

#L-640

2/22/85

Memorandum 85-41

Subject: Study L-640 - Trusts (Conforming Revisions)

Attached to this memorandum is a draft of conforming revisions needed to conform various provisions in other codes to the draft trust law. Also included in these provisions are several sections in other parts of the Probate Code that will need revision. These Probate Code revisions are reminders at this point since they will be revised later in connection with the revision of the entire Probate Code.

The conforming revisions should be largely self-explanatory when read with their comments. If you have any questions about this material, be sure to raise them at the meeting. Several staff concerns are listed in notes following the comments to the draft sections.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

STAFF DRAFT

CONFORMING REVISIONS RELATING TO TRUST LAW

045/058

Civil Code § 731.02 (technical amendment). Application of Legal Estates Principal and Income Law

SEC. ____ . Section 731.02 of the Civil Code is amended to read:

731.02. This chapter shall apply to all transactions by which a principal was established without the interposition of a trust on or after September 13, 1941, or is hereafter so established. Transactions by which a principal is held in trust are governed by ~~Chapter 2-5 (commencing with Section 730)~~ Part 4 of Division 2 Chapter 3 (commencing with Section 900) of Part 3 of Division 3 of the Probate Code.

Comment. Section 731.02 is amended to correct a cross-reference to the Revised Uniform Principal and Income Act. Prob. Code §§ 900-914.

32291

Civil Code § 771 (technical amendment). Duration of trust exceeding time for vesting of future interests; termination

SEC. ____ . Section 771 of the Civil Code is amended to read:

771. (a) A trust is not invalid, either in whole or in part, merely because the duration of the trust may exceed the time within which future interests in property must vest under this title, if the interest of all the beneficiaries must vest, if at all, within such time.

(b) If a trust is not limited in duration to the time within which future interests in property must vest under this title, a provision, express or implied, in the instrument creating the trust that the trust may not be terminated is ineffective insofar as it purports to be applicable beyond such time. ~~A provision, express or implied, in an instrument creating an inter vivos trust that the trust may not be terminated shall not prevent termination by the joint action of all of the creators of the trust and all of the beneficiaries thereunder if all concerned are competent and if the beneficiaries are all of the age of majority.~~

(c) Whenever a trust has existed longer than the time within which future interests in property must vest under this title:

(1) It shall be terminated upon the request of a majority of the beneficiaries.

(2) It may be terminated by a court of competent jurisdiction upon the petition of the Attorney General or of any person who would be affected thereby if the court finds that such termination would be in the public interest or in the best interest of a majority of the persons who would be affected thereby.

Comment. Section 771 is amended to add subdivision designations and to delete unnecessary language in subdivision (b) relating to termination of inter vivos trusts by action of all trustors and beneficiaries. Termination in this situation is governed by Probate Code Section 644. For provisions concerning consent by persons under an incapacity, see the Comment to Probate Code Section 644.

045/208

Civil Code § 1392.1 (technical amendment). Revocability of power of appointment

SEC. ____ . Section 1392.1 of the Civil Code is amended to read:

1392.1. (a) Unless the power to revoke is reserved in the instrument creating the power or exists pursuant to Section ~~2280~~ 640 of the Probate Code, the creation of a power of appointment is irrevocable.

(b) Unless made expressly irrevocable by the creating instrument or the instrument of exercise, an exercise of a power of appointment is revocable if the power to revoke exists pursuant to Section ~~2280~~ 640 of the Probate Code or so long as the interest to the appointive property, whether present or future, has not been transferred or become distributable pursuant to such appointment.

(c) Unless the power to revoke is reserved in the instrument releasing the power, a release of a power of appointment is irrevocable.

Comment. Section 1392.1 is amended to correct cross-references.

30963

Civil Code § 2224.1 (added). Involuntary trust of proceeds of felon's story

SEC. ____ . Title 8 (commencing with Section 2224.1) is added to the Civil Code, to read:

TITLE 8. INVOLUNTARY TRUST OF PROCEEDS
OF FELON'S STORY

§ 2224.1. Involuntary trust of proceeds of felon's story

2224.1. (a) As used in this section:

(1) "Convicted felon" means any person convicted of a felony, or found not guilty by reason of insanity of a felony committed in California, either by a court or jury trial or by entry of a plea in court.

(2) "Felony" means a felony defined by any California or United States statute.

(3) "Representative of the felon" means any person or entity receiving proceeds by designation of that felon, or on behalf of that felon or in the stead of that felon, whether by the felon's designation or by operation of law.

(4)(A) "Beneficiary" means a person who, under applicable law, other than the provisions of this section, has or had a right to recover damages from the convicted felon for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) If a beneficiary described in subparagraph (A) has died, "beneficiary" also includes a person or estate entitled to recover damages pursuant to Section [573] of the Probate Code.

(C) If a person has died and the death was proximately caused by the convicted felon as a result of the crime for which the felon was convicted, "beneficiary" also includes a person described in Section 377 of the Code of Civil Procedure and any beneficiary of a will of the decedent who had a right under that will to receive more than 25 percent of the value of the estate of the decedent.

(5) "Beneficiary's interest in the proceeds" means that portion of the proceeds necessary to pay the following:

(A) In the case of a beneficiary described in subparagraph (A) or (B) of paragraph (4), those damages which, under applicable law other than the provisions of this section, the beneficiary has or had a right to recover from the convicted felon for injuries proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) In the case of a beneficiary described in subparagraph (C) of paragraph (4), those damages which under all the circumstances of the case may be just.

(C) A beneficiary's interest in the proceeds shall be reduced by the following amount:

(i) Money paid to the beneficiary from the restitution fund because of the crime for which the felon was convicted.

(ii) Money paid to the beneficiary by the convicted felon because of a requirement of restitution imposed by a court in connection with the crime for which the felon was convicted.

(iii) Money paid to the beneficiary because of a judgment against the convicted felon based upon the crime for which the felon was convicted.

