

## **PROBATE CODE**

### **SECTION 4000-4034**

4000. This division may be cited as the Power of Attorney Law.

4001. Sections 4124, 4125, 4126, 4127, 4206, 4304, and 4305 may be cited as the Uniform Durable Power of Attorney Act. 4010. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this division. 4014. (a) "Attorney-in-fact" means a person granted authority to act for the principal in a power of attorney, regardless of whether the person is known as an attorney-in-fact or agent, or by some other term. (b) "Attorney-in-fact" includes a successor or alternate attorney-in-fact and a person delegated authority by an attorney-in-fact. 4018. "Durable power of attorney" means a power of attorney that satisfies the requirements for durability provided in Section 4124. 4022. "Power of attorney" means a written instrument, however denominated, that is executed by a natural person having the capacity to contract and that grants authority to an attorney-in-fact. A power of attorney may be durable or nondurable. 4026. "Principal" means a natural person who executes a power of attorney. 4030. "Springing power of attorney" means a power of attorney that by its terms becomes effective at a specified future time or on the occurrence of a specified future 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. 4034. "Third person" means any person other than the principal or attorney-in-fact.

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### **SECTION 4050-4054**

4050. (a) This division applies to the following: (1) Durable powers of attorney, other than powers of attorney for health care governed by Division 4.7 (commencing with Section 4600). (2) Statutory form powers of attorney under Part 3 (commencing with Section 4400). (3) Any other power of attorney that incorporates or refers to this division or the provisions of this division. (b) This division does not apply to the following: (1) A power of attorney to the extent that the authority of the attorney-in-fact is coupled with an interest in the subject of the power of attorney. (2) Reciprocal or interinsurance exchanges and their contracts, subscribers, attorneys-in-fact, agents, and representatives. (3) A proxy given by an attorney-in-fact to another person to exercise voting rights. (c) This division is not intended to affect the validity of any instrument or arrangement that is not described in subdivision (a). 4051. Except where this division provides a specific rule, the general law of agency, including Article 2 (commencing with Section 2019) of Chapter 2 of Title 6 of, and Title 9 (commencing with Section 2295) of, Part 4 of Division 3 of the Civil Code, applies to powers of attorney. 4052. (a) If a power of attorney provides that the Power of Attorney Law of this state governs the power of attorney or otherwise indicates the principal's intention that the Power of Attorney Law of this state governs the power of attorney, this division governs the power of

attorney and applies to acts and transactions of the attorney-in-fact in this state or outside this state where any of the following conditions is satisfied: (1) The principal or attorney-in-fact was domiciled in this state when the principal executed the power of attorney. (2) The authority conferred on the attorney-in-fact relates to property, acts, or transactions in this state. (3) The acts or transactions of the attorney-in-fact occurred or were intended to occur in this state. (4) The principal executed the power of attorney in this state. (5) There is otherwise a reasonable relationship between this state and the subject matter of the power of attorney. (b) If subdivision (a) does not apply to the power of attorney, this division governs the power of attorney and applies to the acts and transactions of the attorney-in-fact in this state where either of the following conditions is satisfied: (1) The principal was domiciled in this state when the principal executed the power of attorney. (2) The principal executed the power of attorney in this state. (c) A power of attorney described in this section remains subject to this division despite a change in domicile of the principal or the attorney-in-fact, or the removal from this state of property that was the subject of the power of attorney. 4053. A durable power of attorney executed in another state or jurisdiction in compliance with the law of that state or jurisdiction or the law of this state is valid and enforceable in this state to the same extent as a durable power of attorney executed in this state, regardless of whether the principal is a domiciliary of this state. 4054. Except as otherwise provided by statute: (a) On and after January 1, 1995, this division applies to all powers of attorney regardless of whether they were executed before, on, or after January 1, 1995. (b) This division applies to all proceedings concerning powers of attorney commenced on or after January 1, 1995. (c) This division applies to all proceedings concerning powers of attorney commenced before January 1, 1995, unless the court determines that application of a particular provision of this division would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of this division does not apply and prior law applies. (d) Nothing in this division affects the validity of a power of attorney executed before January 1, 1995, that was valid under prior law.

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### **SECTION 4100-4102**

4100. This part applies to all powers of attorney under this division, subject to any special rules applicable to statutory form powers of attorney under Part 3 (commencing with Section 4400).

