

AMENDED IN SENATE MAY 24, 2000

AMENDED IN SENATE MAY 2, 2000

**SENATE BILL**

**No. 1869**

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**Introduced by Senator Solis**

February 24, 2000

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An act to amend Sections *4121*, *4128*, *4264*, and *4401* of the Probate Code, relating to powers of attorney.

LEGISLATIVE COUNSEL'S DIGEST

SB 1869, as amended, Solis. Powers of Attorney.

Existing law provides that a power of attorney may not be construed to grant authority to an attorney-in-fact to make or revoke a gift of the principal's property in trust or otherwise unless expressly authorized in the power of attorney. Existing law also provides a Uniform Statutory Form Power Of Attorney which enumerates specific powers a principal may grant to an attorney-in-fact, as specified.

This bill would provide that a principal, subsequent to executing a power of attorney, may execute another document either acknowledged before a notary public or signed by at least 2 witnesses, as specified, authorizing the principal's attorney-in-fact to accept or receive a gift of the principal's property, in trust or otherwise, or to accept or receive any of principal's property as payment for services rendered. The bill would also revise the Uniform Statutory Form Power Of Attorney by adding provisions in which the attorney-in-fact acknowledges with his or her signature before a notary public his or her fiduciary and other legal

responsibilities under the appointment and the limitations thereon, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. *Section 4121 of the Probate Code is*  
2 *amended to read:*

3 4121. A power of attorney is legally sufficient if all of  
4 the following requirements are satisfied:

5 (a) The power of attorney contains the date of its  
6 execution.

7 (b) The power of attorney is signed either (1) by the  
8 principal or (2) in the principal’s name by some other  
9 person in the principal’s presence and at the principal’s  
10 direction.

11 (c) The power of attorney is either (1) acknowledged  
12 before a notary public or (2) signed by at least two  
13 witnesses who satisfy the requirements of Section 4122.

14 (d) *The power of attorney contains the following*  
15 *warning:*

16 *If you give your agent or attorney-in-fact the power to*  
17 *make gifts to himself or herself, the agent or*  
18 *attorney-in-fact may be able to take your property, keep*  
19 *it, and not be required to return it to you. In order to give*  
20 *your agent or attorney-in-fact the power to make gifts to*  
21 *himself or herself, or to transfer property to himself or*  
22 *herself as payment for reasonable fees for services*  
23 *rendered by the agent or attorney-in-fact, you must*  
24 *execute a separate document that meets the*  
25 *requirements of subdivision (b) of Section 4264.*

26 SEC. 2. *Section 4121 of the Probate Code is amended*  
27 *to read:*

28 4121. A power of attorney is legally sufficient if all of  
29 the following requirements are satisfied:

30 (a) The power of attorney contains the date of its  
31 execution.

32 (b) The power of attorney is signed either (1) by the  
33 principal or (2) in the principal’s name by another adult



1 in the principal's presence and at the principal's  
2 direction.

3 (c) The power of attorney is either (1) acknowledged  
4 before a notary public or (2) signed by at least two  
5 witnesses who satisfy the requirements of Section 4122.

6 (d) *The power of attorney contains the following*  
7 *warning:*

8 *If you give your agent or attorney-in-fact the power to*  
9 *make gifts to himself or herself, the agent or*  
10 *attorney-in-fact may be able to take your property, keep*  
11 *it, and not be required to return it to you. In order to give*  
12 *your agent or attorney-in-fact the power to make gifts to*  
13 *himself or herself, or to transfer property to himself or*  
14 *herself as payment for reasonable fees for services*  
15 *rendered by the agent or attorney-in-fact, you must*  
16 *execute a separate document that meets the*  
17 *requirements of subdivision (b) of Section 4264.*

18 SEC. 3. *Section 4128 of the Probate Code is amended*  
19 *to read:*

20 4128. (a) Subject to subdivision (b), a printed form of  
21 a durable power of attorney that is sold or otherwise  
22 distributed in this state for use by a person who does not  
23 have the advice of legal counsel shall contain, in not less  
24 than 10-point boldface type or a reasonable equivalent  
25 thereof, the following warning statement:

26  
27 Notice to Person Executing Durable Power of Attorney

28  
29 A durable power of attorney is an important legal  
30 document. By signing the durable power of attorney, you  
31 are authorizing another person to act for you, the  
32 principal. Before you sign this durable power of attorney,  
33 you should know these important facts:

34 Your agent (attorney-in-fact) has no duty to act unless  
35 you and your agent agree otherwise in writing.

36 This document gives your agent the powers to manage,  
37 dispose of, sell, and convey your real and personal  
38 property, and to use your property as security if your  
39 agent borrows money on your behalf. *This document*  
40 *does not give your agent the power to accept or receive*



1 *any of your property, in trust or otherwise, as a gift, unless*  
2 *you execute a separate document authorizing your agent*  
3 *to accept or receive such property as a gift, as specified*  
4 *in subdivision (b) of Section 4264 of the Probate Code.*

5 Your agent will have the right to receive reasonable  
6 payment for services provided under this durable power  
7 of attorney unless you provide otherwise in this power of  
8 attorney. *However, you must execute a separate*  
9 *document authorizing your agent to accept or receive*  
10 *any of your property as payment for reasonable fees for*  
11 *services rendered by your agent, as specified in*  
12 *subdivision (b) of Section 4264 of the Probate Code.*

13 The powers you give your agent will continue to exist  
14 for your entire lifetime, unless you state that the durable  
15 power of attorney will last for a shorter period of time or  
16 unless you otherwise terminate the durable power of  
17 attorney. The powers you give your agent in this durable  
18 power of attorney will continue to exist even if you can  
19 no longer make your own decisions respecting the  
20 management of your property.

21 You can amend or change this durable power of  
22 attorney only by executing a new durable power of  
23 attorney or by executing an amendment through the  
24 same formalities as an original. You have the right to  
25 revoke or terminate this durable power of attorney at any  
26 time, so long as you are competent.

27 This durable power of attorney must be dated and must  
28 be acknowledged before a notary public or signed by two  
29 witnesses. If it is signed by two witnesses, they must  
30 witness either (1) the signing of the power of attorney or  
31 (2) the principal's signing or acknowledgment of his or  
32 her signature. A durable power of attorney that may  
33 affect real property should be acknowledged before a  
34 notary public so that it may easily be recorded.

35 You should read this durable power of attorney  
36 carefully. When effective, this durable power of attorney  
37 will give your agent the right to deal with property that  
38 you now have or might acquire in the future. The durable  
39 power of attorney is important to you. If you do not  
40 understand the durable power of attorney, or any



1 provision of it, then you should obtain the assistance of an  
2 attorney or other qualified person.

3  
4 (b) Nothing in subdivision (a) invalidates any  
5 transaction in which a third person relied in good faith on  
6 the authority created by the durable power of attorney.

7 (c) This section does not apply to the following:

8 (1) A statutory form power of attorney under Part 3  
9 (commencing with Section 4400).

10 (2) A durable power of attorney for health care under  
11 Part 4 (commencing with Section 4600).

12 (d) *The durable power of attorney described in*  
13 *subdivision (a) shall contain the following warning,*  
14 *which must be printed in not less than 10-point boldface*  
15 *type or a reasonable equivalent thereof, and executed by*  
16 *the person appointed by the durable power of attorney*  
17 *to act as agent or attorney-in-fact:*

18  
19 *Notice to Person Accepting the Appointment as*  
20 *Attorney-in-Fact*

21  
22 *In order for the power of attorney executed by the*  
23 *principal to become effective, you must execute the*  
24 *following acceptance:*

