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1. [Cal Prob Code § 4128](#)

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Cal Prob Code § 4128

Deering's California Codes are current through Chapter 6 of the 2018 Regular Session.

Deering's California Codes Annotated > PROBATE CODE > Division 4.5 Powers of Attorney > Part 2 Powers of Attorney Generally > Chapter 2 Creation and Effect of Powers of Attorney

§ 4128. Warning statement in printed durable power of attorney form; Notice to person executing durable power of attorney; Notice to person accepting appointment as Attorney-in-Fact

- (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 life time, 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. —

Cal Prob Code § 4128

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).

History

Added [Stats 1994 ch 307 § 16 \(SB 1907\)](#). Amended [Stats 1999 ch 658 § 32 \(AB 891\)](#), operative July 1, 2000; [Stats 2000 ch 999 § 1 \(SB 1869\)](#).

Annotations

Notes

Historical Derivation:

Amendments:

Note—

Historical Derivation:

Former CC § 2510, as added Stats 1985 ch 403 § 12, amended Stats 1990 ch 986 § [4](#).

Amendments:

1999 Amendment:

Substituted subd (c) for former subd (c) which read: “(c) This section does not apply to the following:

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

“(2) A durable ***power of attorney*** for health care under Part 4 (commencing with Section 4600).”

2000 Amendment:

(1) Substituted “statements” for “statement” at the end of the introductory clause of subd (a); (2) added the second sentence in the third paragraph of the first warning statement; and (3) added the second warning statement.

Note—

[Stats 2000 ch 999](#) provides:

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

SEC. 3. The provisions of this bill shall not affect a durable ***power of attorney*** under [Section 4128 of the Probate Code](#) executed prior to March 1, 2001. Subsequent to March 1, 2001, all printed forms under [Section 4128 of the Probate Code](#) shall conform to the provisions of this bill.

[Stats 1999 ch 658](#) provides:

SEC. 43. This act shall become operative on July 1, 2000.

Commentary

Law Revision Commission Comments:**1994—**

The warning statement in subdivision (a) of Section 4128 replaces the statement provided in former Civil Code Section 2510(b). Subdivision (b) restates former Civil Code Section 2510(c) without substantive change. Subdivision (c) restates former Civil Code Section 2510(a) without substantive change, but the reference to statutory short form ***powers of attorney*** under former Civil Code Section 2450 is omitted as obsolete. This section is not subject to limitation in the ***power of attorney***. See Section 4101(b).

Other provisions prescribe the contents of the warning statements for particular types of durable ***powers of attorney***. See Section 4401 (statutory form ***power of attorney***), 4703 (durable ***power of attorney*** for health care), 4771 (statutory form durable ***power of attorney*** for health care). See also Section 4703(a) (introductory clause) (printed form of durable ***power of attorney*** for health care to provide only authority to make health care decisions).

Section 4102 permits a printed form to be used after January 1, 1995, if the form complies with prior ***law***. A form printed after January 1, 1986, may be sold or otherwise distributed in this state only if it complies with the requirements of Section 4128 (or its predecessor, former Civil Code Section 2510). See Section 4102(b).

See also Sections 4014 (“***attorney-in-fact***” defined), 4018 (“durable ***power of attorney***” defined), 4026 (“principal” defined), 4034 (“third person” defined).

1999—

Subdivision (c) of Section 4128 is amended to delete a reference to **powers of attorney** for health care, which are governed by Division 4.7 (commencing with Section 4600) (Health Care Decisions **Law**). This is a technical, nonsubstantive change.

Revised 1994—

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Section 4102 permits a printed form to be used after January 1, 1995, if the form complies with prior **law**. A form printed after January 1, 1986, may be sold or otherwise distributed in this state only if it complies with the requirements of Section 4128 (or its predecessor, former Civil Code Section 2510). See Section 4102(b).

See also Sections 4014 (“**attorney-in-fact**” defined), 4018 (“durable **power of attorney**” defined), 4026 (“principal” defined), 4034 (“third person” defined).

Research References & Practice Aids

Law Review Articles:

Review of Selected 2008 California Legislation: Civil: Chapter 278: Protecting Californians from Predatory Rescue. [40 McGeorge L. Rev. 320.](#)

Treatises:

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 427](#) “Principal And Agent”.

Cal. Legal Forms, (Matthew Bender) §§ [68.10\[3\]\[h\]](#), 68.200[1][r], 68.201[1][k], 68.210[1][c], 68.212[1][a], 68.212[1][b], 68.212[2], 68.213[1][a], 68.213[1][b], 68.213[2], 61.18[1].

14 Witkin Summary (10th ed) Wills and Probate § 849.

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