(D) In the case of an unsatisfied existing judgment or order of restitution against the convicted felon and in favor of a beneficiary, any money paid to the beneficiary pursuant to this section shall be applied to reduce the amount of the unsatisfied judgment or order.

(6) "Materials" means books, magazine or newspaper articles, movies, films, video tapes, sound recordings, interviews or appearances on television and radio stations, and live presentations of any kind.

(7) "Story" means a depiction, portrayal, or reenactment of a felony and shall not be taken to mean a passing mention of the felony, as in a footnote or bibliography.

(8) "Sale" includes lease, license, or any other transfer or alienation taking place in California or elsewhere.

(9) "Proceeds" means all fees, royalties, real property, or other consideration of any and every kind or nature received by or owing to a felon or his or her representatives for the preparation for the purpose of sale of materials, for the sale of the rights to materials, or the sale or distribution by the convicted felon of materials whether earned, accrued, or paid before or after the conviction. It includes any interest, earnings, or accretions upon proceeds, and any property received in exchange for proceeds.

(b) All proceeds from the preparation for the purpose of sale, the sale of the rights to, or the sale of materials that include or are based on the story of a felony for which a convicted felon was convicted, shall be subject to an involuntary trust for the benefit of the beneficiaries set forth in this section. That trust shall continue until five years after the time of payment of the proceeds to the felon or five years after the date of conviction, whichever is later. If an action is

filed by a beneficiary to recover his or her interest in a trust within those time limitations, the trust character of the property shall continue until the conclusion of the action.

(c)(1) Any beneficiary may bring an action against a convicted felon or representative of the felon to recover his or her interest in the trust established by this section.

(2) That action may be brought in the superior court of the county in which the beneficiary resides, or of the county in which the convicted felon resides, or of the county in which proceeds are located.

(3) If the court determines that a beneficiary is entitled to proceeds pursuant to this section, the court shall order the payment from proceeds which have been received, and, if that is insufficient, from proceeds which may be received in the future.

(d) If there are two or more beneficiaries and if the available proceeds are insufficient to pay all beneficiaries, the proceeds shall be equitably apportioned among the beneficiaries taking into account the impact of the crime upon them.

Prior to any distribution of any proceeds to a beneficiary, the court shall determine whether the convicted felon has failed to pay any portion of a restitution fine or penalty fine imposed by a court, or any restitution imposed as a condition of probation. The court shall also determine whether the felon is obligated to reimburse a governmental entity for the costs of his or her defense and whether a portion of the proceeds is needed to cover his or her reasonable attorney's fees incurred in the criminal proceeding related to the felony, or any appeal or other related proceeding, or in the defense of the action brought under this section. The court shall order payment of these obligations prior to any payment to a beneficiary, except that 10 percent of the proceeds shall be reserved for payment to the beneficiaries.

(e)(1) The Attorney General may bring an action to require proceeds received by a convicted felon to be held in an express trust in a bank authorized to act as a trustee.

(2) An action may be brought under this subdivision within six months after the receipt of proceeds by a convicted felon or six months after the date of conviction, whichever is later.

That action may be brought in the superior court of any county in which the Attorney General has an office.

(3) If the Attorney General proves that the proceeds are proceeds from the sale of a story which are subject to an involuntary trust pursuant to this section, and that it is more probable than not that there are beneficiaries within the meaning of this section, the court shall order that all proceeds be deposited in a bank and held by the bank as trustee of the trust until an order of disposition is made by a court pursuant to subdivision (d), or until the expiration of the period specified in subdivision (b).

(4) If the Attorney General prevails in an action under this subdivision, the court shall order the payment from the proceeds to the Attorney General of reasonable costs and attorney's fees.

(f) In any action brought pursuant to subdivision (d) or (e), upon motion of a party the court shall grant a preliminary injunction to prevent any waste of proceeds if it appears that the proceeds are subject to the provisions of this section, and that they may be subject to waste.

(g) Any violation of an order of a court made pursuant to this section shall be punishable as contempt.

(h) The remedies provided by this section are in addition to other remedies provided by law.

No period of limitations, except those provided by this section, shall limit the right of recovery under this section.

Comment. Section 2224.1 continues former Section 2224.1 without change, except for the cross-reference in subdivision (a)(4)(B) which has been corrected. The remaining trust provisions in former Title 8 (commencing with Section 2215) are superseded by provisions in Division 3 (commencing with Section 500) of the Probate Code.

34731

Civil Code § 2322 (technical amendment). Authority of agent

SEC. _____. Section 2322 of the Civil Code is amended to read:

2322. An authority expressed in general terms, however broad, does not authorize an agent to do any of the following:

1. ~~To act~~ (a) Act in his or her own name, unless it is the usual course of business to do so.

2. ~~To define~~ (b) Define the scope of his or her agency; ~~or,~~

3. ~~To do any act~~ Violate a duty to which a trustee is ~~forbidden~~ to do by Article 2, Chapter 1, of the last Title subject pursuant to

Chapter 1 (commencing with Section 700) of Part 3 of Division 3 of the Probate Code.

Comment. Section 2322 is amended to correct a cross-reference. Although the statutory statement of trustees' duties varies considerably from that in former Civil Code Sections 2228-2240, the amendment of this section is not intended to alter the general rule that agents are subject to the same general standards as trustees. See, e.g., *Helbing v. Helbing*, 89 Cal. App.2d 224, 227, 200 P.2d 560 (1949); *Kinert v. Wright*, 81 Cal. App.2d 919, 925, 185 P.2d 364 (1947).

045/099

Civil Code § 2932.5 (added). Power of sale under assigned mortgage

SEC. ____ . Section 2932.5 is added to the Civil Code, to read:

2932.5. Where a power to sell real property is given to a mortgagee, or other encumbrancer, in an instrument intended to secure the payment of money, the power is part of the security and vests in any person who by assignment becomes entitled to payment of the money secured by the instrument. The power of sale may be exercised by the assignee if the assignment is duly acknowledged and recorded.