25 *BY ACCEPTING OR ACTING AS*  
26 *ATTORNEY-IN-FACT UNDER THIS POWER OF*  
27 *ATTORNEY, I ACKNOWLEDGE THAT I ASSUME*  
28 *THE FIDUCIARY AND OTHER LEGAL*  
29 *RESPONSIBILITIES OF AN AGENT. I ALSO*  
30 *ACKNOWLEDGE THAT:*

31 *1. I have the legal duty to act solely in the interest of the*  
32 *principal and to avoid actions that would benefit me to*  
33 *the detriment of the principal's interest.*

34  
35 *2. I have the legal duty to keep the principal's property*  
36 *separate and distinct from other property I may own or*  
37 *control. I have no authority to make a loan of the*  
38 *principal's property to myself, unless expressly*  
39 *authorized in the power of attorney.*

40



1 3. If I were to transfer the principal's property to myself  
2 under the power of attorney executed by the principal  
3 without a separate document authorizing me to either  
4 accept or receive any of principal's property as a gift or  
5 as payment for services rendered, as specified in  
6 subdivision (b) of Section 4264 of the Probate Code, I may  
7 be prosecuted for embezzlement.

8  
9 I HAVE READ AND UNDERSTOOD ALL THE TERMS  
10 HEREIN AND AGREE TO ACT ACCORDING TO THE  
11 TERMS OF THIS APPOINTMENT.

12  
13 Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
14

15 \_\_\_\_\_  
16 (attorney-in-fact's signature)  
17

18 \_\_\_\_\_  
19 (attorney-in-fact's social security number)  
20

21 State of \_\_\_\_\_

22 County of \_\_\_\_\_  
23

24 (Include certificate of acknowledgement of notary public in  
25 compliance with Section 1189 of the Civil Code or other applicable  
26 law.)  
27

28 SEC. 4. Section 4128 of the Probate Code is amended  
29 to read:

30 4128. (a) Subject to subdivision (b), a printed form of  
31 a durable power of attorney that is sold or otherwise  
32 distributed in this state for use by a person who does not  
33 have the advice of legal counsel shall contain, in not less  
34 than 10-point boldface type or a reasonable equivalent  
35 thereof, the following warning statement:  
36

37 Notice to Person Executing Durable Power of Attorney

38  
39 A durable power of attorney is an important legal  
40 document. By signing the durable power of attorney, you



1 are authorizing another person to act for you, the  
2 principal. Before you sign this durable power of attorney,  
3 you should know these important facts:

4 Your agent (attorney-in-fact) has no duty to act unless  
5 you and your agent agree otherwise in writing.

6 This document gives your agent the powers to manage,  
7 dispose of, sell, and convey your real and personal  
8 property, and to use your property as security if your  
9 agent borrows money on your behalf. *This document*  
10 *does not give your agent the power to accept or receive*  
11 *any of your property, in trust or otherwise, as a gift, unless*  
12 *you execute a separate document authorizing your agent*  
13 *to accept or receive such property as a gift, as specified*  
14 *in subdivision (b) of Section 4264 of the Probate Code.*

15 Your agent will have the right to receive reasonable  
16 payment for services provided under this durable power  
17 of attorney unless you provide otherwise in this power of  
18 attorney. *However, you must execute a separate*  
19 *document authorizing your agent to accept or receive*  
20 *any of your property as payment for reasonable fees for*  
21 *services rendered by your agent, as specified in*  
22 *subdivision (b) of Section 4264 of the Probate Code.*

23 The powers you give your agent will continue to exist  
24 for your entire lifetime, unless you state that the durable  
25 power of attorney will last for a shorter period of time or  
26 unless you otherwise terminate the durable power of  
27 attorney. The powers you give your agent in this durable  
28 power of attorney will continue to exist even if you can  
29 no longer make your own decisions respecting the  
30 management of your property.

31 You can amend or change this durable power of  
32 attorney only by executing a new durable power of  
33 attorney or by executing an amendment through the  
34 same formalities as an original. You have the right to  
35 revoke or terminate this durable power of attorney at any  
36 time, so long as you are competent.

