

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATIONS

relating to

Powers of Attorney

**Springing Powers of Attorney
Uniform Statutory Form Power of Attorney Act**

December 1989

**California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739**

THE CALIFORNIA LAW REVISION COMMISSION

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Cite this pamphlet as *Recommendations Relating to Powers of Attorney*, 20 Cal. L. Revision Comm'n Reports 401 (1990).

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NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Springing Powers of Attorney*, 20 Cal. L. Revision Comm'n Reports 405 (1990).

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

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VAUGHN R. WALKER

December 1, 1989

To: The Honorable George Deukmejian
Governor of California, and
The Legislature of California

A springing power of attorney is one that becomes effective at a future time specified in the instrument that creates the power or on the occurrence of a particular event or contingency specified in the instrument. This recommendation proposes enactment of a statutory provision to make a springing power of attorney more acceptable to third persons to whom the power of attorney is presented.

This recommendation is made pursuant to 1980 Cal. Stat. res. ch. 37.

Respectfully submitted,

Edwin K. Marzec
Chairperson

RECOMMENDATION

The durable power of attorney¹ is a popular means for individuals to provide for the care of their property and management of their financial affairs should they become incapacitated, without incurring the expense and delay of formal conservatorship proceedings or setting up a trust. The Law Revision Commission has previously recommended legislation to make durable powers of attorney more readily available through use of a statutory short-form power of attorney² and to make the durable power of attorney more effective by protecting third persons who rely on the power in good faith.³ Recently attention has been drawn to the need to provide more guidance as to “springing” powers of attorney—powers of attorney that become effective at a future time specified in the instrument or on the occurrence of a particular event or contingency specified in the instrument.⁴

The California Uniform Durable Power of Attorney Act recognizes a springing power of attorney that becomes effective upon the incapacity of the principal,⁵ but otherwise

1. Civil Code §§ 2400-2423. See *Recommendation Relating to Uniform Durable Power of Attorney Act*, 15 Cal. L. Revision Comm'n Reports 351 (1980). For additional legislative history, see 16 Cal. L. Revision Comm'n Reports 25, 43-46 (1982).

2. Civil Code §§ 2450-2473. See *Recommendation Relating to Statutory Forms for Durable Power of Attorney*, 17 Cal. L. Revision Comm'n Reports 701 (1984). For additional legislative history, see 18 Cal. L. Revision Comm'n Reports 18-19, 45-47 (1986). The Commission is also submitting a recommendation proposing enactment of the Uniform Statutory Form Power of Attorney Act. That recommendation is included in this publication.

3. Civil Code §§ 2510-2513. See *Recommendation Relating to Durable Powers of Attorney*, 18 Cal. L. Revision Comm'n Reports 305 (1986). For additional legislative history, see 18 Cal. L. Revision Comm'n Reports 216-17, 379-82 (1986).

4. See generally N.Y. L. Revision Comm'n, *Recommendation Relating to Springing Durable Powers of Attorney*, Report for 1988, at 230-45 (Leg. Doc. No. 65, 1988); B.C. L. Ref. Comm'n, *Working Paper on the Enduring Power of Attorney: Fine-Tuning the Concept* 28 (Working Paper No. 62, July 1989); Montgomery & Wright, *Durable Powers of Attorney for Property Management*, in 1989 California Durable Power of Attorney Handbook § 2.6, at 30-32, § 2.96, at 82 (Cal. Cont. Ed. Bar 1989).

5. Civil Code § 2400.

California law is silent on the matter.⁶ A well-drawn springing power of attorney will provide for an appropriate means of determining whether the triggering event or contingency has occurred, such as by the certification of the attorney in fact designated in the instrument, the principal's physician, an attending physician, or the principal's attorney, or a trusted friend or relative.⁷ However, without appropriate statutory guidance, even the well-drawn instrument may be inadequate since third persons may not be willing to rely on its terms or may be unwilling to make the effort to interpret the instrument to see whether its terms have been satisfied. Eventually judicial proceedings to determine the principal's incapacity may be required, thus incurring the delay, expense, and potential embarrassment that the springing power sought to avoid.

The need for springing powers of attorney is evident, since a person may be unwilling to grant an immediately effective power. While there are other options, they may not be as practical or desirable as the springing power. A person who is wary of granting an immediately effective power of attorney may retain the instrument, or leave it in the possession of his or her attorney, friend, or relative with instructions to deliver it to the attorney in fact when the time is ripe. This arrangement may work well enough in many situations, but there is no reason to force people into selecting this arrangement rather than a relatively simple springing power of attorney. In any event, springing powers are often now used in preference to other arrangements and should be made effective and acceptable to third persons.

6. It should also be noted that a springing power of attorney need not be contingent on the incapacity of the principal; there are other appropriate triggering events such as a future certain date or the failure to return from a trip. Nor is it necessary that a springing power of attorney be durable, if it is not contingent on the incapacity of the principal.

7. See Montgomery & Wright, *Durable Powers of Attorney for Property Management*, in 1989 California Durable Power of Attorney Handbook § 2.6, at 30-32 (Cal. Cont. Ed. Bar 1989).

The Law Revision Commission recommends a simple statutory validation of springing powers of attorney that would protect third persons who act in reliance on a written declaration that the power is effective. A springing power intended to take advantage of the statute would designate a person or persons who have the power to execute a written declaration under penalty of perjury that the specified event or contingency triggering the springing power has occurred. The person named as attorney in fact could be designated as the person to determine the triggering event either alone or together with other persons. A third person would be able to rely on the declaration of the designated persons without any liability and without regard to whether the triggering event or contingency has actually occurred. The statutory provision is simple and easy for drafters to invoke. It would not supplant any different procedure for determining the triggering event spelled out in the instrument.

The new statute should apply retroactively to any power of attorney drafted before its effective date if the power falls within its terms by designating a person or persons to determine whether the triggering event has occurred. Application of the new statute to existing powers of attorney would meet the expectations of principals and would not impair any vested rights.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to add Section 2514 to the Civil Code, relating to powers of attorney.

The people of the State of California do enact as follows:

Civil Code § 2514 (added). Springing power of attorney

SECTION 1. Section 2514 is added to the Civil Code, to read:

2514. (a) As used in this section:

(1) "Attorney in fact", "power of attorney", and "principal" have the meanings given these terms in Section 2410.

(2) "Springing power of attorney" means a power of attorney stating that it becomes effective at a specified future time or on the occurrence of a specified event or contingency including, but not limited to, the subsequent incapacity of the principal. A springing power of attorney may be a durable power of attorney or a nondurable power of attorney.

(b) In a springing power of attorney, the principal may designate one or more persons who, by a written declaration under penalty of perjury, have the power to determine conclusively that the specified event or contingency has occurred. The principal may designate the attorney in fact or another person to perform this function, either alone or jointly with other persons.

(c) A springing power of attorney containing the designation described in subdivision (b) becomes effective when the person or persons designated in the power of attorney execute a written declaration under penalty of perjury that the specified event or contingency has occurred, and any person may act in reliance on the written declaration without liability to the principal or to any other person, regardless of whether the specified event or contingency has actually occurred.