4101. (a) Except as provided in subdivision (b), the principal may limit the application of any provision of this division by an express statement in the power of attorney or by providing an inconsistent rule in the power of attorney. (b) A power of attorney may not limit either the application of a statute specifically providing that it is not subject to limitation in the power of attorney or a statute concerning any of the following: (1) Warnings or notices required to be included in a power of attorney. (2) Operative dates of statutory enactments or amendments. (3) Execution formalities. (4) Qualifications of witnesses. (5) Qualifications of attorneys-in-

fact. (6) Protection of third persons from liability. 4102. Notwithstanding Section 4128: (a) Except as provided in subdivision (b), on and after January 1, 1995, a printed form of a durable power of attorney may be sold or otherwise distributed if it satisfies the requirements of former Section 2510.5 of the Civil Code. (b) A printed form of a durable power of attorney printed on or after January 1, 1986, that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall comply with former Section 2510 of the Civil Code or with Section 4128 of this code. (c) A durable power of attorney executed on or after January 1, 1995, using a printed form that complies with subdivision (b) of former Section 2400 of the Civil Code, as enacted by Chapter 511 of the Statutes of 1981, or with former Section 2510 of the Civil Code, is as valid as if it had been executed using a printed form that complies with Section 4128 of this code.

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## **PROBATE CODE**

### **SECTION 4120-4130**

4120. A natural person having the capacity to contract may execute a power of attorney. 4121. A power of attorney is legally sufficient if all of the following requirements are satisfied: (a) The power of attorney contains the date of its execution. (b) The power of attorney is signed either (1) by the principal or (2) in the principal's name by another adult in the principal's presence and at the principal's direction. (c) The power of attorney is either (1) acknowledged before a notary public or (2) signed by at least two witnesses who satisfy the requirements of Section 4122. 4122. If the power of attorney is signed by witnesses, as provided in Section 4121, the following requirements shall be satisfied: (a) The witnesses shall be adults. (b) The attorney-in-fact may not act as a witness. (c) Each witness signing the power of attorney shall witness either the signing of the instrument by the principal or the principal's acknowledgment of the signature or the power of attorney. 4123. (a) In a power of attorney under this division, a principal may grant authority to an attorney-in-fact to act on the principal's behalf with respect to all lawful subjects and purposes or with respect to one or more express subjects or purposes. The attorney-in-fact may be granted authority with regard to the principal's property, personal care, or any other matter. (b) With regard to property matters, a power of attorney may grant authority to make decisions concerning all or part of the principal's real and personal property, whether owned by the principal at the time of the execution of the power of attorney or thereafter acquired or whether located in this state or elsewhere, without the need for a description of each item or parcel of property. (c) With regard to personal care, a power of attorney may grant authority to make decisions relating to the personal care of the principal, including, but not limited to, determining where the principal will live, providing meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment. 4124. A durable power of attorney is a power of attorney by which a principal designates another person as attorney-in-fact in writing and the power of attorney contains any of the following statements: (a) "This power of attorney shall not be affected by subsequent incapacity of the principal." (b) "This power of attorney

shall become effective upon the incapacity of the principal." (c) Similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity. 4125. All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal had capacity. 4126. (a) A principal may nominate, by a durable power of attorney, a conservator of the person or estate or both, or a guardian of the person or estate or both, for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. (b) If the protective proceedings are conservatorship proceedings in this state, the nomination has the effect provided in Section 1810 and the court shall give effect to the most recent writing executed in accordance with Section 1810, whether or not the writing is a durable power of attorney. 4127. Unless a power of attorney states a time of termination, the authority of the attorney-in-fact is exercisable notwithstanding any lapse of time since execution of the power of attorney. 4128. (a) Subject to subdivision (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 statements:

Notice to Person Executing  
Durable Power of Attorney

A durable power of attorney is an important legal document. By signing the durable power of attorney, you are authorizing another person to act for you, the principal. Before you sign this durable power of attorney, you should know these important facts: Your agent (attorney-in-fact) has no duty to act unless you and your agent agree otherwise in writing. This document gives your agent the powers to manage, dispose of, sell, and convey your real and personal property, and to use your property as security if your agent borrows money on your behalf. This document does not give your agent the power to accept or receive any of your property, in trust or otherwise, as a gift, unless you specifically authorize the agent to accept or receive a gift. Your agent will have the right to receive reasonable payment for services provided under this durable power of attorney unless you provide otherwise in this power of attorney. The powers you give your agent will continue to exist for your entire lifetime, unless you state that the durable power of attorney will last for a shorter period of time or unless you otherwise terminate the durable power of attorney. The powers you give your agent in this durable power of attorney will continue to exist even if you can no longer make your own decisions respecting the management of your property. You can amend or change this durable power of attorney only by executing a new durable power of attorney or by executing an amendment through the same formalities as an original. You have the right to revoke or terminate this durable power of attorney at any time, so long as you are competent. This durable power of attorney must be dated and must be acknowledged before a notary public or signed by two witnesses. If it is signed by two witnesses, they must witness either (1) the signing of the power of attorney or (2) the principal's signing or acknowledgment of his or her signature. A durable power of attorney that may affect real property should be acknowledged before a notary public so that it may easily be recorded. You should read this durable power of attorney carefully. When effective, this durable power of attorney will give your agent the right to deal with property that you now have or might acquire in the future. The durable power of