Comment. Section 2932.5 continues the substance of former Section 858.

32243

Civil Code § 5103 (technical amendment). Spouses' duty in transactions with each other

SEC. ____ . Section 5103 of the Civil Code is amended to read:

5103. (a) Subject to subdivision (b), either husband or wife may enter into any transaction with the other, or with any other person, respecting property, which either might if unmarried.

(b) Except as provided in Sections 143, 144, and 146 of the Probate Code, in transactions between themselves, a husband and wife are subject to the general rules which control the actions of persons occupying confidential relations with each other, ~~as defined by Title 8 (commencing with Section 2215) of Part 4 of Division 3.~~

Comment. Section 5103 is amended to delete a cross-reference to a repealed title in the Civil Code. This amendment is nonsubstantive and is not intended to alter the law governing the duty of spouses toward one another.

Code of Civil Procedure § 709.010 (technical amendment). Enforcement of money judgment against beneficiary's interest in trust

SEC. ____ . Section 709.010 of the Code of Civil Procedure is amended to read:

709.010. (a) As used in this section, "trust" has the meaning provided in Section ~~1138~~ 82 of the Probate Code ~~but includes a trust subject to court supervision under Article 1 (commencing with Section 1120) of Chapter 19 of Division 3 of the Probate Code.~~

(b) The judgment debtor's interest as a beneficiary of a trust is subject to enforcement of a money judgment only upon petition under this section by a judgment creditor to a court having jurisdiction over administration of the trust as prescribed in Chapter 19 Part 5 (commencing with Section ~~1120~~ 1100) of Division 3 of the Probate Code ~~(administration of trusts)~~. The judgment debtor's interest in the trust may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper, including but not limited to imposition of a lien on or sale of the judgment debtor's interest, collection of trust income, and liquidation and transfer of trust assets by the trustee.

(c) Upon petition of the judgment creditor under this section, the court may make an order that the trustee withhold and pay to the judgment creditor all or a portion of the amount that otherwise would be paid periodically to the judgment debtor from the trust. Unless the order otherwise provides, the order shall continue in effect until the judgment of the judgment creditor is satisfied or the order is modified or terminated. In the case of periodic payments from a spendthrift or support trust, the order may not require that the trustee pay to the judgment creditor any exempt portion of the amount that otherwise would be paid periodically to the judgment debtor from the trust; and, for this purpose, the exempt portion is the amount that the court determines is substantially equivalent to the amount that would be exempt on a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law), including, but not limited to, amounts determined under Sections 706.050, 706.051, and 706.052. Nothing in this subdivision limits the right of the state or other public entity to recover for support provided to a trust beneficiary or to recover for payments made for the support of a trust beneficiary.

(d) Except to the extent that the court order otherwise specifically provides, the provisions of any order entered under subdivision (c) shall not become effective until 30 days after the order has been served upon the trustee, except that the trustee may waive all or any portion of the 30-day period. The trustee may file with the court that made the order a petition requesting modification or clarification of any of the provisions of the order. Notwithstanding any contrary provision of law, the trustee is not required to pay any fee to the clerk of the court as a condition to filing a petition under this subdivision or any subsequent document in connection with a petition. If any provision of the order is modified or set aside, the court, on motion of the judgment creditor or judgment debtor, may set aside or modify other provisions of the order. The trustee, the judgment creditor, and the judgment debtor may present evidence or further evidence that is relevant to the issues to be decided by the court at any hearing on the trustee's petition. The court shall take this evidence into account in determining those issues. Nothing in this subdivision limits any right of a trustee to petition a court under ~~Chapter 49~~ Part 5 (commencing with Section ~~4420~~ 1100) of Division 3 of the Probate Code.

(e) Where the trust gives the trustee discretion over the payment of either principal or income of a trust, or both, nothing in this section affects or limits that discretion or requires the exercise of that discretion in any particular manner. The trustee has no duty to oppose a petition under this section or to make any claim for exemption on behalf of the trust beneficiary. The trustee is not liable for any action taken, or omitted to be taken, in compliance with any court order made under this section.

(f) Except as provided in subdivision (c), (d), and (e), nothing in this section affects the law relating to enforcement of a money judgment against the judgment debtor's interest in a spendthrift trust, but surplus amounts from a spendthrift trust liable pursuant to Section ~~859~~ 859 of the ~~Civil~~ Probate Code are subject to enforcement of a money judgment under this section.

Comment. Section 709.010 is amended to correct cross-references in light of the new trust law.

Code of Civil Procedure §§ 1700-1706 (repealed). Fiduciaries' Wartime Substitution Law

SEC. _____. Title 10b (commencing with Section 1700) of Part 3 of the Code of Civil Procedure is repealed.

Comment. The substance of the Fiduciaries' Wartime Substitution Law, Sections 1700-1706, is continued in Probate Code Sections 300-327. Sections 1700.2 (masculine includes feminine) and 1706 (applicability of title) are not continued because they are unnecessary.

Code of Civil Procedure § 1971 (technical amendment). Statute of Frauds

SEC. _____. Section 1971 of the Code of Civil Procedure is amended to read:

1971. No estate or interest in real property, other than for leases for a term not exceeding one year, nor any ~~trusts or~~ power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his or her lawful agent thereunto authorized by writing.

Comment. Section 1971 is amended to reflect the enactment of Probate Code Section 606 which retains the Statute of Frauds as applied to trusts. This amendment of Section 1971 is not substantive.

Code of Civil Procedure § 1972 (technical amendment). Exception to Statute of Frauds

SEC. _____. Section 1972 of the Code of Civil Procedure is amended to read:

1972. (a) ~~The preceding section~~ Section 1971 must not be construed to affect the power of a testator in the disposition of his or her real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law, nor to abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof.

(b) Section 1971 does not affect the creation of a trust under Division 3 (commencing with Section 500) of the Probate Code.

Comment. Section 1972 is amended to reflect the enactment of Probate Code Section 606 which provides the Statute of Frauds as applied to trusts. This amendment of Section 1972 is not substantive.

