

Senate Bill No. 1038

Passed the Senate May 13, 2010

Secretary of the Senate

Passed the Assembly June 21, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 4231 of, and to add Section 4231.5 to, the Probate Code, relating to powers of attorney.

LEGISLATIVE COUNSEL'S DIGEST

SB 1038, Harman. Powers of attorney: duties.

The Power of Attorney Law creates various duties and requires an attorney-in-fact to observe the standard of care that would be observed by a prudent person dealing with property of another, or if an attorney-in-fact has special skills he or she shall observe the standard of care that would be observed by others with similar skills. However, existing law provides that an attorney-in-fact is not liable for a loss to the principal's property if he or she is not compensated, unless the loss results from his or her bad faith, intentional wrongdoing, or gross negligence.

This bill would delete the latter provision. The bill would provide that if the attorney-in-fact breaches a duty pursuant to the Power of Attorney Law he or she is chargeable with interest for any loss or depreciation in value of the property, any profit made through the breach, or any profit that would have accrued to the principal if the loss or profit is a result of the breach. This bill would allow the court, in its discretion, to excuse the attorney-in-fact if he or she acted reasonably and in good faith, or if the court finds that an attorney-in-fact acted in bad faith, he or she would be held liable for twice the value of the property recovered.

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

SECTION 1. Section 4231 of the Probate Code is amended to read:

4231. (a) Except as provided in subdivision (b), in dealing with property of the principal, an attorney-in-fact shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries.

(b) An attorney-in-fact who has special skills or expertise or was designated as an attorney-in-fact on the basis of representations

of special skills or expertise shall observe the standard of care that would be observed by others with similar skills or expertise.

SEC. 2. Section 4231.5 is added to the Probate Code, to read:

4231.5. (a) If the attorney-in-fact breaches a duty pursuant to this division, the attorney-in-fact is chargeable with any of the following, as appropriate under the circumstances:

(1) Any loss or depreciation in value of the principal's property resulting from the breach of duty, with interest.

(2) Any profit made by the attorney-in-fact through the breach of duty, with interest.

(3) Any profit that would have accrued to the principal if the loss of profit is the result of the breach of duty.

(b) If the attorney-in-fact has acted reasonably and in good faith under the circumstances as known to the attorney-in-fact, the court, in its discretion, may excuse the attorney-in-fact in whole or in part from liability under subdivision (a) if it would be equitable to do so.

(c) If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of property belonging to a principal under a power of attorney, the person shall be liable for twice the value of the property recovered by an action to recover the property or for surcharge. The remedy provided in this section shall be in addition to any other remedies available in law to the principal or any successor in interest of the principal.

Approved _____, 2010

Governor