(d) This section applies to a power of attorney whether executed before, on, or after January 1, 1991, if the power of attorney contains the designation described in subdivision (b).

Comment. Section 2514 is a new provision intended to make springing powers of attorney more effective by providing a mechanism for conclusively determining that the triggering event or contingency has occurred. Subdivision (b) makes clear that the principal may give the attorney in fact (or one or more other persons) the power to determine by written declaration under penalty of perjury that the event or contingency specified in the springing power of attorney has occurred so that the power of attorney is effective. This section does not apply to or affect springing powers of attorney containing different procedures for determining whether the triggering event or contingency has occurred. This section applies only where the terms of subdivision (b) are satisfied.

Subdivision (c) makes clear that the written declaration of the persons designated in the power of attorney is conclusive, even though it may turn out that the event or contingency did not occur, or that circumstances have now returned to normal. The purpose of the conclusive written declaration is to permit other persons to act in reliance on the written declaration without liability.

A springing power of attorney may or may not be a durable power of attorney. A springing power that takes effect on the occurrence of a contingency other than the incapacity of the principal (such as, for example, the principal's failure to return from a vacation or business trip by a certain date) need not be a durable power of attorney. However, a springing power of attorney that takes effect upon the subsequent incapacity of the principal is necessarily a durable power of attorney, and the other rules concerning durable powers of attorney are applicable. See, e.g., Sections 2400-2407 (Uniform Durable Power of Attorney Act).

Subdivision (d) makes clear that this section applies to powers of attorney executed before the operative date of this section if they contain the designation provided in subdivision (b).

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This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Uniform Statutory Form Power of Attorney Act*, 20 Cal. L. Revision Comm'n Reports 415 (1990).

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VAUGHN R. WALKER

December 1, 1989

To: The Honorable George Deukmejian
Governor of California, and
The Legislature of California

This recommendation proposes the enactment of the Uniform Statutory Form Power of Attorney Act. This new uniform act would replace Civil Code Sections 2450-2473 (statutory short form power of attorney). This recommendation is made pursuant to 1980 Cal. Stat. res. ch. 37.

Respectfully submitted,

Edwin K. Marzec
Chairperson

RECOMMENDATION

A durable power of attorney to cover all aspects of property matters may be a lengthy document. To avoid this, the new Uniform Statutory Form Power of Attorney Act¹ provides a short statutory form that gives the agent (attorney in fact) authority to act with respect to one or more of 13 categories of transactions or matters, such as “real property transactions” or “banking and other financial institution transactions.”²

The Uniform Act contains constructional sections that spell out in considerable detail the precise powers the agent has if granted one or more of the general categories of authority listed in the 13 categories in the form.³ For example, if the agent is given authority with respect to “real property transactions” in the statutory form, the details of the authority granted are specified in a more than 350-word statutory statement.⁴

1. The new Uniform Statutory Form Power of Attorney Act (hereinafter referred to as “Uniform Act”) was approved and recommended for enactment in all the states by the National Conference of Commissioners on Uniform State Laws in 1988.

2. Uniform Act § 1. The categories included in the Uniform Act are:

- (A) Real property transactions.
- (B) Tangible personal property transactions.
- (C) Stock and bond transactions.
- (D) Commodity and option transactions.
- (E) Banking and other financial institution transactions.
- (F) Business operating transactions.
- (G) Insurance and annuity transactions.
- (H) Estate, trust, and other beneficiary transactions.
- (I) Claims and litigation.
- (J) Personal and family maintenance.
- (K) Benefits from social security, medicare, medicaid, or other governmental

programs, or military service.

(L) Retirement plan transactions.

(M) Tax matters.

(N) ALL OF THE POWERS LISTED ABOVE.

3. Uniform Act §§ 3-16. See also Uniform Act § 17 (after acquired property, property located outside state, exercise of power outside state, execution of power outside state).

4. Uniform Act § 4.

The Uniform Act form⁵ contains a space for “special instructions.” In this space, the principal can insert language that makes the power a “springing power,” that is a power that does not become operative until the occurrence of some future event, such as the incapacity of the principal.⁶ In addition, using this space, the principal can limit the powers that would otherwise be granted with respect to one or more of the categories of powers granted to the agent or can add additional powers that would not otherwise be granted to the agent by the form.

California already has legislation substantially similar to the Uniform Act. Civil Code Sections 2450-2473 provide for a “Statutory Short Form Power of Attorney.” The California statute adopts the same scheme as the Uniform Act—a statutory short form,⁷ together with constructional sections in the statute that spell out the authority granted by each of the general categories listed in the statutory form.⁸ The California statutory form also includes a space for “Special Provisions and Limitations” where the principal can provide special provisions and limitations concerning the exercise of the powers granted.⁹

The Uniform Act closely follows the general categories in the California statutory form and the constructional provisions of the California statute. However, there are some significant differences between the existing California statute and the Uniform Act:

(1) All the powers listed on the California statutory form are automatically granted to the agent unless the principal takes

5. Uniform Act § 1.

6. A springing power provision should be used with caution. A power of attorney that is a springing power may not be acceptable to a person to whom the power of attorney is presented absent satisfactory proof that the event that causes the power to become effective has actually occurred.

7. Civil Code § 2450.

8. Civil Code §§ 2460-2473.

9. Civil Code § 2450.

affirmative action to *eliminate* one or more powers by drawing a line through each power not granted.¹⁰ By way of contrast, the Uniform Act requires an affirmative act by the principal in order to *grant* a power to the agent. The Uniform Act requires that the principal initial the space next to each power to be granted or initial a space indicating that the principal wishes to grant the agent all of the listed powers.¹¹

(2) The California statutory form contains a category of powers not found in the Uniform Act form. This category—"all other matters"—adds to the listed powers all additional powers that can be given to an agent.¹² These additional powers are automatically given the agent unless the principal draws a line through this category on the statutory form.¹³ The Uniform Act contains no similar category; any powers the principal wishes to give the agent in addition to the specific powers covered by the 13 categories listed in the form can be granted only by adding a specially drafted statement to the form describing the additional powers granted.

10. Civil Code § 2450. The instructions on the form state: "Strike out any one or more of the items above to which you do NOT desire to give your agent authority. . . . TO STRIKE OUT AN ITEM, YOU MUST DRAW A LINE THROUGH THE TEXT OF THAT ITEM."

11. Uniform Act § 1. The instructions on the form state:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

12. Civil Code § 2473(a) (" . . . 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 the sections describing the specific categories of powers] and which the principal can do through an agent"). The authority does not extend to making health care decisions for the principal. Civil Code § 2473(b).

13. See text at note 10 *supra*.

(3) The California statutory form automatically grants very broad estate planning powers to the agent.¹⁴ For example, the authority with respect to “estate transactions” includes the authority to establish a trust with property 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.”¹⁵ By way of contrast, under the Uniform Act, these powers cannot be granted to the agent merely by giving the agent authority under the specific categories listed in the statutory form; it is necessary to spell out specifically these powers by a statement added to the form. Absent a specific statement, the agent has no power under the Uniform Act to create, modify, or revoke a trust.