27409

Corporations Code § 10251 (technical amendment). Common trust funds

SEC. ____ . Section 10251 of the Corporations Code is amended to read:

10251. (a) "Educational institution," as used in this section, means any nonprofit corporation organized under the provisions of Chapter 3 (commencing with Section 94300) or Chapter 4 (commencing with Section 94400) of Part 59 of Division 10 of the Education Code or organized under the provisions of Part 1 (commencing with Section 9000) of this division in effect on December 31, 1979, and designated on or after January 1, 1980, as a nonprofit public benefit corporation, or organized for charitable or eleemosynary purposes under the provisions of Part 2 (commencing with Section 5110) of this division, or Part 3 (commencing with Section 10200) of this division in effect on December 31, 1979, and designated on or after January 1, 1980, as a nonprofit public benefit corporation for the purpose of establishing, conducting or maintaining an institution offering courses beyond high school and issuing or conferring a diploma or for the purpose of offering or conducting private school instruction on the high school or elementary school level and any charitable trust organized for such purpose or purposes. "Educational institution," as used in this section, also means the University of California, the state colleges, the state community colleges and any auxiliary organization, as defined in Section 89901 of the Education Code, established for the purpose of receiving gifts, property and funds to be used for the benefits of a state college.

(b) It shall be lawful for any educational institution to become a member of a nonprofit corporation incorporated under the laws of any state for the purpose of maintaining a common trust fund or similar common fund in which nonprofit organizations may commingle their funds and property for investment and to invest any and all of its funds, whenever and however acquired, in such common fund or funds; provided, that, in the case of funds or property held as fiduciary, such investment is not prohibited by the wording of the will, deed or other instrument creating such fiduciary relationship.

(c) An educational institution electing to invest in a common fund or funds under the provisions of this section may elect to receive distributions from each such fund in an amount not to exceed for each fiscal year the greater of the income, as defined in Section ~~730-03~~ 904 of the ~~Civil~~ Probate Code, accrued on its interest in such fund or 10 percent of the value of its interest in such fund as of the last day of its next preceding fiscal year. The educational institution may expend such distribution or distributions for any lawful purpose notwithstanding the provisions of any general or special law characterizing such distribution, or any part thereof, as principal or income; provided, that, in the case of funds or property invested as fiduciary, such expenditure is not prohibited by the wording of the will, deed or other instrument creating such fiduciary relationship. No such prohibition of expenditure shall be deemed to exist solely because a will, deed or other such instrument, whether executed or in effect before or after the effective date of this section, directs or authorizes the use of only the "income," or "interest," or "dividends" or "rents, issues or profits," or contains words of similar import.

(d) The provisions of the Corporate Securities Law of 1968 shall not apply to the creation, administration or termination of common trust funds authorized under this section, or to participation therein.

Comment. Subdivision (c) of Section 10251 is amended to correct a cross-reference.

31474

Corporations Code § 29002 (technical amendment). Definitions in Bucket Shop Law

SEC. ____ . Section 29002 of the Corporations Code is amended to read:

29002. (a) "Trustee" means a person executing a trust, as defined in this section.

(b) "Trust" means all voluntary trusts, ~~as defined in the Civil Code,~~ expressly created by or declared in an instrument in writing, other than a will or a judicial writ, order, decree, or judgment, to carry on any business or to secure the payment or repayment of money.

Comment. Section 29002 is amended to delete the reference to a repealed provision in the Civil Code. See Prob. Code § 82 ("trust" defined). This amendment makes no substantive change.

Education Code §§ 94600-94610 (added). Uniform Management of Institutional Funds Act

SEC. __. Chapter 6 (commencing with Section 94600) is added to Part 59 of Division 10 of the Education Code.

CHAPTER 6. UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

§ 94600. Short title

94600. This chapter may be cited as the Uniform Management of Institutional Funds Act.

Comment. Sections 94600-94610 continue former Civil Code Sections 2290.1-2290.12 without substantive change. The source of each section in this chapter is indicated below.

<u>New Education Code Section</u>	<u>Former Civil Code Section</u>
94600	2290.12
94601	2290.1
94602	2290.2
94603	2290.3
94604	2290.4
94605	2290.5
94606	2290.6
94607	2290.7
94608	2290.8
94609	2290.9
94610	2290.11

968/997

§ 94601. Definitions

94601. As used in this chapter:

(a) "Institution" means a private incorporated or unincorporated organization organized and operated exclusively for educational purposes and accredited by the Association of Western Colleges and Universities to the extent that it holds funds exclusively for any of such purposes.

(b) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include (1) a fund held for an institution by a trustee that is not an institution or (2) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(c) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(d) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(e) "Historic dollar value" means the aggregate fair value in dollars of (1) an endowment fund at the time it became an endowment fund, (2) each subsequent donation to the fund at the time it is made, and (3) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

(f) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

405/376

§ 94602. Expenditure of asset net appreciation for current use

94602. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by Section 94606. Appropriations shall be based upon an average fair value covering a period of up to the five preceding fiscal years of the institution and shall be set at any reasonable date prior to each fiscal year. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

405/377

§ 94603. Construction of gift instruments

94603. (a) Section 94602 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended.

(b) With respect to gift instruments in effect prior to January 1, 1974, a restriction upon the expenditure of net appreciation need not be implied solely from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "dividends," or "rents, issues or profits," or "to preserve the principal intact," or a direction which contains other words of similar import.

(c) With respect to gift instruments executed or becoming effective on or after January 1, 1974, a restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," or "rents, issues or profits," or "to preserve the principal intact," or a direction which contains other words of similar import.

405/378

§ 94604. Authority of board to invest and reinvest

94604. In addition to an investment otherwise authorized by law or by the applicable gift instrument, the governing board, subject to any specific limitations set forth in the applicable gift instrument, may do any or all of the following:

(a) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, or partnerships, and obligations of any government or subdivision or instrumentality thereof.

