

#L-640

1/16/85

Second Supplement to Memorandum 84-32

Subject: Study L-640 - Trusts (Revised Uniform Principal and Income Act)

We have just received additional comments from the California Bankers Association on the material considered in Memorandum 84-32 and the First Supplement thereto. A copy of the CBA comments is attached as Exhibit 1 to this supplement.

The CBA comments are self-explanatory and raise no new issues. The CBA is largely in support of staff suggestions for revisions of the Revised Uniform Principal and Income Act. The CBA positions will be noted during the discussion at the meeting.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

CBA Comments, January 10, 1985
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Memorandum 84-32 Revised Uniform Principle and Income Act

Location of the Revised Uniform Principle and Income Act:

1. The California Bankers Association agrees that the act should be moved to the Probate Code.
2. The CBA has no objection to the Staff's suggestion that it be located with the provisions governing the powers of a trustee.

Section 4801: Effect on Tax Laws:

1. This provision does not appear necessary.
2. The Los Angeles County Bar Association seems to feel that it is helpful in dealing with the Internal Revenue Service. If so, we do not object to its retention.
3. We have not encountered any problem with the Internal Revenue Service in this area.

Section 4802: Definitions:

1. We agree that terms such as "Trustee," which are defined elsewhere in the code, need not be defined again.
2. We are not convinced by the State Bar's suggestion that it is more "convenient" to repeat the definition.

Section 4803: Duty of Trustees as to Receipt and Expenditures:

1. We support deletion of the reference to the Prudent Person standard.
2. The Prudent Person standard is no longer an accurate statement of the standard contained in Civil Code §2261.
3. Use of the Nebraska version of the "no reference" provision appears appropriate.

Section 4804: Income and Principle:

1. We agree that subdivision (c), which establishes a duty on the part of the trustee, should be separate from the definitional provisions of subdivisions (a) and (b).
2. We have no objection to adding "income added to and held as principle" but would tend to concur with the Staff's suggestion that changes be made only where a definite improvement would occur.

Section 4805: When Right to Income Arises:

1. We support the RUIA provision which treats periodic payments as accruing from day to day.
2. We do not find allocation of such payments to be an undue administrative burden.
3. We feel that such allocation is generally a more equitable approach.

Section 4807: Corporate Distributions:

We find this provision to be satisfactory as it stands and see no reason to change it at this time.

Section 4808: Bonds:

1. We concur with the Staff's recommendation that the "no amortization" rule be deleted.
2. We do not believe that this rule is necessarily a "better general rule," as the State Bar suggest, since it could result in inequitable treatment of remaindermen.

Section 4809: Business and Farming Operations:

1. We have encountered no difficulty with the reference to "generally accepted accounting principals."
2. We therefore see no need to revise this provision.
3. We support deletion of the "no carry forward" rule, as recommended by the State Bar.

Section 4810: Disposition of Natural Resources:

1. We support replacing the reference to 27^{1/2} with a more general provision.
2. As the Staff points out, tax laws change from time to time, and statutes containing specific figures can prove to be overly rigid.

Section 4811: Timber:

1. We see no reason why Timber should not be treated as a "Natural Resource" and included under §4810.
2. We would need to review specific language before commenting on the State Bar suggestion that average harvest age for particular types of trees be used to segregate income from principle at the inception of a Trust.

Section 4612: Other Property Subject to Depletion:

1. We prefer the California version of this provision, which gives the Trustee discretion as long as the amount allocated to principle is reasonable.
2. We do not find introduction of "inventory value" and 5% limitations to be necessary at this time.

Section 4813: Under-Productive Property:

1. We agree with the Staff that 5% seems a low figure, and that a "floating" standard might be more appropriate.
2. However, we are not aware of any major problems in this area, and therefore have no objections to leaving this provision intact.

Section 4814: Charges Against Income and Principle:

We support the current provision allocating trustees' fees and extraordinary expenses between income and principle, and do not feel that such allocation presents an undue administrative burden.

Section 4815: Reserve for Depreciation or Depletion:

We have no objection to the elimination of this provision. As the Staff points out, it appears to be essentially a transitional provision, which is no longer necessary.

Section 4816: Application of RUPIA:

1. We agree that any provision applying RUPIA to all trusts, regardless to date of creation, should be placed at the beginning of the Act.
2. Any such provision should state that the terms of the Trust instrument take precedence over the Act.

3. Even though §4803 so states, a claim could be made that there is a conflict between §4803 and a provision stating that the Act applies to all trusts.

Section 4817: Severability:

We agree with the Staff's suggestion that this section be deleted since Probate Code §11 deals with severability.