(4) The California statutory form gives the agent very broad authority to make gifts and other transfers without consideration and to engage in transactions for the benefit of the spouse or descendants of the principal.¹⁶ No similar authority is found in the Uniform Act. Here again, if it is desired to give broad estate planning powers to the agent, the

14. These powers may be withheld by drawing a line through the category “estate transactions” or by adding specifically drafted limitations in the portion of the form for “Special Provisions and Limitations.” See text at notes 9-10 *supra*.

15. Civil Code § 2467(a)(5). Section 2467 also gives the agent the power to “exercise in whole or in part, release, or 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, but a trust created by the principal may only be modified or revoked by the agent as provided in the trust instrument.” Other provisions of the California statute also give the agent the power to create, modify, or revoke a trust with respect to specific types of property. See, e.g., Civil Code §§ 2460(a)(4) (real estate transactions), 2461(a)(4) (tangible personal property transactions), 2462(a)(3) (bond, share, and commodity transactions).

16. Civil Code Section 2470(a) includes a provision that authorizes the agent to:

(8) 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; consent to the splitting of gifts under Internal Revenue Code Section 2513, or successor sections, if the spouse of the principal makes gifts of any one or more of the descendants of the principal or to a charitable

Uniform Act requires that a specially drafted statement granting the powers be added to the form. Absent a specific statement, the agent has only very limited estate planning powers.¹⁷

(5) The California statutory form, but not the Uniform Act form, includes provisions permitting the designation of more than one agent and for specifying whether the multiple agents may act severally or must act jointly.¹⁸

(6) By way of contrast to the form provided by the Uniform Act, the California statutory form includes additional provisions that make the form lengthy and difficult to understand. The California statutory form, but not the Uniform Act form, includes provisions (i) governing the duration of the power of attorney and (ii) permitting the nomination of a conservator of the estate.¹⁹ These provisions, together with the explanations and instructions concerning them, add considerably to the length and complexity of the form.

(7) The general requirements for a durable power of attorney in California are that the durable power of attorney

institution; pay any gift tax that may arise by reason of those gifts; and loan any assets of the principal to the spouse or descendants of the principal, or their personal representatives or a trustee for their benefit, the loan bearing such interest, and to be secured or unsecured, as the agent determines advisable.

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

17. Under the Uniform Act, the agent has limited authority to obtain insurance and to designate insurance beneficiaries (Uniform Act § 10), to transfer property of the principal to a revocable trust created by the principal as settlor (Uniform Act § 11), and to designate and change beneficiaries under retirement plans (Uniform Act § 15).

18. Civil Code § 2450. See also Civil Code § 2453.

19. Civil Code § 2450. Under the Uniform Act, the duration of the power of attorney can be limited by a statement included in the "Special Instructions" portion of the form. The Uniform Act form creates a durable power of attorney unless the principal strikes out the sentence in the form that provides that the power "will continue to be effective even though I become disabled, incapacitated, or incompetent."

be “in writing” and include language showing the intent that the authority conferred shall be exercisable notwithstanding the principal’s subsequent incapacity.²⁰ The California statutory form and the Uniform Act form both have an additional requirement: The form must be signed and dated by the principal and acknowledged before a notary.²¹ However, the California statute further requires two witnesses, making execution of the form more difficult and confusing.²² The witnesses must be present when the principal signs or acknowledges the form and must personally know the principal or the identity of the principal must be proved to them by “convincing evidence.” The form contains a long statement of what constitutes convincing evidence.

(8) The Uniform Act form includes a more concise statement concerning the consequences of executing the form than the statement in the California form.

The Law Revision Commission recommends that the Uniform Statutory Form Power of Attorney Act (with the additions described below) be enacted in California to replace the existing Statutory Short Form Power of Attorney statute. The form provided by the Uniform Act is simple and easy to understand. This simplicity, together with the advantage of having a uniform form that will receive national acceptance, outweigh any benefit that might be thought to exist because of the broader scope, the additional provisions, and the more complex execution requirements of the existing California statutory short form.

20. Civil Code § 2400. Section 2400 is part of the California Uniform Durable Power of Attorney Act.

21. Civil Code § 2452; Uniform Act §1(b). See also Gov’t Code § 27287 (general requirement that instrument must be acknowledged in order to be recorded).

22. Civil Code § 2452(2). See also the instructions on the form itself. Civil Code § 2450.

The legislation recommended by the Commission makes the following additions to the Uniform Act:²³

(1) Provisions drawn from the existing California Statutory Short Form Power of Attorney statute are added to the Uniform Act form to permit designation of co-agents.²⁴

(2) A section is added to the Uniform Act to make a springing power of attorney acceptable to third persons to whom it is presented. A springing power of attorney is one that goes into effect upon the occurrence of a specified event or contingency. The new section includes a provision that protects a third person who relies on the declaration under penalty of perjury of the person or persons named in the power of attorney that the specified event or contingency has occurred. The inclusion of this section would not limit the means that can be used to create a springing power.

(3) A section is added to the Uniform Act to encourage a third person to accept and act on the power of attorney. The new section requires that the court award attorney fees to the agent if the court finds that the third person acted unreasonably in refusing to honor the power of attorney. The section is drawn from Probate Code Section 13105 (affidavit procedure for collection or transfer of personal property of a small estate).

(4) A section is added to the Uniform Act to make clear that the general provisions that apply to a power of attorney apply to a statutory form power of attorney under this chapter. Many of these provisions protect third persons who act in good faith reliance upon the power of attorney.

23. In addition to the revisions mentioned in the text, to conform to the California Uniform Durable Power of Attorney Act (Civil Code § 2400), the word "incapacitated" should be substituted for "disabled, incapacitated, or incompetent" in the text of the Uniform Act form and in the instruction that follows the text.

24. A provision also should be added to the statute to make clear that the Uniform Act form is not invalid merely because it does not include a provision that permits designation of co-agents.

(5) A section is added to the Uniform Act to make clear that the agent has no power to modify or revoke a trust unless a specific provision is added to the statutory form giving the agent that power and to recognize the requirement of Probate Code Section 15401(b) which precludes modification of a trust by an attorney in fact unless the trust instrument expressly so permits.

The Commission further recommends that the existing California Statutory Short Form Power of Attorney statute (Civil Code Sections 2450-2473) be repealed. However, a provision should be enacted to permit continued use of this form after the repeal of the statute. This will protect the person who uses the old form without knowledge that the statute has been repealed and will also permit use of the old form by a lawyer or other informed person who desires to use the old form because it grants broader powers than those granted by the Uniform Statutory Form Power of Attorney Act (Sections 2475-2499).