attorney is important to you. If you do not understand the durable power of attorney, or any provision of it, then you should obtain the assistance of an attorney or other qualified person. Notice to Person Accepting the Appointment as Attorney-in-Fact By acting or agreeing to act as the agent (attorney-in-fact) under this power of attorney you assume the fiduciary and other legal responsibilities of an agent. These responsibilities include: 1. The legal duty to act solely in the interest of the principal and to avoid conflicts of interest. 2. The legal duty to keep the principal's property separate and distinct from any other property owned or controlled by you. You may not transfer the principal's property to yourself without full and adequate consideration or accept a gift of the principal's property unless this power of attorney specifically authorizes you to transfer property to yourself or accept a gift of the principal's property. If you transfer the principal's property to yourself without specific authorization in the power of attorney, you may be prosecuted for fraud and/or embezzlement. If the principal is 65 years of age or older at the time that the property is transferred to you without authority, you may also be prosecuted for elder abuse under Penal Code Section 368. In addition to criminal prosecution, you may also be sued in civil court. I have read the foregoing notice and I understand the legal and fiduciary duties that I assume by acting or agreeing to act as the agent (attorney-in-fact) under the terms of this power of attorney. Date: \_\_\_\_\_

(Signature of agent) \_\_\_\_\_ (Print name of agent) (b) Nothing in subdivision (a) invalidates any transaction in which a third person relied in good faith on the authority created by the durable power of attorney. (c) This section does not apply to a statutory form power of attorney under Part 3 (commencing with Section 4400). 4129. (a) 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. (b) A springing power of attorney containing the designation 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 of whether the specified event or contingency has actually occurred. (c) 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 (a). (d) This section does not provide the exclusive method by which a power of attorney may be limited to take effect on the occurrence of a specified event or contingency. 4130. (a) If a principal grants inconsistent authority to one or more attorneys-in-fact in two or more powers of attorney, the authority granted last controls to the extent of the inconsistency. (b) This section is not subject to limitation in the power of attorney.

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# PROBATE CODE

## SECTION 4150-4155

4150. (a) A principal may modify a power of attorney as follows: (1) In accordance with the terms of the power of attorney. (2) By an instrument executed in the same manner as a power of attorney may be executed. (b) An attorney-in-fact or third person who does not have notice of the modification is protected from liability as provided in Chapter 5 (commencing with Section 4300).

4151. (a) A principal may revoke a power of attorney as follows: (1) In accordance with the terms of the power of attorney. (2) By a writing. This paragraph is not subject to limitation in the power of attorney. (b) An attorney-in-fact or third person who does not have notice of the revocation is protected from liability as provided in Chapter 5 (commencing with Section 4300).

4152. (a) Subject to subdivision (b), the authority of an attorney-in-fact under a power of attorney is terminated by any of the following events: (1) In accordance with the terms of the power of attorney. (2) Extinction of the subject or fulfillment of the purpose of the power of attorney. (3) Revocation of the attorney-in-fact's authority, as provided in Section 4153. (4) Death of the principal, except as to specific authority permitted by statute to be exercised after the principal's death. (5) Removal of the attorney-in-fact. (6) Resignation of the attorney-in-fact. (7) Incapacity of the attorney-in-fact, except that a temporary incapacity suspends the attorney-in-fact's authority only during the period of the incapacity. (8) Dissolution or annulment of the marriage of the attorney-in-fact and principal, as provided in Section 4154. (9) Death of the attorney-in-fact. (b) An attorney-in-fact or third person who does not have notice of an event that terminates the power of attorney or the authority of an attorney-in-fact is protected from liability as provided in Chapter 5 (commencing with Section 4300).

4153. (a) The authority of an attorney-in-fact under a power of attorney may be revoked as follows: (1) In accordance with the terms of the power of attorney. (2) Where the principal informs the attorney-in-fact orally or in writing that the attorney-in-fact's authority is revoked or when and under what circumstances it is revoked. This paragraph is not subject to limitation in the power of attorney. (3) Where the principal's legal representative, with approval of the court as provided in Section 4206, informs the attorney-in-fact in writing that the attorney-in-fact's authority is revoked or when and under what circumstances it is revoked. This paragraph is not subject to limitation in the power of attorney. (b) An attorney-in-fact or third person who does not have notice of the revocation is protected from liability as provided in Chapter 5 (commencing with Section 4300).

4154. (a) If after executing a power of attorney the principal's marriage to the attorney-in-fact is dissolved or annulled, the principal's designation of the former spouse as an attorney-in-fact is revoked. (b) If the attorney-in-fact's authority is revoked solely by subdivision (a), it is revived by the principal's remarriage to the attorney-in-fact.