37 This durable power of attorney must be dated and must  
38 be acknowledged before a notary public or signed by two  
39 witnesses. If it is signed by two witnesses, they must  
40 witness either (1) the signing of the power of attorney or



1 (2) the principal’s signing or acknowledgment of his or  
2 her signature. A durable power of attorney that may  
3 affect real property should be acknowledged before a  
4 notary public so that it may easily be recorded.

5 You should read this durable power of attorney  
6 carefully. When effective, this durable power of attorney  
7 will give your agent the right to deal with property that  
8 you now have or might acquire in the future. The durable  
9 power of attorney is important to you. If you do not  
10 understand the durable power of attorney, or any  
11 provision of it, then you should obtain the assistance of an  
12 attorney or other qualified person.

13  
14 (b) Nothing in subdivision (a) invalidates any  
15 transaction in which a third person relied in good faith on  
16 the authority created by the durable power of attorney.

17 (c) This section does not apply to a statutory form  
18 power of attorney under Part 3 (commencing with  
19 Section 4400).

20 (d) *The durable power of attorney described in*  
21 *subdivision (a) shall contain the following warning,*  
22 *which must be printed in not less than 10-point boldface*  
23 *type or a reasonable equivalent thereof, and executed by*  
24 *the person appointed by the durable power of attorney*  
25 *to act as agent or attorney-in-fact:*

26  
27 *Notice to Person Accepting the Appointment as*  
28 *Attorney-in-Fact*  
29

30 *In order for the power of attorney executed by the*  
31 *principal to become effective, you must execute the*  
32 *following acceptance:*

33 *BY ACCEPTING OR ACTING AS*  
34 *ATTORNEY-IN-FACT UNDER THIS POWER OF*  
35 *ATTORNEY, I ACKNOWLEDGE THAT I ASSUME*  
36 *THE FIDUCIARY AND OTHER LEGAL*  
37 *RESPONSIBILITIES OF AN AGENT. I ALSO*  
38 *ACKNOWLEDGE THAT:*

39 *1. I have the legal duty to act solely in the interest of the*  
40 *principal and to avoid actions that would benefit me to*



1 *the detriment of the principal's interest.*

2

3 2. *I have the legal duty to keep the principal's property*  
4 *separate and distinct from other property I may own or*  
5 *control. I have no authority to make a loan of the*  
6 *principal's property to myself, unless expressly*  
7 *authorized in the power of attorney.*

8

9 3. *If I were to transfer the principal's property to myself*  
10 *under the power of attorney executed by the principal*  
11 *without a separate document authorizing me to either*  
12 *accept or receive any of principal's property as a gift or*  
13 *as payment for services rendered, as specified in*  
14 *subdivision (b) of Section 4264 of the Probate Code, I may*  
15 *be prosecuted for embezzlement.*

16

17 *I HAVE READ AND UNDERSTOOD ALL THE TERMS*  
18 *HEREIN AND AGREE TO ACT ACCORDING TO THE*  
19 *TERMS OF THIS APPOINTMENT.*

20

21 Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

22

23

24

\_\_\_\_\_  
(attorney-in-fact's signature)

25

26

27

\_\_\_\_\_  
(attorney-in-fact's social security number)

28

29

State of \_\_\_\_\_

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County of \_\_\_\_\_

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*(Include certificate of acknowledgement of notary public in*  
*compliance with Section 1189 of the Civil Code or other applicable*  
*law.)*

35

36

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38

39

*SEC. 5. Section 4264 of the Probate Code is amended*  
*to read:*  
*4264. (a) A power of attorney may not be construed*  
*to grant authority to an attorney-in-fact to perform any*



1 of the following acts unless expressly authorized in the  
2 power of attorney:

3 (1) Create, modify, or revoke a trust.

4 (2) Fund with the principal's property a trust not  
5 created by the principal or a person authorized to create  
6 a trust on behalf of the principal.

7 (3) Make or revoke a gift of the principal's property in  
8 trust or otherwise.