RECOMMENDED LEGISLATION**CHAPTER 3.5. UNIFORM STATUTORY FORM POWER
OF ATTORNEY ACT**

(This chapter is added to the Civil Code)

Article 1. General Provisions

- § 2475. Statutory form
- § 2476. Requirements for statutory form power of attorney
- § 2477. Effect of initialing line in front of (N) in statutory form
- § 2478. Durable power of attorney
- § 2479. Power of attorney that becomes effective upon occurrence of specified event or contingency
- § 2480. Compelling third person to honor power of attorney
- § 2481. General provisions applicable to power under this chapter
- § 2482. Short title
- § 2483. Uniformity of construction
- § 2484. Partial invalidity

Article 2. Construction of Powers

- § 2485. Construction of powers generally
- § 2486. Real property transactions
- § 2487. Tangible personal property transactions
- § 2488. Stock and bond transactions
- § 2489. Commodity and option transactions
- § 2490. Banking and other financial institution transactions
- § 2491. Business operating transactions
- § 2492. Insurance and annuity transactions
- § 2493. Estate, trust, and other beneficiary transactions
- § 2494. Claims and litigation
- § 2495. Personal and family maintenance
- § 2496. Benefits from social security, medicare, medicaid, and other governmental programs, or civil or military service
- § 2497. Retirement plan transactions
- § 2498. Tax matters
- § 2499. After acquired property; property located outside this state; power exercised outside this state; power of attorney executed outside this state
- § 2499.5. Power to modify or revoke trust

Article 1. General Provisions

2475. Statutory form

2475. The following statutory form of power of attorney is legally sufficient when the requirements of Section 2476 are satisfied:

**UNIFORM STATUTORY FORM POWER OF ATTORNEY
(California Civil Code § 2475)**

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA CIVIL CODE SECTIONS 2475-2499.5). IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I

_____ (your name and address)

appoint

_____ (name and address of the person appointed, or of each person appointed if you want to designate more than one)

as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

- (A) Real property transactions.
- (B) Tangible personal property transactions.
- (C) Stock and bond transactions.
- (D) Commodity and option transactions.
- (E) Banking and other financial institution transactions.
- (F) Business operating transactions.
- (G) Insurance and annuity transactions.
- (H) Estate, trust, and other beneficiary transactions.
- (I) Claims and litigation.
- (J) Personal and family maintenance.
- (K) Benefits from social security, medicare, medicaid, or other governmental programs, or civil or military service.
- (L) Retirement plan transactions.
- (M) Tax matters.
- (N) ALL OF THE POWERS LISTED ABOVE.

YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney will continue to be effective even though I become incapacitated.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME INCAPACITATED.

EXERCISE OF POWER OF ATTORNEY WHERE MORE THAN ONE AGENT DESIGNATED

If I have designated more than one agent, the agents are to act _____ .

IF YOU APPOINTED MORE THAN ONE AGENT AND YOU WANT EACH AGENT TO BE ABLE TO ACT ALONE WITHOUT THE OTHER AGENT JOINING, WRITE THE WORD "SEPARATELY" IN THE BLANK SPACE ABOVE. IF YOU DO NOT INSERT ANY WORD IN THE BLANK SPACE, OR IF YOU INSERT THE WORD "JOINTLY", THEN ALL OF YOUR AGENTS MUST ACT OR SIGN TOGETHER.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this _____ day of _____, 19__

(your signature)

(your social security number)

State of _____

County of _____

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of California)
) ss.

County of _____)

On this _____ day of _____, 19 __, before me,

_____, personally appeared

(name of notary public)

_____, personally known to

(name of principal)

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.

NOTARY SEAL

 (signature of notary public)

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

Comment. Section 2475 is the same in substance as subsection (a) of Section 1 of the Uniform Statutory Form Power of Attorney Act (1988) with the addition of provisions to permit designation of co-agents. The added provisions are drawn from the former Statutory Short Form Power of Attorney statute. See former Section 2450. The acknowledgment portion of the form has been revised to be consistent with the form used under California law. The word "incapacitated" has been substituted for the words "disabled, incapacitated, or incompetent" used in the Uniform Act. This substitution conforms the statutory form to the California version of the Uniform Durable Power of Attorney Act. See Section 2400.

Section 2475 provides the text of the form that is sufficient and necessary to bring this chapter into operation. A form used to create a power of attorney subject to this chapter should use the language

provided in Section 2475. Minor variances in wording will not take it out of the scope of the chapter. Nor does the omission of the provisions relating to designation of co-agents take the form out of the scope of this chapter. See Section 2476(a). The statutory form can be used in whole or part instead of individually drafted forms or forms adapted from a form book.

After the introductory phrase, the term "agent" is used throughout the Uniform Act in place of the longer and less familiar "attorney in fact." Special effort is made throughout the Uniform Act to make the language as informal as possible without impairing its effectiveness.

The statutory form contains a list of powers. The powers listed relate to various separate classes of activities, except the last, which includes all the others. Health care matters are not included. For a durable power of attorney form for health care matters, see Sections 2500-2508.

Space is provided in the statutory form for "Special Instructions." In this space, the principal can add specially drafted provisions limiting or extending the powers granted to the agent. (If the space provided is not sufficient, a reference can be made in this space to an attached sheet or sheets, and the special provisions can be included on the attached sheet or sheets.)

The statutory form contains only a limited list of powers. If it is desired to give the agent the broadest possible powers, language similar to the following can be added under the "Special Instructions" portion of the form:

In addition to all of the powers listed in lines (A) to (M) above, I grant to my agent full power and authority to act for me, in any way which I myself could act if I were personally present and able to act, with respect to all other matters and affairs not listed in lines (A) to (M) above, but this authority does not include authority to make health care decisions.

Neither the form in this section, nor the constructional provisions in Sections 2485-2499, attempt to allow the grant of the power to make a will or to give the agent extensive estate planning authority, although several of the powers, especially lines (G), (H), and (L) of the statutory form, may be useful in planning the disposition of an estate. An individually tailored power of attorney can be used if the principal wants to give the agent extensive estate planning authority, or additional estate planning powers can be granted to the agent by stating those additional powers in the space provided in the form for "Special Instructions." For example, provisions like the following might be included under the special instructions portion of the statutory form:

In addition to the powers listed in lines (A) to (M) above, the agent is empowered to do all of the following:

(1) Establish a trust with property 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, and transfer any property in which the principal has an interest to the trust.

(2) Exercise in whole or in part, release, or 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, but a trust created by the principal may only be modified or revoked by the agent as provided in the trust instrument.

(3) Make a gift, grant, or other transfer without consideration to or for the benefit of the spouse or descendants of the principal or a charitable organization, 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; consent to the splitting of gifts under Internal Revenue Code Section 2513, or successor sections, if the spouse of the principal makes gifts to any one or more of the descendants of the principal or to a charitable institution; pay any gift tax that may arise by reason of those gifts.

(4) Loan any of the property of the principal to the spouse or descendants of the principal, or their personal representatives or a trustee for their benefit, the loan bearing such interest, and to be secured or unsecured, as the agent determines advisable.

(5) In general, and in addition to all the specific acts enumerated, do any other act 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 other personal relationships of the principal to parents, relatives, friends, and organizations.

It should be noted that a trust may not be modified or revoked by an attorney in fact under a statutory form power of attorney unless it is expressly permitted by the instrument granting the power and by the trust instrument. See Prob. Code Section 15401(b).

Section 2478 and the statutory form itself make the power of attorney a durable power of attorney, remaining in effect after the incapacity of the principal, unless the person executing the form strikes out the language in the form that makes the instrument a durable power of attorney.