4155. (a) Subject to subdivision (b), the authority of an attorney-in-fact under a nondurable power of attorney is terminated by the incapacity of the principal to contract. (b) An attorney-in-fact or third person who does not have notice of the incapacity of the principal is protected from liability as provided in Chapter 5 (commencing with Section 4300). (c) This section is not subject to limitation in the power of attorney.

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## PROBATE CODE

### SECTION 4200-4207

4200. Only a person having the capacity to contract is qualified to act as an attorney-in-fact. 4201. Designating an unqualified person as an attorney-in-fact does not affect the immunities of third persons nor relieve the unqualified person of any applicable duties to the principal or the principal's successors. 4202. (a) A principal may designate more than one attorney-in-fact in one or more powers of attorney. (b) Authority granted to two or more attorneys-in-fact is exercisable only by their unanimous action. (c) If a vacancy occurs, the remaining attorneys-in-fact may exercise the authority conferred as if they are the only attorneys-in-fact. (d) If an attorney-in-fact is unavailable because of absence, illness, or other temporary incapacity, the other attorneys-in-fact may exercise the authority under the power of attorney as if they are the only attorneys-in-fact, where necessary to accomplish the purposes of the power of attorney or to avoid irreparable injury to the principal's interests. (e) An attorney-in-fact is not liable for the actions of other attorneys-in-fact, unless the attorney-in-fact participates in, knowingly acquiesces in, or conceals a breach of fiduciary duty committed by another attorney-in-fact. 4203. (a) A principal may designate one or more successor attorneys-in-fact to act if the authority of a predecessor attorney-in-fact terminates. (b) The principal may grant authority to another person, designated by name, by office, or by function, including the initial and any successor attorneys-in-fact, to designate at any time one or more successor attorneys-in-fact. (c) A successor attorney-in-fact is not liable for the actions of the predecessor attorney-in-fact. 4204. An attorney-in-fact is entitled to reasonable compensation for services rendered to the principal as attorney-in-fact and to reimbursement for reasonable expenses incurred as a result of acting as attorney-in-fact. 4205. (a) An attorney-in-fact may revocably delegate authority to perform mechanical acts to one or more persons qualified to exercise the authority delegated. (b) The attorney-in-fact making a delegation remains responsible to the principal for the exercise or nonexercise of the delegated authority. 4206. (a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator of the estate, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of the principal's property except specified exclusions, the attorney-in-fact is accountable to the fiduciary as well as to the principal. Except as provided in subdivision (b), the fiduciary has the same power to revoke or amend the durable power of attorney that the principal would have had if not incapacitated, subject to any required court approval. (b) If a conservator of the estate is appointed by a court of this state, the conservator can revoke or amend the durable power of attorney only if the court in which the conservatorship proceeding is pending has first made an order authorizing or requiring the fiduciary to modify or revoke the durable power of attorney and the modification or revocation is in accord with the order. (c) This section is not subject to limitation in the power of attorney. 4207. (a) An attorney-in-fact may resign by any of the following means: (1) If the principal is competent, by giving notice to the principal. (2) If a conservator

has been appointed, by giving notice to the conservator. (3) On written agreement of a successor who is designated in the power of attorney or pursuant to the terms of the power of attorney to serve as attorney-in-fact. (4) Pursuant to a court order. (b) This section is not subject to limitation in the power of attorney.

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## **PROBATE CODE**

### **SECTION 4230-4238**

4230. (a) Except as provided in subdivisions (b) and (c), a person who is designated as an attorney-in-fact has no duty to exercise the authority granted in the power of attorney and is not subject to the other duties of an attorney-in-fact, regardless of whether the principal has become incapacitated, is missing, or is otherwise unable to act. (b) Acting for the principal in one or more transactions does not obligate an attorney-in-fact to act for the principal in a subsequent transaction, but the attorney-in-fact has a duty to complete a transaction that the attorney-in-fact has commenced. (c) If an attorney-in-fact has expressly agreed in writing to act for the principal, the attorney-in-fact has a duty to act pursuant to the terms of the agreement. The agreement to act on behalf of the principal is enforceable against the attorney-in-fact as a fiduciary regardless of whether there is any consideration to support a contractual obligation.

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.

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.

