

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 620  
By: Harris  
Jurisprudence  
4-9-97  
Committee Report (Substituted)

### **DIGEST**

Currently, the law does not deal with the effect of divorce or annulment on a former spouse's authority to act as an attorney in fact or agent as designated under a durable power of attorney. While it is generally agreed that a former spouse's right under a power of attorney should cease upon divorce, that cessation must be balanced with the rights of third parties. This bill modifies current law by terminating the rights of a former spouse while protecting innocent third parties.

### **PURPOSE**

As proposed, C.S.S.B. 620 modifies current law regarding durable powers of attorney by terminating the rights of a former spouse while protecting innocent third parties.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 481 et seq., Probate Code (Durable Power of Attorney Act), by adding Section 485A, as follows:

Sec. 485A. EFFECT OF PRINCIPAL'S DIVORCE OR MARRIAGE ANNULMENT IF FORMER SPOUSE IS ATTORNEY IN FACT OR AGENT. Provides that a durable power of attorney between a principal and agent terminates upon divorce of the principal and agent.

SECTION 2. Amends Section 486, Probate Code, as follows:

Sec. 486. New heading: KNOWLEDGE OF DEATH, GUARDIAN OF ESTATE, REVOCATION, DIVORCE, OR MARRIAGE ANNULMENT; GOOD-FAITH ACTS. Provides that an appointment as agent for a principal before a divorce or an annulment and a subsequent divorce does not revoke or terminate the agent's power, if the person acts in good faith under or in reliance on the power. Makes conforming and nonsubstantive changes.

SECTION 3. Amends Section 487, Probate Code, as follows:

Sec. 487. New heading: AFFIDAVIT OF LACK OF KNOWLEDGE OF TERMINATION OF POWER; RECORDING; GOOD FAITH RELIANCE. Sets forth requirements for an affidavit executed by the attorney or agent under a durable power of attorney. Provides that a third party who relies in good faith on the acts of an attorney or agent within the scope of the power of attorney is not liable to the principal.

SECTION 4. Amends Section 490(a), Probate Code, to delete a provision setting forth a third party's liability to a principal. Sets forth a new form for a power of attorney.

SECTION 5. Amends Section 492, Probate Code, to authorize an agent to manage and supervise real property.

SECTION 6. Amends Section 503, Probate Code, to define " retirement plan."

SECTION 7. Repealer: Section 490(c), Section 481 et seq., Probate Code (Power of attorney).

SECTION 8. Effective date: September 1, 1997.  
Makes application of this Act prospective.

SECTION 9. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

SECTION 2.

Amends Section 486, Probate Code (Durable Power of Attorney Act), regarding divorce or marriage annulment.

SECTION 3.

Amends Section 487, Probate Code, regarding an affidavit of lack of knowledge or termination of power and good faith reliance.

SECTION 4.

Amends Section 490(a), Probate Code, regarding language in a statutory durable power of attorney.

SECTION 5.

Amends Section 492, Probate Code, regarding construction of power relating to real property transactions.