The last paragraph of the text of the statutory form protects a third party who receives a copy of the statutory form power of attorney and acts in reliance on it. The statement in the statutory form—that revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation—is consistent with Sections 2403 (good faith reliance upon power of attorney without actual knowledge of death or incapacity of principal), 2404 (affidavit of lack of knowledge of termination of power). See also Section 2512 (protection of person who acts in good faith reliance upon power of attorney where specified requirements are satisfied). The protection provided by these sections and other immunities that may protect persons who rely on a power of attorney (see subdivision (b) of Section 2512) apply to a statutory form power of attorney.

Neither this section, nor the chapter as a whole, attempts to provide an exclusive method for creating a power of attorney. Other forms may be used and other law employed to create powers of attorney. However, this chapter should be sufficient for most purposes.

For provisions relating to court enforcement of the duties of the agent, see Sections 2410-2423.

The form provided by Section 2475 supersedes the former statutory short form power of attorney under former Chapter 3 (commencing with Section 2450). See Section 2450 and the Comment to that section.

§ 2476. Requirements for statutory form power of attorney

2476. A statutory form power of attorney under this chapter is legally sufficient if all of the following requirements are satisfied:

(a) The wording of the form complies substantially with Section 2475. A form does not fail to comply substantially with Section 2475 merely because the form does not include the provisions of Section 2475 relating to designation of co-agents.

(b) The form is properly completed.

(c) The signature of the principal is acknowledged.

Comment. Section 2476 is the same in substance as subsection (b) of Section 1 of the Uniform Statutory Form Power of Attorney Act (1988) with the addition of the second sentence of subdivision (a). (The official text of the Uniform Act does not include provisions for designation of co-agents.) The added sentence in subdivision (a) makes clear that use of a

form that complies with the requirements of the official text of the Uniform Act satisfies the requirements of this section, even though the form used does not include the provisions included in Section 2475 for designation of co-agents.

§ 2477. Effect of initialing line in front of (N) in statutory form

2477. If the line in front of (N) of the statutory form under Section 2475 is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N).

Comment. Section 2477 is the same in substance as subsection (c) of Section 1 of the Uniform Statutory Form Power of Attorney Act (1988).

§ 2478. Durable power of attorney

2478. A power of attorney legally sufficient under this chapter is durable to the extent that the power of attorney contains language, such as “This power of attorney will continue to be effective even though I become incapacitated,” showing the intent of the principal that the power granted may be exercised notwithstanding later incapacity.

Comment. Section 2478 is the same in substance as of Section 2 of the Uniform Statutory Form Power of Attorney Act (1988). The phrase “to the extent that durable powers are permitted by other law of this State,” found in the Uniform Act, has been omitted as unnecessary. Durable powers of attorney are specifically authorized by Article 3 (commencing with Section 2400) of Chapter 2. The words “incapacitated” and “incapacity” are used in Section 2478 to conform to the form used in Section 2475 and to Section 2400 (California version of the Uniform Durable Power of Attorney Act).

A durable power of attorney under this chapter continues in effect when the principal becomes incapacitated. The form in Section 2475 includes a provision for continuance under those circumstances. That provision may be used or stricken at the discretion of the principal. The provision is consistent with Section 2400 (Uniform Durable Power of Attorney Act). See also Sections 2401 (effect of acts by attorney in fact during incapacity of principal), 2403 (good faith reliance upon power of attorney after death or incapacity of principal). As to the effect of appointment of a conservator of the estate, guardian of the estate, or other fiduciary charged with the management of the principal's property, see Section 2402.

§ 2479. Power of attorney that becomes effective upon occurrence of specified event or contingency

2479. (a) A power of attorney under this chapter that limits the power to take effect upon the occurrence of a specified event or contingency, including but not limited to the incapacity of the principal, may contain a provision designating one or more persons who, by a written declaration under penalty of perjury, have the power to determine conclusively that the specified event or contingency has occurred.

(b) A power of attorney that contains the provision described in subdivision (a) becomes effective when the person or persons designated in the power of attorney execute a written declaration under penalty of perjury that the specified event or contingency has occurred, and any person may act in reliance on the written declaration without liability to the principal or to any other person, regardless whether the specified event or contingency has actually occurred.

(c) The provision described in subdivision (a) may be included in the "Special Instructions" portion of the form set out in Section 2475.

(d) Subdivisions (a) and (b) do not provide the exclusive method by which a power of attorney under this chapter may be limited to take effect upon the occurrence of a specified event or contingency.

Comment. Section 2479 is a new provision not found in the Uniform Statutory Form Power of Attorney Act (1988). The section is drawn from Section 5-1602 of the New York General Obligations Law. A provision described in subdivision (a) protects a third person who relies on the declaration under penalty of perjury of the person or persons named in the power of attorney that the specified event or contingency has occurred. The principal may designate the agent or another person, or several persons, to make this declaration.

Subdivision (d) makes clear that subdivisions (a) and (b) are not the exclusive method for creating a "springing power" (a power of attorney that goes into effect upon the occurrence of a specified event or

contingency). The principal is free to set forth in a power of attorney under this chapter any provision the principal desires to provide for the method of determining whether the specified event or contingency has occurred. For example, the principal may provide that his or her "incapacity" be determined by a court under Sections 2410-2423. See Section 2412(a). If the power of attorney provides only that it shall become effective "upon the incapacity of the principal," the determination whether the power of attorney is in effect also may be made under Sections 2410-2423.

§ 2480. Compelling third person to honor power of attorney

2480. If a person to whom a properly executed statutory form power of attorney under this chapter is presented refuses to honor it within a reasonable time, the attorney in fact may compel the person to honor the power of attorney in an action for that purpose brought against the person. If an action is brought under this section, the court shall award attorney's fees to the attorney in fact if the court finds that the person acted unreasonably in refusing to honor the power of attorney.

Comment. Section 2480 is a new provision not found in the Uniform Statutory Form Power of Attorney Act (1988). The section is drawn Probate Code Section 13105 (affidavit procedure for collection or transfer of personal property of small estate). The person to whom the power of attorney is presented may, for example, act reasonably in refusing to honor it where it is not absolutely clear that the power of attorney grants the agent authority with respect to the particular transaction. Likewise, for example, the person may reasonably refuse to honor the power of attorney if the person is not reasonably satisfied as to the identity of the agent or has information that would lead a reasonable person to question the validity of the power of attorney.

§ 2481. General provisions applicable to power under this chapter

2481. The following provisions apply to a statutory form power of attorney under this chapter:

- (a) Article 3 (commencing with Section 2400) of Chapter 2.
- (b) Article 4 (commencing with Section 2410) of Chapter 2.
- (c) Sections 2512 and 2513.

Comment. Section 2481 makes clear that the general provisions that apply to a power of attorney apply to a statutory form power of attorney under this chapter. Accordingly, the following provisions apply to a power of attorney under this chapter:

Section 2400 (requirements to create durable power of attorney). The statutory form set out in Section 2475 satisfies the requirements to create a durable power of attorney unless the provision making the power of attorney durable is struck out on the form.

Section 2400.5 (proxies given by attorney in fact to exercise voting rights).

Section 2401 (effect of acts by attorney in fact during incapacity of principal).

Section 2402 (effect of appointment of a conservator of the estate or other fiduciary charged with the management of the principal's property).