4232. (a) An attorney-in-fact has a duty to act solely in the interest of the principal and to avoid conflicts of interest. (b) An attorney-in-fact is not in violation of the duty provided in subdivision (a) solely because the attorney-in-fact also benefits from acting for the principal, has conflicting interests in relation to the property, care, or affairs of the



principal, or acts in an inconsistent manner regarding the respective interests of the principal and the attorney-in-fact. 4233. (a) The attorney-in-fact shall keep the principal's property separate and distinct from other property in a manner adequate to identify the property clearly as belonging to the principal. (b) An attorney-in-fact holding property for a principal complies with subdivision (a) if the property is held in the name of the principal or in the name of the attorney-in-fact as attorney-in-fact for the principal. 4234. (a) To the extent reasonably practicable under the circumstances, an attorney-in-fact has a duty to keep in regular contact with the principal, to communicate with the principal, and to follow the instructions of the principal. (b) With court approval, the attorney-in-fact may disobey instructions of the principal. 4235. If the principal becomes wholly or partially incapacitated, or if there is a question concerning the capacity of the principal to give instructions to and supervise the attorney-in-fact, the attorney-in-fact may consult with a person previously designated by the principal for this purpose, and may also consult with and obtain information needed to carry out the attorney-in-fact's duties from the principal's spouse, physician, attorney, accountant, a member of the principal's family, or other person, business entity, or government agency with respect to matters to be undertaken on the principal's behalf and affecting the principal's personal affairs, welfare, family, property, and business interests. A person from whom information is requested shall disclose relevant information to the attorney-in-fact. Disclosure under this section is not a waiver of any privilege that may apply to the information disclosed. 4236. (a) The attorney-in-fact shall keep records of all transactions entered into by the attorney-in-fact on behalf of the principal. (b) The attorney-in-fact does not have a duty to make an account of transactions entered into on behalf of the principal, except in the following circumstances: (1) At any time requested by the principal. (2) Where the power of attorney requires the attorney-in-fact to account and specifies to whom the account is to be made. (3) On request by the conservator of the estate of the principal while the principal is living. (4) On request by the principal's personal representative or successor in interest after the death of the principal. (5) Pursuant to court order. (c) The following persons are entitled to examine and copy the records kept by the attorney-in-fact: (1) The principal. (2) The conservator of the estate of the principal while the principal is living. (3) The principal's personal representative or successor in interest after the death of the principal. (4) Any other person, pursuant to court order. (d) This section is not subject to limitation in the power of attorney. 4237. An attorney-in-fact with special skills has a duty to apply the full extent of those skills. 4238. (a) On termination of an attorney-in-fact's authority, the attorney-in-fact shall promptly deliver possession or control of the principal's property as follows: (1) If the principal is not incapacitated, to the principal or as directed by the principal. (2) If the principal is incapacitated, to the following persons with the following priority: (A) To a qualified successor attorney-in-fact. (B) As to any community property, to the principal's spouse. (C) To the principal's conservator of the estate or guardian of the estate. (3) In the case of the death of the principal, to the principal's personal representative, if any, or the principal's successors. (b) On termination of an attorney-in-fact's authority, the attorney-in-fact shall deliver copies of any records relating to transactions undertaken on the principal's behalf that are requested by the person to whom

possession or control of the property is delivered. (c) Termination of an attorney-in-fact's authority does not relieve the attorney-in-fact of any duty to render an account of actions taken as attorney-in-fact. (d) The attorney-in-fact has the powers reasonably necessary under the circumstances to perform the duties provided by this section.

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## **PROBATE CODE**

### **SECTION 4260-4266**

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).

4261. If a power of attorney grants general authority to an attorney-in-fact and is not limited to one or more express actions, subjects, or purposes for which general authority is conferred, the attorney-in-fact has all the authority to act that a person having the capacity to contract may carry out through an attorney-in-fact specifically authorized to take the action.

4262. Subject to this article, if a power of attorney grants limited authority to an attorney-in-fact, the attorney-in-fact has the following authority: (a) The authority granted in the power of attorney, as limited with respect to permissible actions, subjects, or purposes. (b) The authority incidental, necessary, or proper to carry out the granted authority.

4263. (a) A power of attorney may grant authority to the attorney-in-fact by incorporating powers by reference to another statute, including, but not limited to, the following: (1) Powers of attorneys-in-fact provided by the Uniform Statutory Form Power of Attorney Act (Part 3 (commencing with Section 4400)). (2) Powers of guardians and conservators provided by Chapter 5 (commencing with Section 2350) and Chapter 6 (commencing with Section 2400) of Part 4 of Division 4. (3) Powers of trustees provided by Chapter 2 (commencing with Section 16200) of Part 4 of Division 9. (b) Incorporation by reference to another statute includes any amendments made to the incorporated provisions after the date of execution of the power of attorney.

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. 4265. A power of attorney may not authorize an attorney-in-fact to make, publish, declare, amend, or revoke the principal's will. 4266. The grant of authority to an attorney-in-fact, whether by the power of attorney, by statute, or by the court, does not in itself require or permit the exercise of the power. The exercise of authority by an attorney-in-fact is subject to the attorney-in-fact's fiduciary duties.