(b) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable.

(c) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution.

(d) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

968/995

§ 94605. Delegation of authority

94605. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may (1) delegate to its committees, officers, or employees of the institution or the fund, or agents, including

investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds, (2) contract with independent investment advisors, investment counsel or managers, banks, or trust companies, so to act, and (3) authorize the payment of compensation for investment advisory or management services.

992/946

§ 94606. Standard of care

94606. In investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing property, appropriating appreciation, and delegating investment management for the benefit of an institution, the members of the governing board shall exercise the judgment, care, and prudence, under the circumstances then prevailing, which persons of discretion and intelligence exercise in the management of their affairs. In exercising judgment under this section, the members of the governing board shall consider the long and short term needs of the institution in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, general economic conditions, the appropriateness of a reasonable proportion of higher risk investment with respect to institutional funds as a whole, income, growth, and long term net appreciation, as well as the probable safety of funds.

992/947

§ 94607. Release of restriction in gift instruments

94607. (a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) If written consent of the donor cannot be obtained by reason of the donor's death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the superior court of the county in which the principal activities of the institution are conducted, or other court of competent jurisdiction, for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. No court has jurisdiction to modify any use of an institutional fund under this part unless the Attorney General is a party to the proceedings. If

the court finds that the restriction is obsolete or impracticable, it may by order release the restriction in whole or in part. A release under this subdivision may not change an endowment fund to a fund that is not an endowment fund.

(c) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(d) This section does not limit the application of the doctrine of cy pres.

992/948

§ 94608. Severability

94608. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

992/949

§ 94609. Application and construction

94609. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

992/950

§ 94610. Status of governing boards

94610. Nothing in this chapter alters the status of governing boards under other laws of this state.

404/121

Financial Code § 1561 (technical amendment). Trust funds

SEC. _____. Section 1561 of the Financial Code is amended to read:

1561. Trust funds received by any trust company in connection with its trust business, if invested, shall be invested as provided in ~~the Civil Code, subject to such provisions as may be contained in any trust instrument~~ Part 3 (commencing with Section 700) of Division 3 of the Probate Code.

Comment. Section 1561 is amended to reflect the consolidation of trust law in the Probate Code and to eliminate unnecessary language.

See Prob. Code §§ 700 (duty to administer trust according to its terms), 720(c) (standard of care subject to terms of trust), 800 (powers subject to control by trust).

045/102

Probate Code § 20 (amended). Application of definitions

SEC. ____ . Section 20 of the Probate Code is amended to read:

20. Unless the provision or context otherwise requires, the words and phrases defined in this part govern the construction of Divisions 1 (commencing with Section 1), 2 (commencing with Section 100), 3 (commencing with Section 500), and 6 (commencing with Section 6100).

Comment. Section 20 is amended to make the definitions in this part applicable to the division on trusts.

3654

Probate Code §§ 300-327 (added). Fiduciaries' Wartime Substitution Law

CHAPTER 1. GENERAL PROVISIONS

§ 300. Short title

300. This part may be cited as Fiduciaries' Wartime Substitution Law.

Comment. Section 300 continues former Code of Civil Procedure Section 1700.

3655

§ 301. Construction of part

301. Unless the context requires a different construction, the provisions in this chapter govern the construction of this part.

Comment. Section 301 continues the substance of former Code of Civil Procedure Section 1700.1.

3667

§ 302. Fiduciary

302. "Fiduciary" includes guardians, conservators, executors, administrators, and trustees of living and testamentary trusts.

Comment. Section 302 continues the substance of former Code of Civil Procedure Section 1700.3.

§ 303. Trusts

303. "Trusts" means express, not constructive or implied trusts.

Comment. Section 303 continues former Code of Civil Procedure Section 1700.4.

Note. This provision is unnecessary. See Section 82 ("Trust" defined).

§ 304. Court trusts; private trusts

304. "Court trusts" and "private trusts," unless the context requires a different construction, have the meaning attributed to these terms in the Banking Law, except that this part applies to all fiduciaries, corporate or individual.

Comment. Section 304 continues former Code of Civil Procedure Section 1700.5.

Note. This reference to "court" and "private" trusts appears outmoded. The same can be said for Financial Code Section 1581 which defines these terms.

§ 305. Consultant

305. "Consultant" means a person not a trustee designated in a trust to advise or direct the trustee in respect of any matters or things connected with the trust, or whose consent or approval is required to purchases, sales, exchanges, or other transactions on the part of the trustee. It includes a trustor who reserves any such powers of direction or control.

Comment. Section 305 continues former Code of Civil Procedure Section 1700.6.

Note. This section is anomalous; the concept of a consultant is not used in other trust statutes.

§ 306. War service

306. A fiduciary or consultant shall be deemed to be engaged in war service in the following cases:

(a) If he or she is a member of the military or naval forces of the United States or like forces of any nation with which the United States is allied or associated in time of war. "Military or naval forces" includes members of the Army, Navy, Marine Corps, and Coast Guard,

members of the Public Health Service detailed by proper authority for duty with the armed forces, members of the Enlisted Reserve Corps under orders to report for naval service, members of the Women's Army Auxiliary Corps, Women's Reserves, and all other organizations or services recognized by the laws of the United States as a part of or auxiliary to the armed forces of the United States.

(b) If he or she has been accepted for and is awaiting induction into the military or naval forces or is receiving training or education under government supervision preliminary to induction into any of these forces.

(c) If he or she is engaged, outside that part of the continental limits of the United States which is south of the 49th parallel of latitude, in any work in connection with a governmental agency of the United States or with the American Red Cross or any other body with similar objects operating with the approval and sanction of the government of the United States, or of any nation, dominion, or commonwealth with which the United States is allied or associated in time of war.

(d) If he or she is engaged in time of war in service upon any ship of United States registry.

(e) If he or she is interned or a prisoner of war in a foreign country or in the United States or any possession or dependency of the United States, or if he or she is absent from that part of the United States which is south of the 49th parallel of latitude and, due to war conditions, is unable to return freely at his or her own volition.