Section 2403 (good faith reliance upon power of attorney after death or incapacity of principal).

Section 2404 (good faith reliance upon affidavit of attorney in fact as conclusive proof of the nonrevocation or nontermination of the power).

Sections 2410-2423 (court enforcement of duties of attorney in fact).

Section 2512 (protection against liability of person acting in good faith reliance upon power of attorney).

Section 2513 (application of power of attorney to all or portion of property of principal; unnecessary to describe items or parcels of property).

§ 2482. Short title

2482. This chapter may be cited as the Uniform Statutory Form Power of Attorney Act.

Comment. This chapter is substantially the same as the Uniform Statutory Form Power of Attorney Act (1988). Section 2482 is the same as Section 19 of the Uniform Act.

§ 2483. Uniformity of construction

2483. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Comment. Section 2483 is a standard provision in Uniform Acts and is the same as Section 18 of the Uniform Statutory Form Power of Attorney Act (1988).

§ 2484. Partial invalidity

2484. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Comment. Section 2484 is a standard provision in Uniform Acts and is the same as Section 20 of the Uniform Statutory Form Power of Attorney Act (1988).

Article 2. Construction of Powers

Comment. This article (commencing with Section 2485) explains the powers listed in the statutory form in Section 2475. Section 2485 provides general powers that apply to all of the defined classes of authority listed in lines (A) through (M) of the statutory form, subject to any conditions set by the principal.

The language in Sections 2486-2498 makes explicit reference to authority that would be appropriate for each class of transaction. The language in those sections identifies activities that are typical responsibilities for the particular class of transaction.

Any of Sections 2486-2498, together with the general authority in Section 2485, gives the agent (attorney in fact) complete power for the class of transactions. The recitation of particular powers in each section explains the scope of the individual section and assures the user of this chapter and the form provided by this chapter that the matters that are the user's particular concern are covered by the chapter. As to use of a power executed outside this state, after-acquired property, use of the power with respect to property located outside this state, and exercise of the power outside this state, see Section 2499.

A general effect of this article is that the agent (attorney in fact) can exercise authority subject to the same conditions and limitations as the principal. In a few instances the limiting conditions are made explicit. For example, in Section 2491 it is stated that partnership powers are subject to the terms of the partnership agreement. But all authority is subject to conditions of fact and law that exist outside the chapter. For example, a collection agency could not escape regulation by acting under this power of attorney. See also Prob. Code § 15401 (modifying or revoking trust).

Provisions of this article grant the agent authority to enforce rights of the principal "by litigation or otherwise" or to initiate litigation or to bring an action. These grants of authority do not affect the Code of Civil Procedure Section 367 requirement that an action be prosecuted in the name of the real party in interest.

§ 2485. Construction of powers generally

2485. By executing a statutory form power of attorney with respect to a subject listed in Section 2475, the principal, except as limited or extended by the principal in the power of attorney, empowers the agent, for that subject, to do all of the following:

(a) Demand, receive, and obtain by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received for the purposes intended.

(b) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction, and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal.

(c) Execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction.

(d) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, a claim existing in favor of or against the principal or intervene in litigation relating to the claim.

(e) Seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney.

(f) Engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant.

(g) Keep appropriate records of each transaction, including an accounting of receipts and disbursements.

(h) Prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation.

(i) Reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney.

(j) In general, do any other lawful act with respect to the subject.

Comment. Section 2485 is the same in substance as Section 3 of the Uniform Statutory Form Power of Attorney Act (1988). See the Comment to this article under the article heading. See also Sections 2410-2423 (court enforcement of duties of attorney in fact).

§ 2486. Real property transactions

2486. In a statutory form power of attorney, the language granting power with respect to real property transactions empowers the agent to do all of the following:

(a) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire, an interest in real property or a right incident to real property.

(b) Sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition, consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease, sublease, or otherwise dispose of, an interest in real property or a right incident to real property.

(c) Release, assign, satisfy, and enforce by litigation or otherwise, a mortgage, deed of trust, encumbrance, lien, or other claim to real property which exists or is asserted.

(d) Do any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned, or claimed to be owned, by the principal, including all of the following:

(1) Insuring against a casualty, liability, or loss.

(2) Obtaining or regaining possession, or protecting the interest or right, by litigation or otherwise.

(3) Paying, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them.

(4) Purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property.

(e) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right.

(f) Participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold shares of stock or obligations received in a plan of reorganization, and act with respect to them, including all of the following:

(1) Selling or otherwise disposing of them.

(2) Exercising or selling an option, conversion, or similar right with respect to them.

(3) Voting them in person or by proxy.

(g) Change the form of title of an interest in or right incident to real property.

(h) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest or right.

Comment. Section 2486 is the same in substance as Section 4 of the Uniform Statutory Form Power of Attorney Act (1988). See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§ 2487. Tangible personal property transactions

2487. In a statutory form power of attorney, the language granting power with respect to tangible personal property transactions empowers the agent to do all of the following:

(a) Accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of

tangible personal property or an interest in tangible personal property.

(b) Sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, sublease to others, or otherwise dispose of tangible personal property or an interest in tangible personal property.

(c) Release, assign, satisfy, or enforce by litigation or otherwise, a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property.

(d) Do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including all of the following:

(1) Insuring against casualty, liability, or loss.

(2) Obtaining or regaining possession, or protecting the property or interest, by litigation or otherwise.

(3) Paying, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments.

(4) Moving from place to place.

(5) Storing for hire or on a gratuitous bailment.

(6) Using, altering, and making repairs or alterations.

Comment. Section 2487 is the same in substance as Section 5 of the Uniform Statutory Form Power of Attorney Act (1988). See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§ 2488. Stock and bond transactions

2488. In a statutory form power of attorney, the language granting power with respect to stock and bond transactions empowers the agent to do all of the following:

(a) Buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments except

commodity futures contracts and call and put options on stocks and stock indexes.

(b) Receive certificates and other evidences of ownership with respect to securities.

(c) Exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

Comment. Section 2488 is the same in substance as Section 6 of the Uniform Statutory Form Power of Attorney Act (1988). See the Comment to this article under the article heading. See also Sections 2400.5 (proxies given by attorney in fact to exercise voting rights), 2485 (construction of powers generally).

§ 2489. Commodity and option transactions

2489. In a statutory form power of attorney, the language granting power with respect to commodity and option transactions empowers the agent to do all of the following:

(a) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated option exchange.

(b) Establish, continue, modify, and terminate option accounts with a broker.

Comment. Section 2489 is the same in substance as Section 7 of the Uniform Statutory Form Power of Attorney Act (1988). See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§ 2490. Banking and other financial institution transactions

2490. In a statutory form power of attorney, the language granting power with respect to banking and other financial institution transactions empowers the agent to do all of the following:

(a) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal.

(b) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and

loan association, credit union, thrift company, industrial loan company, brokerage firm, or other financial institution selected by the agent.

(c) Hire or close a safe deposit box or space in a vault.

(d) Contract to procure other services available from a financial institution as the agent considers desirable.

(e) Withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution.