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## **PROBATE CODE**

### **SECTION 4300-4310**

4300. A third person shall accord an attorney-in-fact acting pursuant to the provisions of a power of attorney the same rights and privileges that would be accorded the principal if the principal were personally present and seeking to act. However, a third person is not required to honor the attorney-in-fact's authority or conduct business with the attorney-in-fact if the principal cannot require the third person to act or conduct business in the same circumstances. 4301. A third person may rely on, contract with, and deal with an attorney-in-fact with respect to the subjects and purposes encompassed or expressed in the power of attorney without regard to whether the power of attorney expressly authorizes the specific act, transaction, or decision by the attorney-in-fact. 4302. When requested to engage in transactions with an attorney-in-fact, a third person, before incurring any duty to comply with the power of attorney, may require the attorney-in-fact to provide identification, specimens of the signatures of the principal and the attorney-in-fact, and any other information reasonably necessary or appropriate to identify the principal and the attorney-in-fact and to facilitate the actions of the third person in transacting business with the attorney-in-fact. A third person may require an attorney-in-fact to provide the current and permanent residence addresses of the principal before agreeing to engage in a transaction with the attorney-in-fact. 4303. (a) A third person who acts in good faith reliance on a power of attorney is not liable to the principal or to any other person for so acting if all of the following requirements are satisfied: (1) The power of attorney is presented to the third person by the attorney-in-fact designated in the power of attorney. (2) The power of attorney appears on its face to be valid. (3) The power of attorney includes a notary public's certificate of acknowledgment or is signed by two witnesses. (b) Nothing in this section is intended to create an implication that a third person is liable for acting in reliance on a power of attorney under circumstances where the requirements of subdivision (a) are not satisfied. Nothing in this section affects any immunity that may otherwise exist apart from this section. 4304. (a) The death of a principal who has executed a power of attorney, whether durable or nondurable, does not revoke or terminate the agency as to the attorney-in-fact or a third person who, without actual knowledge of the principal's death, acts in good faith under the power of attorney. Any action so taken, unless otherwise invalid or unenforceable, binds the principal's successors in interest. (b) The incapacity of a principal who has previously executed a nondurable power of attorney does not revoke or terminate the agency as to the attorney-in-fact or a third person who, without actual knowledge of the incapacity of the principal, acts in good faith under the power of attorney. Any action

so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest. 4305. (a) As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney-in-fact under a power of attorney, whether durable or nondurable, stating that, at the time of the exercise of the power, the attorney-in-fact did not have actual knowledge of the termination of the power of attorney or the attorney-in-fact's authority by revocation or of the principal's death or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. (b) This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity. 4306. (a) If an attorney-in-fact furnishes an affidavit pursuant to Section 4305, whether voluntarily or on demand, a third person dealing with the attorney-in-fact who refuses to accept the exercise of the attorney-in-fact's authority referred to in the affidavit is liable for attorney's fees incurred in an action or proceeding necessary to confirm the attorney-in-fact's qualifications or authority, unless the court determines that the third person believed in good faith that the attorney-in-fact was not qualified or was attempting to exceed or improperly exercise the attorney-in-fact's authority. (b) The failure of a third person to demand an affidavit pursuant to Section 4305 does not affect the protection provided the third person by this chapter, and no inference as to whether a third person has acted in good faith may be drawn from the failure to demand an affidavit from the attorney-in-fact. 4307. (a) A copy of a power of attorney certified under this section has the same force and effect as the original power of attorney. (b) A copy of a power of attorney may be certified by any of the following: (1) An attorney authorized to practice law in this state. (2) A notary public in this state. (3) An official of a state or of a political subdivision who is authorized to make certifications. (c) The certification shall state that the certifying person has examined the original power of attorney and the copy and that the copy is a true and correct copy of the original power of attorney. (d) Nothing in this section is intended to create an implication that a third person may be liable for acting in good faith reliance on a copy of a power of attorney that has not been certified under this section. 4308. (a) A third person who conducts activities through employees is not charged under this chapter with actual knowledge of any fact relating to a power of attorney, nor of a change in the authority of an attorney-in-fact, unless both of the following requirements are satisfied: (1) The information is received at a home office or a place where there is an employee with responsibility to act on the information. (2) The employee has a reasonable time in which to act on the information using the procedure and facilities that are available to the third person in the regular course of its operations. (b) Knowledge of an employee in one branch or office of an entity that conducts business through branches or multiple offices is not attributable to an employee in another branch or office. 4309. Nothing in this chapter requires a third person to engage in any transaction with an attorney-in-fact if the attorney-in-fact has previously breached any agreement with the third person. 4310. Without limiting the generality of Section 4300, nothing in this chapter requires a financial institution to open a deposit account for a principal at the request of an attorney-in-fact if the principal is

not currently a depositor of the financial institution or to make a loan to the attorney-in-fact on the principal's behalf if the principal is not currently a borrower of the financial institution.