(f) If he or she is engaged in any service in the United States or abroad arising out of or connected with a state of war which the court having jurisdiction of the trust finds prevents him or her from giving proper attention to his or her duties.

Comment. Section 306 continues former Code of Civil Procedure Section 1700.7.

Note. This section contains obsolete terminology and repetitious language, and omits the Air Force, although general language fills the gaps. The reference to the 49th parallel would seem to leave out Lake of the Woods, Minnesota.

5010

§ 307. Corporate fiduciary; residence

307. Where reference is made to the county in which a fiduciary resides, it means, in case of a corporate fiduciary, the county in which its principal office is located, or the county in which is located the

office handling or administering the estate or trust with which the fiduciary or consultant engaged in war service is concerned.

Comment. Section 307 continues former Code of Civil Procedure Section 1700.8.

CHAPTER 2. APPOINTMENT OF SUBSTITUTE FIDUCIARY

§ 308. Authority to appoint; petition

308. The appropriate court may appoint a substitute fiduciary for a fiduciary engaged in war service upon petition of such fiduciary, a cofiduciary, or any person interested in the estate or trust. In the case of court trusts such substitute shall be appointed by the court in which the estate or trust is being administered, and in the case of private trusts by the superior court in and for the county in which one or more trustees reside.

Comment. Section 308 continues former Code of Civil Procedure Section 1701.

Note. This section is inconsistent with the draft trust law.

§ 309. Notice of hearing

309. Notice of hearing of the petition shall be given as provided in Section 325.

Comment. Section 309 continues former Code of Civil Procedure Section 1701.1.

§ 310. Fiduciary in service; accounting; suspension; reinstatement

310. Upon hearing the petition and making such provision as the court deems necessary regarding an accounting by the fiduciary engaged in war service, the court may order a suspension of the powers and duties of the fiduciary for the period of his or her war service and until the further order of the court. Upon the expiration of his or her war service, if the trust or estate has not been closed, the fiduciary, upon petition to the court and notice of hearing pursuant to this chapter, shall be entitled to reinstatement as fiduciary. Upon such reinstatement, any fiduciary appointed as substitute shall be removed and may receive his or her discharge upon such conditions as the court prescribes.

Comment. Section 310 continues former Code of Civil Procedure Section 1701.2.

5089

§ 311. Cofiduciary; exercise of powers of fiduciary in service

311. Where there is a qualified and acting cofiduciary, the court is not required to appoint a substitute fiduciary, but may vest in the cofiduciary the power and authority of the fiduciary engaged in war service.

Comment. Section 311 continues former Code of Civil Procedure Section 1701.3.

5091

§ 312. Powers of substitute

312. Any substitute fiduciary, including a cofiduciary in whom authority is vested pursuant to this chapter, shall have all the power and authority, including discretionary powers, which the fiduciary engaged in war service might have exercised, except discretionary powers which the court finds are purely personal to the fiduciary.

Comment. Section 312 continues former Code of Civil Procedure Section 1701.4.

5092

§ 313. Trusts having multiple trustees; substitute

313. In trusts having multiple trustees, a substitute trustee shall be appointed in all cases where, in the absence of such appointment, the trusteeship would be vested solely in a beneficiary having a vested or contingent interest in or to the income or principal of the trust.

Comment. Section 313 continues former Code of Civil Procedure Section 1701.5.

5093

§ 314. Bond of substitute

314. Any substitute fiduciary appointed pursuant to this part shall give bond in the manner and to the extent provided by law.

Comment. Section 314 continues former Code of Civil Procedure Section 1701.6.

§ 315. Substitute or reinstated fiduciary; responsibility for acts of predecessor

315. A substitute fiduciary and any fiduciary engaged in war service and reinstated pursuant to Section 310 shall not have any responsibility for, nor unless expressly directed by the court any duty to inquire into, the acts or omissions of the predecessor fiduciary.

Comment. Section 315 continues former Code of Civil Procedure Section 1701.7.

§ 316. Delegation of powers; fiduciary; approval

316. With the approval of the court, a fiduciary engaged in war service may delegate his or her power and authority as fiduciary, including discretionary power, to any cofiduciary or fiduciaries who are not engaged in war service. Delegation may be made for the period during which the fiduciary is engaged in war service and not to exceed six months following the expiration of that period. In the case of court trusts the approval of the court in which the estate or trust is being administered shall be required to delegation, and in the case of private trusts the approval of the superior court in and for the county in which any cotrustee or trustees reside.

Comment. Section 316 continues former Code of Civil Procedure Section 1702.

Note. The jurisdiction provisions in this section are anomalous. Compare to draft Sections 1100-1105 attached to Memorandum 85-32.

§ 317. Delegation of powers; fiduciary; jurisdiction to approve; notice of hearing; resumption of powers

317. The superior court sitting in probate or in equity, as the case may be, may approve or disapprove any delegation upon petition of the delegant or delegate or of a fiduciary or any person interested in the estate or trust. Notice of hearing of the petition shall be given as provided in Section 325. Upon the expiration of his or her war service the delegant, upon petition to the court and notice of hearing, may be authorized by the court to resume the exercise of his or her functions, and the authority delegated shall cease.

Comment. Section 317 continues former Code of Civil Procedure Section 1702.1.

§ 318. Delegation of powers; fiduciary; exceptions to right

318. The right of delegation shall not exist in either of the following circumstances:

(a) In the case of a trust, where and to the extent that the court finds that the powers to be delegated are purely personal to the delegant.

(b) Where in the case of a trust, the sole trustee to whom authority might otherwise be delegated is a beneficiary having a vested or contingent interest in or to income or principal of the trust.

Comment. Section 318 continues former Code of Civil Procedure Section 1702.2.