(f) Receive bank statements, vouchers, notices, and similar documents from a financial institution and act with respect to them.

(g) Enter a safe deposit box or vault and withdraw or add to the contents.

(h) Borrow money at an interest rate agreeable to the agent and pledge as security personal property of the principal necessary in order to borrow, pay, renew, or extend the time of payment of a debt of the principal.

(i) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal's order, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due.

(j) Receive for the principal and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument.

(k) Apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution, and give an indemnity or other agreement in connection with letters of credit.

(l) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

Comment. Section 2490 is the same in substance as Section 8 of the Uniform Statutory Form Power of Attorney Act (1988). See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§ 2491. Business operating transactions

2491. In a statutory form power of attorney, the language granting power with respect to business operating transactions empowers the agent to do all of the following:

(a) Operate, buy, sell, enlarge, reduce, and terminate a business interest.

(b) To the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement:

(1) Perform a duty or discharge a liability and exercise a right, power, privilege, or option that the principal has, may have, or claims to have, under a partnership agreement, whether or not the principal is a partner.

(2) Enforce the terms of a partnership agreement by litigation or otherwise.

(3) Defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of membership in the partnership.

(c) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other instrument of similar character, and defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of a bond, share, or similar instrument.

(d) With respect to a business owned solely by the principal:

(1) Continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business before execution of the power of attorney.

(2) Determine the policy of the business as to (i) the location of its operation, (ii) the nature and extent of its business, (iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation, (iv) the amount and types of insurance carried, and (v) the mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees.

(3) Change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of the business.

(4) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business, and control and disburse the money in the operation of the business.

(e) Put additional capital into a business in which the principal has an interest.

(f) Join in a plan of reorganization, consolidation, or merger of the business.

(g) Sell or liquidate a business or part of it at the time and upon the terms the agent considers desirable.

(h) Represent the principal in establishing the value of a business under a buy-out agreement to which the principal is a party.

(i) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business which are required by a governmental agency or instrumentality or which the agent considers desirable, and make related payments.

(j) Pay, compromise, or contest taxes or assessments and do any other act which the agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including

attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

Comment. Section 2491 is the same in substance as Section 9 of the Uniform Statutory Form Power of Attorney Act (1988). See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§ 2492. Insurance and annuity transactions

2492. In a statutory form power of attorney, the language granting power with respect to insurance and annuity transactions empowers the agent to do all of the following:

(a) Continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract.

(b) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment.

(c) Pay the premium or assessment on, modify, rescind, release, or terminate a contract of insurance or annuity procured by the agent.

(d) Designate the beneficiary of the contract, but the agent may be named a beneficiary of the contract, or an extension, renewal, or substitute for it, only to the extent the agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney.

(e) Apply for and receive a loan on the security of the contract of insurance or annuity.

(f) Surrender and receive the cash surrender value.

(g) Exercise an election.

(h) Change the manner of paying premiums.

(i) Change or convert the type of insurance contract or annuity as to any insurance contract or annuity with respect to

which the principal has or claims to have a power described in this section.

(j) Change the beneficiary of a contract of insurance or annuity, but the agent may not be designated a beneficiary except to the extent permitted by subdivision (d).

(k) Apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal.

(l) Collect, sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in a contract of insurance or annuity.

(m) Pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

Comment. Section 2492 is the same in substance as Section 10 of the Uniform Statutory Form Power of Attorney Act (1988). See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally). Section 2492 covers, but is not limited to, life, accident, health, disability, or liability insurance and fire, marine, burglary, compensation, disability, liability, hurricane, earthquake, and casualty insurance.

§ 2493. Estate, trust, and other beneficiary transactions

2493. In a statutory form power of attorney, the language granting power with respect to estate, trust, and other beneficiary transactions, empowers the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including the power to do all of the following:

(a) Accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund.

(b) Demand or obtain by litigation or otherwise money or other thing of value to which the principal is, may become, or claims to be entitled by reason of the fund.

(c) Initiate, participate in, and oppose litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal.

(d) Initiate, participate in, and oppose litigation to remove, substitute, or surcharge a fiduciary.

(e) Conserve, invest, disburse, and use anything received for an authorized purpose.

(f) Transfer an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance, and other property, to the trustee of a revocable trust created by the principal as settlor.

Comment. Section 2493 is the same in substance as Section 11 of the Uniform Statutory Form Power of Attorney Act (1988). See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§ 2494. Claims and litigation

2494. In a statutory form power of attorney, the language with respect to claims and litigation empowers the agent to do all of the following:

(a) Assert and prosecute before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, cross-complaint, or offset, and defend against an individual, a legal entity, or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief.

(b) Bring an action to determine adverse claims, intervene in litigation, and act as *amicus curiae*.

(c) In connection with litigation:

(1) Procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief

and use any available procedure to effect, enforce, or satisfy a judgment, order, or decree.

(2) Perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation.

(d) Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation.

(e) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.

(f) Act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization proceeding, or with respect to an assignment for the benefit of creditors, receivership, or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value.

(g) Pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

Comment. Section 2494 is the same in substance as Section 12 of the Uniform Statutory Form Power of Attorney Act (1988). Subdivision (f)

is clarified by adding a reference to an assignment for the benefit of creditors. See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§ 2495. Personal and family maintenance

2495. In a statutory form power of attorney, the language granting power with respect to personal and family maintenance empowers the agent to do all of the following:

(a) Do the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract, or paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals.

(b) Provide for the individuals described in subdivision (a) all of the following:

(1) Normal domestic help.

(2) Usual vacations and travel expenses.

(3) Funds for shelter, clothing, food, appropriate education, and other current living costs.

(c) Pay for the individuals described in subdivision (a) necessary medical, dental, and surgical care, hospitalization, and custodial care.

(d) Continue any provision made by the principal, for the individuals described in subdivision (a), for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them.

(e) Maintain or open charge accounts for the convenience of the individuals described in subdivision (a) and open new accounts the agent considers desirable to accomplish a lawful purpose.

(f) Continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or

other organization and continue contributions to those organizations.

Comment. Section 2495 is the same in substance as Section 13 of the Uniform Statutory Form Power of Attorney Act (1988). See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§ 2496. Benefits from social security, medicare, medicaid, or other governmental programs, or civil or military service

2496. In a statutory form power of attorney, the language granting power with respect to benefits from social security, medicare, medicaid or other governmental programs, or civil or military service, empowers the agent to do all of the following:

(a) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in subdivision (a) of Section 2495, and for shipment of their household effects.

(b) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose.

(c) Prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation.

(d) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive.

(e) Receive the financial proceeds of a claim of the type described in this section, conserve, invest, disburse, or use anything received for a lawful purpose.

Comment. Section 2496 is the same in substance as Section 14 of the Uniform Statutory Form Power of Attorney Act (1988). See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§ 2497. Retirement plan transactions

2497. In a statutory form power of attorney, the language granting power with respect to retirement plan transactions empowers the agent to do all of the following:

(a) Select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals.

(b) Designate beneficiaries under those plans and change existing designations.

(c) Make voluntary contributions to those plans.

(d) Exercise the investment powers available under any self-directed retirement plan.

