

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE: SB 237 Amendment to ORS 127.005 and 127.015 to authorize springing powers of attorney

Submitted by: Estate Planning & Administration Section of the Oregon State Bar

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1. Does this amend current law or program? Yes

The change expressly authorizes springing powers of attorney

2. PROBLEM PRESENTED (including level of severity):

Springing powers of attorney become effective at a specified future time or on the occurrence of a specified future event or contingency, often the principal's incapacity. Although springing powers of attorney have been in use in Oregon for decades, it is unclear whether they are in fact legally valid without legislative authorization, on the theory that English common law did not allow such appointments of an agent. Virtually all states, other than Oregon, have adopted legislation authorizing springing powers of attorney.

3. SOLUTION:

Amend ORS 127.005 to make clear that a power of attorney may become effective at a specified future time or on the occurrence of a specified future event or contingency, including the fact that the principal has become financially incapable.

Amend ORS 127.015 to specify how a principal's financial incapability may be determined, if that is the triggering event for a springing power of attorney.

4. PUBLIC POLICY IMPLICATION of this proposed legislative change:

Some lawyers, perhaps a majority, believe that a power of attorney should take effect immediately, because an agent who can be trusted to act for the principal under a springing power of attorney should be trustworthy enough to hold an immediate power.

Nevertheless, other lawyers, and many clients, prefer springing powers, to maintain privacy in the hope that they will never need a surrogate decision maker. Adopting this change also clarifies the validity of existing springing powers of attorney.

5. Could the problem be addressed through a NON-LEGISLATIVE SOLUTION, such as administrative rule or education? No.

6. COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL? If so, have you suggested it to the section or group?

The Estate Planning Section is the most appropriate group to introduce the bill.

However, we believe that various members of the Elder Law Section of the Oregon State Bar have an interest in this legislation.

The Oregon Bankers Association has been consulted and is supportive of the legislation.

7. IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED or interested in this change. Who would support it and who would oppose it?

The elderly and their attorneys should support this change. The Professional Liability Fund of the Oregon State Bar should also support this change, to confirm the validity of existing springing powers of attorney and to avoid potential claims if those documents are held by a court to be invalid.

8. Has this been introduced in a prior session? No.