§ 319. Personal powers of fiduciary in service

319. In the absence of power to delegate or in the absence of its exercise where the power is existent, proceedings may be had for the appointment of a substitute fiduciary, except that a substitute fiduciary shall not be authorized to exercise powers purely personal to the fiduciary engaged in war service. Such powers of the fiduciary shall remain suspended until their exercise is resumed pursuant to this chapter.

Comment. Section 319 continues former Code of Civil Procedure Section 1702.3.

§ 320. Delegation of powers; fiduciary; responsibility for acts of delegate

320. A fiduciary delegating pursuant to this chapter shall have no responsibility for the acts or omissions of the person to whom the delegation is made.

Comment. Section 320 continues former Code of Civil Procedure Section 1702.4.

§ 321. Delegation of powers; consultant; authority; procedure; personal powers

321. A consultant engaged in war service may delegate his or her power and authority as consultant, including discretionary powers, to his or her coconsultant who is not engaged in war service, or to the trustee administering the trust. The procedure relative to delegation

by fiduciaries shall govern in such cases. The right of delegation shall not exist to the extent that the court finds that the powers to be delegated are purely personal to the delegant. In that class of cases the powers of the delegant shall remain suspended until their exercise is resumed pursuant to this chapter.

Comment. Section 321 continues former Code of Civil Procedure Section 1703.

§ 322. Suspension of consultant; substitution

322. Where the consultant engaged in war service does not delegate his or her functions, the appropriate court, upon the petition of the trustee or of any person interested in the trust and after notice of the hearing of the petition as provided in Section 325, may do either of the following:

(a) Suspend the consultant's authority and powers for the period of his or her war service and not to exceed six months thereafter.

(b) Confer these functions, except discretionary powers which the court finds are purely personal to the consultant, upon any other consultant designated in the trust, or the trustee, or any other qualified person.

Comment. Section 322 continues former Code of Civil Procedure Section 1703.1.

§ 323. Reinstatement of consultant after war service

323. In all cases of delegation by the consultant or of the suspension of his or her powers by the court, the consultant, within not to exceed six months following the expiration of his or her war service and upon petition to the court and notice of hearing, may be authorized by the court to resume the exercise of his or her functions. All authority delegated to or conferred upon other persons shall thereupon cease.

Comment. Section 323 continues former Code of Civil Procedure Section 1703.2.

§ 324. Delegation of powers; consultant; responsibility for acts of delegate

324. A consultant delegating pursuant to this chapter shall have no responsibility for the acts or omissions of the person to whom the delegation is made.

Comment. Section 324 continues former Code of Civil Procedure Section 1703.3.

24825

§ 325. Notices of hearing; posting; service

325. In all cases where notice of hearing of a petition for substitution of fiduciaries, or suspension or delegation of the functions of a fiduciary or consultant, or for resumption of these functions is required to be given pursuant to this chapter, the clerk shall set the petition for hearing and shall post notice of the time and place of hearing in three public places in the county at least 10 days before the time set for the hearing. At least 10 days before the time set for hearing, the petitioner shall cause further notice thereof to be given as follows:

(a) Notice shall be mailed, except as prohibited by federal statute or governmental order or regulation:

(1) To each fiduciary, including consultants if any, who does not join in the petition.

(2) In case of probate estates, to the persons enumerated in [the second paragraph of Section 1200] of the Probate Code, in the manner therein provided.

(3) In case of trusts, to each person receiving benefits under the trust, and to each person presumptively entitled in remainder, insofar as the addresses and identity of such persons are known to the petitioner or to the trustee. In the case of revocable or terminable trusts, notice shall be sufficient if mailed to the person having such right of revocation or termination.

(b) In the case of guardianships or conservatorships, notice shall be given in the manner required by law upon settlement of an account of a guardian or conservator.

(c) In addition to the notice specified in subdivisions (a) and (b), in cases where the fiduciary or consultant engaged in war service is not the petitioner or where his or her written consent to the relief prayed for is not filed, notice served either personally or by mail,

telegraph, or cable shall be given to such fiduciary or consultant, unless the court finds that such notice is impracticable because his or her whereabouts is unknown and cannot reasonably be ascertained, or because of impossibility or difficulty of communicating with him or her.

(d) In all cases mentioned in this section, such additional notice, if any, shall be given to parties in interest as the court may direct.

Comment. Section 325 continues former Code of Civil Procedure Section 1704.

§ 326. Notices of hearing; inquiry; finding

326. In all cases where notice is required to be given, the court shall inquire as to whether proper notice has been given. A finding as to the giving of due notice contained in the court's order when final shall be conclusive on the fiduciary or consultant, as the case may be, and on all persons interested in the estate, trust, guardianship, or conservatorship, unless modified or vacated on equitable grounds by a court of competent jurisdiction.

Comment. Section 326 continues former Code of Civil Procedure Section 1704.1.

§ 327. Provisions of wills or trusts differing or inconsistent

327. Provisions otherwise lawful contained in wills and trusts relating to any of the matters and things dealt with in this chapter shall be valid though differing from or inconsistent with it.

Comment. Section 327 continues former Code of Civil Procedure Section 1705.

Probate Code § [1032] (technical amendment). Marital deduction gift

SEC. ____ . Section [1032] of the Probate Code is amended to read:

1032. (a) If a will contains a marital deduction gift, the provisions of the will, including any power, duty, or discretionary authority given to the fiduciary, shall be construed to comply with the marital deduction provisions of the Internal Revenue Code and the regulations thereunder in order to conform to that intent. Whether the will contains a marital deduction gift depends upon the intention of the testator at

the time the will is executed. If the testator has adequately evidenced an intention to make a marital deduction gift, the fiduciary shall not take any action or have any power that may impair that deduction. This chapter shall not apply to a trust which qualifies for the marital deduction under Section 20.2056(e)-(2)(b) of the Code of Federal Regulations (the so-called "estate trust"). This chapter shall neither require nor prohibit a fiduciary making the election referred to in Section 2056(b)(7) of the Internal Revenue Code.