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## PROBATE CODE

### SECTION 4400-4409

4400. This part may be cited as the Uniform Statutory Form Power of Attorney Act. 4401. The following statutory form power of attorney is legally sufficient when the requirements of Section 4402 are satisfied: \* \* \* \* \*

NOTICE OF INCOMPLETE TEXT: The Uniform Statutory Form Power of Attorney appears in the hard-copy publication of the chaptered bill. See Sec. 3 of Chapter 113, Statutes of 2011. \* \* \* \* \*

\* \* \* \* \* PRINTER: INSERT POWER OF ATTORNEY FORM HERE

4402. A statutory form power of attorney under this part is legally sufficient if all of the following requirements are satisfied: (a) The wording of the form complies substantially with Section 4401. A form does not fail to comply substantially with Section 4401 merely because the form does not include the provisions of Section 4401 relating to designation of co-agents. A form does not fail to comply substantially with Section 4401 merely because the form uses the sentence "Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation" in place of the sentence "Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation," in which case the form shall be interpreted as if it contained the sentence "Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation." (b) The form is properly completed.

(c) The signature of the principal is acknowledged. 4403. If the line in front of (N) of the statutory form under Section 4401 is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N). 4404. A statutory form power of attorney legally sufficient under this part 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. 4405.

(a) A statutory form power of attorney under this part 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 statutory form 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 forth in Section 4401. (d) Subdivisions (a) and (b) do not provide

the exclusive method by which a statutory form power of attorney under this part may be limited to take effect upon the occurrence of a specified event or contingency. 4406. (a) If a third person to whom a properly executed statutory form power of attorney under this part is presented refuses to honor the agent's authority under the power of attorney within a reasonable time, the third person may be compelled to honor the agent's authority under the power of attorney in an action brought against the third person for this purpose, except that the third person may not be compelled to honor the agent's authority if the principal could not compel the third person to act in the same circumstances. (b) If an action is brought under this section, the court shall award attorney's fees to the agent if the court finds that the third person acted unreasonably in refusing to accept the agent's authority under the statutory form power of attorney. (c) For the purpose of subdivision (b), and without limiting any other grounds that may constitute a reasonable refusal to accept an agent's authority under a statutory form power of attorney, a third person shall not be deemed to have acted unreasonably in refusing to accept an agent's authority if the refusal is authorized or required by state or federal statute or regulation. (d) Notwithstanding subdivision (c), a third person's refusal to accept an agent's authority under a statutory form power of attorney under this part shall be deemed unreasonable if the only reason for the refusal is that the power of attorney is not on a form prescribed by the third person to whom the power of attorney is presented. (e) The remedy provided in this section is cumulative and nonexclusive. 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. 4408. Nothing in this part affects or limits the use of any other form for a power of attorney. A form that complies with the requirements of any law other than the provisions of this part may be used instead of the form set forth in Section 4401, and none of the provisions of this part apply if the other form is used. 4409. (a) A statutory short form power of attorney executed before, on, or after the repeal of Chapter 3 (commencing with Section 2450) of Title 9 of Part 4 of Division 3 of the Civil Code by Chapter 986 of the Statutes of 1990, using a form that complied with former Section 2450 of the Civil Code, 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) of Title 9 of Part 4 of Division 3 of the Civil Code had not been repealed by, and former Section 2511 of the Civil Code amended by, Chapter 986 of the Statutes of 1990. (b) A statutory form power of attorney executed before, on, or after the repeal of Chapter 3.5 (commencing with Section 2475) of Title 9 of Part 4 of Division 3 of the Civil Code by the act that enacted this section, using a form that complied with the repealed chapter of the Civil Code is as valid as if that chapter had not been repealed.

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## **PROBATE CODE**

### **SECTION 4450-4465**

4450. By executing a statutory form power of attorney with respect to a subject listed in Section 4401, 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. 4451. 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. 4452. 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. 4453. 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. 4454. 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. 4455. 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. 4456. 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 (A) the location of its operation, (B) the nature and extent of its business, (C) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation, (D) the amount and types of insurance carried, and (E) 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.

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.

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.

4459. 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.

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. 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. 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. 4463. 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. 4464. The powers described in this chapter 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. 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.

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## **PROBATE CODE**

### **SECTION 4500-4505**

4500. A power of attorney is exercisable free of judicial intervention, subject to this part. 4501. The remedies provided in this part are cumulative and not exclusive of any other remedies provided by law. 4502. Except as provided in Section 4503, this part is not subject to limitation in the power of attorney. 4503. (a) Subject to subdivision (b), a power of attorney may expressly eliminate the authority of a person listed in Section 4540 to petition the court for any one or more of the purposes enumerated in Section 4541 if both of the following requirements are satisfied: (1) The power of attorney is executed by the principal at a time when the principal has the advice of a lawyer authorized to practice law in the state where the power of attorney is executed. (2) The principal's lawyer signs a certificate stating in substance: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney." (b) A power of attorney may not limit the authority of the attorney-in-fact, the principal, the conservator of the person or estate of the principal, or the public guardian to petition under this part. 4504. There is no right to a jury trial in proceedings under this division. 4505. Except as otherwise provided in this division, the general provisions in Division 3 (commencing with Section 1000) apply to proceedings under this division.

