

Assembly Bill No. 1082

CHAPTER 113

An act to amend Sections 4260, 4264, 4401, 4407, 4457, 4458, 4460, 4461, and 4462 of, and to repeal and add Section 4465 of, the Probate Code, relating to powers of attorney.

[Approved by Governor July 25, 2011. Filed with
Secretary of State July 25, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1082, Gatto. Powers of attorney: statutory form power of attorney.

Existing law, the Power of Attorney Law, sets forth the authority of an attorney-in-fact, defined as a person who is granted authority to act for the principal in a power of attorney. Under existing law, the attorney-in-fact may be granted general authority to act on behalf of the principal and authority to act by incorporating powers by reference to other laws. Existing law requires express authority in the power of attorney in order for an attorney-in-fact to take specified actions, including creating, modifying, or revoking a trust and exercising the right to make a disclaimer on behalf of the principal. Other provisions of existing law, the Uniform Statutory Form Power of Attorney Act, set forth a form in which the principal designates the category of powers granted to the agent pursuant to the power of attorney, referred to as a statutory form power of attorney, and defines the extent of the powers so conferred on the agent. Under existing law, the provisions setting forth the authority of an attorney-in-fact are inapplicable to a statutory form power of attorney.

This bill would, instead, apply the attorney-in-fact provisions to a statutory form power of attorney, except for those providing to the attorney-in-fact general authority and powers by reference to other laws. The bill would revise certain powers that require express authority in the power of attorney for their exercise by the attorney-in-fact, specifying that an attorney-in-fact may modify, revoke, or terminate a trust in whole or in part, but only as provided in the trust instrument, and that the attorney-in-fact may reject, disclaim, release, or consent to a reduction or modification of a share in, or payment from, an estate, trust, or other fund. The bill would also revise the statutory form power of attorney to notify the principal that it does not include all of the powers available under law for an attorney-in-fact and would revise the agent's power under a statutory form power of attorney with regard to insurance, annuity, and retirement plan transactions and estate, trust, and other beneficiary transactions. The bill would specify that the power of an agent under a statutory form power of attorney with respect to personal and family maintenance is not dependent on any other authority to make gifts on the principal's behalf and is not limited by any other

limitation applicable to the agent's authority to make gifts on the principal's behalf.

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

SECTION 1. Section 4260 of the Probate Code is amended to read:

4260. (a) Except as specified in subdivision (b), this article applies to all powers of attorney under this division.

(b) Sections 4261 and 4263 do not apply to the provisions of Part 3 (commencing with Section 4400).

SEC. 2. Section 4264 of the Probate Code is amended to read:

4264. An attorney-in-fact under a power of attorney may perform any of the following acts on behalf of the principal or with the property of the principal only if the power of attorney expressly grants that authority to the attorney-in-fact:

(a) Create, modify, revoke, or terminate a trust, in whole or in part. If a power of attorney under this division empowers the attorney-in-fact to modify or revoke a trust created by the principal, the trust may be modified or revoked by the attorney-in-fact only as provided in the trust instrument.

(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) Exercise the right to reject, disclaim, release, or consent to a reduction in, or modification of, a share in, or payment from, an estate, trust, or other fund on behalf of the principal. This subdivision does not limit the attorney-in-fact's authority to disclaim a detrimental transfer to the principal with the approval of the court.

(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.

(g) Make a loan to the attorney-in-fact.

SEC. 3. Section 4401 of the Probate Code is amended to read:

4401. The following statutory form power of attorney is legally sufficient when the requirements of Section 4402 are satisfied:

UNIFORM STATUTORY FORM POWER OF ATTORNEY
(California Probate Code Section 4401)

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA PROBATE CODE SECTIONS 4400–4465). THE POWERS LISTED IN THIS DOCUMENT DO NOT INCLUDE ALL POWERS THAT ARE AVAILABLE UNDER THE PROBATE CODE. ADDITIONAL POWERS AVAILABLE UNDER THE PROBATE CODE MAY BE ADDED BY SPECIFICALLY LISTING THEM UNDER THE SPECIAL INSTRUCTIONS SECTION OF THIS DOCUMENT. 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. A third party may seek identification. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge 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 _____, 20 _____

(your signature)

State of _____ County of _____

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

[Include certificate of acknowledgment of notary public in compliance with Section 1189 of the Civil Code or other applicable law.]

SEC. 4. Section 4407 of the Probate Code is amended to read:

4407. The provisions of this division apply to a statutory form power of attorney except when there is a conflicting provision in this part, in which case the provision of this part governs, or when a provision of this division is expressly made inapplicable to a statutory form power of attorney.

SEC. 5. Section 4457 of the Probate Code is amended to read:

4457. 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 that 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) Apply for and receive a loan on the security of the contract of insurance or annuity.

(e) Surrender and receive the cash surrender value.

(f) Exercise an election.

(g) Change the manner of paying premiums.

(h) 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.

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

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

(k) 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.

SEC. 6. Section 4458 of the Probate Code is amended to read:

4458. 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, receive, receipt for, sell, assign, pledge, or exchange, 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.

(g) Disclaim a detrimental transfer to the principal with the approval of the court.

SEC. 7. Section 4460 of the Probate Code is amended to read:

4460. (a) 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:

(1) 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.

(2) Provide for the individuals described in paragraph (1) all of the following:

(A) Normal domestic help.

(B) Usual vacations and travel expenses.

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

(3) Pay for the individuals described in paragraph (1) necessary medical, dental, and surgical care, hospitalization, and custodial care.

(4) Continue any provision made by the principal, for the individuals described in paragraph (1), for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them.

(5) Maintain or open charge accounts for the convenience of the individuals described in paragraph (1) and open new accounts the agent considers desirable to accomplish a lawful purpose.

(6) 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.

(b) The authority of an agent with respect to personal and family maintenance under this section is not dependent on any other grant of authority to the agent to make gifts on the principal's behalf and is not limited by any limitation that otherwise applies to the authority of the agent to make gifts on the principal's behalf.

SEC. 8. Section 4461 of the Probate Code is amended to read:

4461. 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 paragraph (1) of subdivision (a) of Section 4460, 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.

SEC. 9. Section 4462 of the Probate Code is amended to read:

4462. 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) Make voluntary contributions to those plans.

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

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

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

(f) 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.

SEC. 10. Section 4465 of the Probate Code is repealed.

SEC. 11. Section 4465 is added to the Probate Code, to read:

4465. A statutory form power of attorney under this part does not empower the agent to take any of the actions specified in Section 4264 unless the statutory form power of attorney expressly grants that authority to the attorney-in-fact.