

ASSEMBLY BILL

No. 1082

Introduced by Assembly Member Gatto

February 18, 2011

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.

LEGISLATIVE COUNSEL'S DIGEST

AB 1082, as introduced, 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.

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 4260 of the Probate Code is amended to
 2 read:
 3 4260. ~~This~~ *(a) Except as specified in subdivision (b), this*
 4 ~~article does not apply to~~ *applies to all statutory form* powers of
 5 attorney under *this division*.
 6 *(b) Sections 4261 and 4263 do not apply to the provisions of*
 7 *Part 3 (commencing with Section 4400).*
 8 SEC. 2. Section 4264 of the Probate Code is amended to read:
 9 4264. ~~An attorney-in-fact under a power of attorney may~~
 10 ~~not be construed to grant authority to an attorney-in-fact to perform~~
 11 ~~any of the following acts unless on behalf of the principal or with~~
 12 ~~the property of the principal only if the power of attorney expressly~~
 13 ~~authorized in the power of attorney grants that authority to the~~
 14 ~~attorney-in-fact:~~
 15 (a) Create, modify, ~~or~~ *revoke, or terminate* a trust, *in whole or*
 16 *in part. If a power of attorney under this division empowers the*
 17 *attorney-in-fact to modify or revoke a trust created by the principal,*

1 *the trust may be modified or revoked by the attorney-in-fact only*
2 *as provided in the trust instrument.*

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

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

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

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

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

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

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

21 4401. The following statutory form power of attorney is legally
22 sufficient when the requirements of Section 4402 are satisfied:

- 1 PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE
- 2 INSERTED

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1 SEC. 4. Section 4407 of the Probate Code is amended to read:
2 4407. ~~Unless~~*The provisions of this division apply to a statutory*
3 *form power of attorney except when there is a conflicting provision*
4 *in this part, in which case the provision of this part governs, the*
5 ~~other provisions or when a provision of this division apply is~~
6 *expressly made inapplicable to a statutory form power of attorney.*

7 SEC. 5. Section 4457 of the Probate Code is amended to read:
8 4457. In a statutory form power of attorney, the language
9 granting power with respect to insurance and annuity transactions
10 empowers the agent to do all of the following:

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

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

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

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

28 ~~(e)~~

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

31 ~~(f)~~

32 (e) Surrender and receive the cash surrender value.

33 ~~(g)~~

34 (f) Exercise an election.

35 ~~(h)~~

36 (g) Change the manner of paying premiums.

37 ~~(i)~~

38 (h) Change or convert the type of insurance contract or annuity
39 as to any insurance contract or annuity with respect to which the
40 principal has or claims to have a power described in this section.

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

4 ~~(k)~~

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

7 ~~(l)~~

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

10 ~~(m)~~

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

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

17 4458. In a statutory form power of attorney, the language
18 granting power with respect to estate, trust, and other beneficiary
19 transactions, empowers the agent to act for the principal in all
20 matters that affect a trust, probate estate, guardianship,
21 conservatorship, escrow, custodianship, or other fund from which
22 the principal is, may become, or claims to be entitled, as a
23 beneficiary, to a share or payment, including the power to do all
24 of the following:

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

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

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

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

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

39 (f) Transfer an interest of the principal in real property, stocks,
40 bonds, accounts with financial institutions, insurance, and other

1 property, to the trustee of a revocable trust created by the principal
2 as settlor.

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

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

6 4460. (a) In a statutory form power of attorney, the language
7 granting power with respect to personal and family maintenance
8 empowers the agent to do all of the following:

9 (a)

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

17 (b)

18 (2) Provide for the individuals described in ~~subdivision (a)~~
19 *paragraph (1)* all of the following:

20 (1)

21 (A) Normal domestic help.

22 (2)

23 (B) Usual vacations and travel expenses.

24 (3)

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

27 (e)

28 (3) Pay for the individuals described in ~~subdivision (a)~~
29 *paragraph (1)* necessary medical, dental, and surgical care,
30 hospitalization, and custodial care.

31 (d)

32 (4) Continue any provision made by the principal, for the
33 individuals described in ~~subdivision (a)~~ *paragraph (1)*, for
34 automobiles or other means of transportation, including registering,
35 licensing, insuring, and replacing them.

36 (e)

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

1 ~~(f)~~

2 (6) Continue payments incidental to the membership or
3 affiliation of the principal in a church, club, society, order, or other
4 organization and continue contributions to those organizations.

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

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

11 4461. In a statutory form power of attorney, the language
12 granting power with respect to benefits from social security,
13 medicare, medicaid, or other governmental programs, or civil or
14 military service, empowers the agent to do all of the following:

15 (a) Execute vouchers in the name of the principal for allowances
16 and reimbursements payable by the United States or a foreign
17 government or by a state or subdivision of a state to the principal,
18 including allowances and reimbursements for transportation of the
19 individuals described in *paragraph (1) of subdivision (a) of Section*
20 *4460, and for shipment of their household effects.*

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

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

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

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

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

37 4462. In a statutory form power of attorney, the language
38 granting power with respect to retirement plan transactions
39 empowers the agent to do all of the following:

- 1 (a) Select payment options under any retirement plan in which
2 the principal participates, including plans for self-employed
3 individuals.
- 4 ~~(b) Designate beneficiaries under those plans and change~~
5 ~~existing designations.~~
- 6 ~~(c)~~
7 (b) Make voluntary contributions to those plans.
- 8 ~~(d)~~
9 (c) Exercise the investment powers available under any
10 self-directed retirement plan.
- 11 ~~(e)~~
12 (d) Make rollovers of plan benefits into other retirement plans.
- 13 ~~(f)~~
14 (e) If authorized by the plan, borrow from, sell assets to, and
15 purchase assets from the plan.
- 16 ~~(g)~~
17 (f) Waive the right of the principal to be a beneficiary of a joint
18 or survivor annuity if the principal is a spouse who is not employed.
- 19 SEC. 10. Section 4465 of the Probate Code is repealed.
- 20 ~~4465. A statutory form power of attorney under this part does~~
21 ~~not empower the agent to modify or revoke a trust created by the~~
22 ~~principal unless that power is expressly granted by the power of~~
23 ~~attorney. If a statutory form power of attorney under this part~~
24 ~~empowers the agent to modify or revoke a trust created by the~~
25 ~~principal, the trust may only be modified or revoked by the agent~~
26 ~~as provided in the trust instrument.~~
- 27 SEC. 11. Section 4465 is added to the Probate Code, to read:
28 4465. A statutory form power of attorney under this part does
29 not empower the agent to take any of the actions specified in
30 Section 4264 unless the statutory form power of attorney expressly
31 grants that authority to the attorney-in-fact.