April 22, 1994

The Honorable Thomas Campbell
Member of the Senate, 11th District
State Capitol, Room 3048
Sacramento, CA 95814

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SB 1907, as introduced: SUPPORT
Estate Planning, Trust and Probate Law Section

Dear Senator Campbell,

The Estate Planning, Trust and Probate Law Section of the State Bar of California, composed of experts in the field of estate planning and probate law, is pleased to support your SB 1907 for the reasons detailed in the attached report.

THIS POSITION IS ONLY THAT OF THE ESTATE PLANNING, TRUST AND PROBATE LAW SECTION OF THE STATE BAR. IT HAS NOT BEEN APPROVED BY THE STATE BAR'S BOARD OF GOVERNORS OR OVERALL MEMBERSHIP, AND IS NOT TO BE CONSTRUED AS REPRESENTING THE POSITION OF THE STATE BAR OF CALIFORNIA. MEMBERSHIP IN THE ESTATE PLANNING, TRUST AND PROBATE LAW SECTION OF THE STATE BAR IS VOLUNTARY. THE SECTION IS COMPOSED OF 5,282 MEMBERS FROM AMONG THE 132,000 MEMBERS OF THE STATE BAR OF CALIFORNIA.

It is the policy of the State Bar to refer legislative proposals affecting specific legal questions or the practice of law to the appropriate State Bar Committee or Section for review and comment. If you wish to discuss this position further, please feel free to contact me.

Best Regards,


Larry Doyle
Chief Legislative Counsel

Enclosure

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To: Stan Uchida	From: Mona Hungen	
Co:	Co:	
Dept:	Phone #	
Fax # (415) 444-1335	Fax #	

cc: Senate Committee on Judiciary
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File: SB 1907

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Reporter
LEONARD W. POLLARD II, *San Diego*
Section Administrator
SUSAN M. ORLOFF, *San Francisco*

April 11, 1994

REPLY TO:

0195-05-1

VIA TELECOPIER AND U.S. MAIL

Mr. Larry Doyle
Deputy Legislative Counsel
State Bar Office of Governmental Affairs
915 L Street, Suite 1260
Sacramento, California 95814

Re: SB 1907

Dear Larry:

On behalf of the Estate Planning, Trust and Probate Law Section of the State Bar of California, I am writing to express the Section's strong support of the Comprehensive Power of Attorney Law recommended by the California Law Revision Commission and set forth in SB 1907.

The Executive Committee of the Section has devoted a tremendous amount of time tracking the formation of this legislation by the California Law Revision Commission and making extensive comments and suggestions as it was developed by the Commission. We believe the Commission's final recommendation, sent to Governor Pete Wilson on February 10, 1994, represents a tremendous advance in California law dealing with powers of attorney. In particular, this new law would replace the incomplete and disorganized statutes dealing with powers of attorney and provide a comprehensive and detailed statutory framework for these documents.

Durable powers of attorney are a very important estate planning vehicle today. These documents are in widespread use in California by individuals who wish to designate agents to make decisions regarding their health care and financial affairs

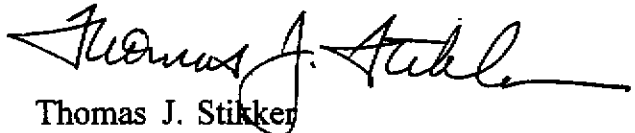
Mr. Larry Doyle
April 11, 1994
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should they become incompetent or unable to handle these matters themselves. Durable powers of attorney generally present a far superior alternative to the more costly and expensive conservatorship or trust options. The proposed legislation restructures, relocates and refines statutory provisions relating to the creation, modification and termination of powers of attorney, the powers and obligations of agents, relations between agents and third persons and judicial proceedings concerning powers of attorney. In short, the legislation provides much needed consistency and clarification with respect to these matters.

Members of the Executive Committee stand ready to appear and testify at any legislative hearings on SB 1907. Kindly advise us when such an appearance would be warranted and keep us posted as to developments with respect to this very important legislation.

Thank you for your assistance.

Sincerely,


Thomas J. Stikker

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