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## **PROBATE CODE**

### **SECTION 4520-4523**

4520. (a) The superior court has jurisdiction in proceedings under this division. (b) The court in proceedings under this division is a court of general jurisdiction and the court, or a judge of the court, has the same power and authority with respect to the proceedings as otherwise provided by law for a superior court, or a judge of the superior court, including, but not limited to, the matters authorized by Section 128 of the Code of Civil Procedure. 4521. The court may exercise jurisdiction in proceedings under this division on any basis permitted by Section 410.10 of the Code of Civil Procedure. 4522. Without limiting Section 4521, a person who acts as an attorney-in-fact under a power of attorney governed by this division is subject to personal jurisdiction in this state with respect to matters relating to

acts and transactions of the attorney-in-fact performed in this state or affecting property or a principal in this state. 4523. The proper county for commencement of a proceeding under this division shall be determined in the following order of priority: (a) The county in which the principal resides. (b) The county in which the attorney-in-fact resides. (c) A county in which property subject to the power of attorney is located. (d) Any other county that is in the principal's best interest.

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## **PROBATE CODE**

### **SECTION 4540-4545**

4540. Subject to Section 4503, a petition may be filed under this part by any of the following persons: (a) The attorney-in-fact. (b) The principal. (c) The spouse of the principal. (d) A relative of the principal. (e) The conservator of the person or estate of the principal. (f) The court investigator, described in Section 1454, of the county where the power of attorney was executed or where the principal resides. (g) The public guardian of the county where the power of attorney was executed or where the principal resides. (h) The personal representative or trustee of the principal's estate. (i) The principal's successor in interest. (j) A person who is requested in writing by an attorney-in-fact to take action. (k) Any other interested person or friend of the principal.

4541. A petition may be filed under this part for any one or more of the following purposes: (a) Determining whether the power of attorney is in effect or has terminated. (b) Passing on the acts or proposed acts of the attorney-in-fact, including approval of authority to disobey the principal's instructions pursuant to subdivision (b) of Section 4234. (c) Compelling the attorney-in-fact to submit the attorney-in-fact's accounts or report the attorney-in-fact's acts as attorney-in-fact to the principal, the spouse of the principal, the conservator of the person or the estate of the principal, or to any other person required by the court in its discretion, if the attorney-in-fact has failed to submit an accounting or report within 60 days after written request from the person filing the petition. (d) Declaring that the authority of the attorney-in-fact is revoked on a determination by the court of all of the following: (1) The attorney-in-fact has violated or is unfit to perform the fiduciary duties under the power of attorney. (2) At the time of the determination by the court, the principal lacks the capacity to give or to revoke a power of attorney. (3) The revocation of the attorney-in-fact's authority is in the best interest of the principal or the principal's estate. (e) Approving the resignation of the attorney-in-fact: (1) If the attorney-in-fact is subject to a duty to act under Section 4230, the court may approve the resignation, subject to any orders the court determines are necessary to protect the principal's interests. (2) If the attorney-in-fact is not subject to a duty to act under Section 4230, the court shall approve the resignation, subject to the court's discretion to require the attorney-in-fact to give notice to other interested persons. (f) Compelling a third person to honor the authority of an attorney-in-fact. 4542. A proceeding under this part is commenced by filing a petition stating facts showing that the petition is authorized under this part, the grounds of the petition, and, if known to the petitioner, the terms of

the power of attorney. 4543. The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the principal or the principal's estate and shall stay or dismiss the proceeding in whole or in part when required by Section 410.30 of the Code of Civil Procedure. 4544.

(a) Subject to subdivision (b), at least 15 days before the time set for hearing, the petitioner shall serve notice of the time and place of the hearing, together with a copy of the petition, on the following:

(1) The attorney-in-fact if not the petitioner. (2) The principal if not the petitioner. (b) In the case of a petition to compel a third

person to honor the authority of an attorney-in-fact, notice of the time and place of the hearing, together with a copy of the petition, shall be served on the third person in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. 4545. In a proceeding under this part commenced by

the filing of a petition by a person other than the attorney-in-fact, the court may in its discretion award reasonable attorney's fees to one of the following: (a) The attorney-in-fact, if the court determines that the proceeding was commenced without any reasonable cause. (b)

The person commencing the proceeding, if the court determines that the attorney-in-fact has clearly violated the fiduciary duties under the power of attorney or has failed without any reasonable cause or justification to submit accounts or report acts to the principal or conservator of the estate or of the person, as the case may be, after written request from the principal or conservator.

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