(e) Make rollovers of plan benefits into other retirement plans.

(f) If authorized by the plan, borrow from, sell assets to, and purchase assets from the plan.

(g) Waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

Comment. Section 2497 is the same in substance as Section 15 of the Uniform Statutory Form Power of Attorney Act (1988). See the Comment to this article under the article heading. See also Section 2485 (construction of powers generally).

§ 2498. Tax matters

2498. In a statutory form power of attorney, the language granting power with respect to tax matters empowers the agent to do all of the following:

(a) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act returns, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under Internal Revenue Code Section 2032A or any successor section), closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and to the tax year in which the power of attorney was executed and any subsequent tax year.

(b) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority.

(c) Exercise any election available to the principal under federal, state, local, or foreign tax law.

(d) Act for the principal in all tax matters for all periods before the Internal Revenue Service and any other taxing authority.

Comment. Section 2498 is the same in substance as Section 16 of the Uniform Statutory Form Power of Attorney Act (1988). At the end of subdivision (a), reference is made to “a tax year upon which the statute of limitations has not run and to the tax year in which the power of attorney was executed and any subsequent tax year.” This replaces the reference in the Uniform Act to “a tax year upon which the statute of limitations has not run and the following 25 tax years.” This substitution is consistent with the power granted by subdivision (d) which extends to “all tax matters for all periods” and is not limited to particular tax years. See also the Comment to this article under the article heading and Section 2485 (construction of powers generally).

§ 2499. After-acquired property; property located outside this state; power exercised outside this state; power of attorney executed outside this state

2499. The powers described in this article are exercisable equally with respect to an interest the principal has when the

statutory form power of attorney is executed or acquires later, whether or not the property is located in this state, and whether or not the powers are exercised or the power of attorney is executed in this state.

Comment. Section 2499 makes the power of attorney explicitly effective for property acquired at times and in places that might otherwise be subject to dispute. The section is the same in substance as Section 17 of the Uniform Statutory Form Power of Attorney Act (1988). See also Section 2513 (no need to describe each item or parcel of property).

§ 2499.5. Power to modify or revoke trust

2499.5. A statutory form power of attorney under this chapter does not empower the agent to modify or revoke a trust created by the principal unless that power is expressly granted by the power of attorney. If a statutory form power of attorney under this chapter empowers the agent to modify or revoke a trust created by the principal, the trust may only be modified or revoked by the agent as provided in the trust instrument.

Comment. Section 2499.5 is a new provision not found in the Uniform Statutory Form Power of Attorney Act (1988).

The first sentence of Section 2499.5 makes clear that the agent has no power to modify or revoke a trust unless a specific provision is added to the statutory form giving the agent that power. The “Special Instructions” portion of the statutory form provides space for such a provision. The first sentence is a clarification that is consistent with the uniform act powers. See Section 11 of the Uniform Statutory Form Power of Attorney Act (1988), which does not give the agent the power to modify or revoke a trust created by the principal.

The second sentence of Section 2499.5 recognizes the requirement of Probate Code Section 15401(b) which precludes modification or revocation of a trust by an attorney in fact unless the trust instrument expressly so permits.

CONFORMING REVISIONS

Civil Code § 2450-2473 (repealed)

SEC. __. Chapter 3 (commencing with Section 2450) of Title 9 of Part 4 of the Civil Code is repealed.

Comment. Chapter 3 (commencing with Section 2450) is superseded by the Uniform Statutory Form Power of Attorney Act (Sections 2475-2499). However, a form that complied with the repealed chapter may continue to be used after the repeal takes effect. See Section 2450 (added by the act that repealed former Chapter 3) and the Comment to that section.

Civil Code § 2450 (added)

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

CHAPTER 3. STATUTORY SHORT FORM POWER OF ATTORNEY

§ 2450. Use of statutory form provided by repealed statute

2450. A statutory short form power of attorney executed before, on, or after the repeal of Chapter 3 (commencing with Section 2450) by the act that enacted this section, using a form that complied with Section 2450 as originally enacted by Chapter 602 of the Statutes of 1984, or as amended by Chapter 403 of the Statutes of 1985, is as valid as if Chapter 3 (commencing with Section 2450) had not been repealed by the act that enacted this section.

Comment. Section 2450 permits continued use of the form prescribed by former statutes, even when used after the repeal of the former statutes. See also former Section 2457. Accordingly, after the repeal of the provisions formerly found in this chapter takes effect, either the form set forth in former Section 2450 as originally enacted or the form set forth in Section 2450 as amended may continue to be used. This avoids the need to discard existing printed forms and protects the unwary person who uses a printed form prepared pursuant to the former provisions of this chapter. However, it is anticipated that the new form provided pursuant to the Uniform Statutory Form Power of Attorney Act (Section 2475) will soon replace the older forms.

Civil Code § 2510 (amended). Warning statement

2510. (a) This section does not apply to *either any* of the following:

- (1) A durable power of attorney for health care.

(2) A Statutory Short Form Power of Attorney that satisfies the requirements of ~~Chapter 3 (commencing with Section 2450)~~ Section 2450 .

(3) A statutory form power of attorney that satisfies the requirements of the Uniform Statutory Form Power of Attorney Act (Sections 2475 to 2499, inclusive).

(b) A printed form of a durable power of attorney that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall contain, in not less than 10-point boldface type or a reasonable equivalent thereof, the following warning statement:

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:

This document may provide the person you designate as your attorney in fact with broad powers to manage, dispose, sell, and convey your real and personal property and to borrow money using your property as security for the loan.

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.

You have the right to revoke or terminate this power of attorney.

If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

(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 2510 is amended to add paragraph (3) to subdivision (a) to recognize the Uniform Statutory Form Power of Attorney Act (1988). For the California version of this Uniform Act, see Civil Code Sections 2475-2499. The Uniform Act has its own warning statement. See Section 2475.

Paragraph (2) of subdivision (a) is revised to reflect the repeal of the former statute authorizing a "statutory short form power of attorney." However, despite the repeal, Section 2450 permits continued use of the form formerly prescribed for a statutory short form power of attorney under Section 2450 as enacted by Chapter 602 of the Statutes of 1984 or as amended by Chapter 403 of the Statutes of 1985. Since that form also had its own warning statement, paragraph (2) is continued in a revised form.

Civil Code § 2511 (amended). Convincing evidence of identity of principal

2511. For the purposes of the declaration of witnesses required by Section ~~2450~~ or 2500, "convincing evidence" means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person signing or acknowledging the power of attorney as principal is not the individual he or she claims to be and any one of the following:

(a) Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five years:

(1) An identification card or driver's license issued by the California Department of Motor Vehicles.

(2) A passport issued by the Department of State of the United States.

(b) Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, bears a serial or other identifying number, and, in the event that the document is a passport, has been stamped by the United States Immigration and Naturalization Service:

(1) A passport issued by a foreign government.

(2) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.

(3) An identification card issued by a state other than California.

(4) An identification card issued by any branch of the armed forces of the United States.

Comment. Section 2511 is amended to delete the reference to Section 2450 found in the introductory clause of Section 2511. Section 2450 has been repealed and replaced by a different section given the same number.