9 (4) Exercise the right to make a disclaimer on behalf  
10 of the principal. This subdivision does not limit the  
11 attorney-in-fact's authority to disclaim a detrimental  
12 transfer to the principal with the approval of the court.

13 (5) Create or change survivorship interests in the  
14 principal's property or in property in which the principal  
15 may have an interest.

16 (6) Designate or change the designation of  
17 beneficiaries to receive any property, benefit, or contract  
18 right on the principal's death.

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

20 (b) A power of attorney may not be construed to  
21 authorize an attorney-in-fact to accept or receive a gift of  
22 the principal's property in trust or otherwise, or to accept  
23 or receive any of the principal's property as payment for  
24 services rendered by the attorney-in-fact. Subsequent to  
25 the execution of the power of attorney, a principal may  
26 execute a document signed by the principal or in the  
27 principal's name by ~~some other person~~ *an adult other*  
28 *than the attorney-in-fact* in the principal's presence and  
29 at the principal's direction that expressly authorizes an  
30 attorney-in-fact to accept or receive a gift of the  
31 principal's property in trust or otherwise, or to accept or  
32 receive any of the principal's property as payment for  
33 services rendered by the attorney-in-fact provided the  
34 document is either acknowledged before a notary public  
35 or signed by at least two witnesses who satisfy the  
36 requirements of Section 4122.

37 (c) *A document executed by the principal pursuant to*  
38 *subdivision (b) subsequent to the execution of a power of*  
39 *attorney shall contain the following warning:*



1 HAVING ACCEPTED THE APPOINTMENT TO  
2 ACT FOR THE ABOVE PRINCIPAL UNDER A  
3 POWER OF ATTORNEY, I ACKNOWLEDGE THAT:

4 1. I have the legal duty to act solely in the interest of the  
5 principal and to avoid actions that would benefit me to  
6 the detriment of the principal's interest.

7  
8

9 2. I have the legal duty to receive only reasonable fees for  
10 services I have rendered to the principal.

11  
12

13 3. If I were to transfer the principal's property to myself  
14 under the power of attorney executed by the principal  
15 without a separate document authorizing me to either  
16 accept or receive any of principal's property as a gift or  
17 as payment for services rendered, as specified by  
18 subdivision (b) of Section 4264 of the Probate Code, I may  
19 be prosecuted for embezzlement.

20

21 I HAVE READ AND UNDERSTOOD ALL THE TERMS  
22 HEREIN AND AGREE TO ACT ACCORDING TO THE  
23 TERMS OF THIS APPOINTMENT.

24

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

25

26

27

\_\_\_\_\_

(attorney-in-fact's signature)

28

29

30

\_\_\_\_\_

(attorney-in-fact's social security number)

31

32

State of \_\_\_\_\_

33

County of \_\_\_\_\_

34

35

36 (Include certificate of acknowledgement of notary public in  
37 compliance with Section 1189 of the Civil Code or other applicable  
38 law.)

39

40

~~SEC. 2.~~



1    *SEC.* 6. Section 4401 of the Probate Code is amended  
2 to read:  
3    4401. The following statutory form power of attorney  
4 is legally sufficient when the requirements of Section 4402  
5 are satisfied:



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2 STRIKE AND ITALED CAMERA-READY COPY HERE

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1    *SEC. 7. The provisions of this bill shall not affect any*  
2    *legally sufficient power of attorney executed prior to*  
3    *January 1, 2001.*

4    *SEC. 8. The provisions of this bill shall not affect an*  
5    *executed durable power of attorney under Section 4128*  
6    *of the Probate Code or an executed Uniform Statutory*  
7    *Form Power of Attorney under Section 4401 of the*  
8    *Probate Code in printed form prior to March 1, 2001.*  
9    *Subsequent to March 1, 2001, all printed forms under*  
10    *Section 4128 of the Probate Code or Section 4401 of the*  
11    *Probate Code not conforming to the provisions of this bill*  
12    *shall be deemed legally insufficient.*