(b) If a will indicates the testator's intention at the time the will is executed to comply with the Internal Revenue Code requirements for a charitable remainder unitrust or a charitable remainder annuity trust as each is defined in Section 664 of the Internal Revenue Code, the provisions of the will, including any power, duty, or discretionary authority given to the fiduciary, shall be construed to comply with the charitable deduction provisions of Section 2055 of the Internal Revenue Code and the charitable remainder trust provisions of Section 664 of the Internal Revenue Code in order to conform to that intent. In no event shall the fiduciary take any action or have any power that may impair the charitable deduction. After the death of the testator, the provisions of the will may be augmented in any manner consistent with subdivision (e) of Section 2055 of the Internal Revenue Code upon a petition provided for in ~~subdivision (b)~~ of Section ~~1126~~ 1130 of the Probate Code.

Comment. [Section 1032 is amended to correct a cross-reference. This amendment makes no substantive change.]

405/899

Probate Code § [1200] (amended). Manner of notice under Probate Code

SEC. ____ . Section [1200] of the Probate Code is amended to read:

1200. (a) Upon the filing of:

- (1) A petition for the sale of stocks or bonds;
 - (2) A petition for confirmation of a sale or a petition to grant an option to purchase real property;
 - (3) A petition for leave to enter into an agreement to sell or give an option to purchase a mining claim or real property worked as a mine;
- or

(4) A petition for leave to lease or to exchange property, or to institute an action for the partition of property, the clerk shall set the same for hearing by the court and shall give notice of the proceeding by causing a notice of the time and place of hearing thereof to be

posted at the courthouse of the county where the proceedings are pending, at least 10 days before the day of hearing, giving the name of the estate, the name of the petitioner and the nature of the application, referring to the petition for further particulars, and stating the time at which the application will be heard.

(b) Proof of the giving of notice shall be made at the hearing; and, if it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order, and the order shall be conclusive upon all persons when it becomes final.

(c) This section does not apply to proceedings under Division 4 (commencing with Section 1400). When a provision of Division 4 applies the provisions of this code applicable to executors or administrators to proceedings under Division 4, a reference to this section in the provisions applicable to executors or administrators shall be deemed to be a reference to Chapter 3 (commencing with Section 1460) of Part 1 of Division 4.

(d) This section does not apply to proceedings under Division 3 (commencing with Section 500).

~~(d)~~ (e) Notwithstanding any other provision of this code which requires the clerk to post notice of a hearing in accordance with this section, the posting shall not be required, except as to those matters specifically enumerated in subdivision (a).

Comment. [Subdivision (d) is added to Section [1200] to make clear that the general notice provisions do not apply to the division on trusts. See Section 1110 et seq. (notice in trust proceedings).]

405/905

Probate Code § [1200.5] (amended). Manner of notice in certain cases

SEC. ____ . Section [1200.5] of the Probate is amended to read:

1200.5. (a) Notice shall be given in the manner prescribed in subdivision (b) upon the filing of any of the following:

(1) A petition under Section 641 of this code for the setting aside of an estate.

(2) A petition to set apart a homestead or exempt property.

(3) A petition relating to the family allowance filed after the return of the inventory.

(4) A petition for leave to settle or compromise a claim against a debtor of the decedent or a claim against the estate or a suit against the executor or administrator as such.

(5) A petition for the sale of stocks or bonds.

(6) A petition for confirmation of a sale or a petition to grant an option to purchase real property.

(7) A petition for leave to enter into an agreement to sell or give an option to purchase a mining claim or real property worked as a mine.

(8) A petition for leave to execute a promissory note or mortgage or deed of trust or give other security.

(9) A petition for leave to lease or to exchange property, or to institute an action for the partition of property.

(10) A petition for an order authorizing or directing the investment of money.

(11) An account of an executor or administrator or trustee.

(12) A petition for partial or ratable or preliminary or final distribution.

(13) A petition for the delivery of the estate of a nonresident.

(14) A petition for determination of heirship or interests in an estate.

~~(15) A petition of a trustee for instructions.~~

~~(16) A petition for the appointment of a trustee.~~

~~(17)~~ (15) Any petition for letters of administration or for probate of will, or for letters of administration-with-will annexed, which is filed after letters of administration or letters testamentary have once been issued.

~~(18)~~ (16) A report of status of administration.

~~(19)~~ (17) A petition for family allowance.

~~(20)~~ (18) An objection to the appraisement made by the executor, administrator, or probate referee.

~~(21)~~ (19) A petition under Section 709 for leave to file a claim against the estate after the expiration of the prescribed period.

~~(22)~~ (20) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) At least 10 days before the time set for the hearing of the petition or account, the petitioner or person filing the account shall cause notice of the time and place of hearing to be mailed to the executor or administrator, when he or she is not the petitioner, to any coexecutor or coadministrator not petitioning, and to all persons (or to their attorneys, if they have appeared by attorney), who have requested notice

or who have given notice of appearance in the estate in person or by attorney, as heir, devisee, legatee or creditor, or as otherwise interested, addressed to them at their respective post office addresses given in their request for special notice, if any, otherwise at their respective offices or places of residence, if known, and if not, at the county seat of the county where the proceedings are pending, or to be personally served upon such person.

(c) Proof of the giving of notice shall be made at the hearing; and, if it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order, and the order shall be conclusive upon all persons when it becomes final.

(d) This section ~~shall~~ does not apply to proceedings under Division 4 (commencing with Section 1400). When a provision of Division 4 applies the provisions of this code applicable to executors or administrators to proceedings under Division 4, a reference to this section in the provisions applicable to executors or administrators shall be deemed to be a reference to Chapter 3 (commencing with Section 1460) of Part 1 of Division 4.

(e) This section does not apply to proceedings under Division 3 (commencing with Section 500).

~~(e)~~ (f) The notice required by this section shall be in addition to the notice, if any, required to be given in the manner specified in Section 1200.

Comment. [A new subdivision (e) is added to Section [1200.5] to make clear that the general notice provisions of this section do not apply to the division on trusts. See Section 1110 et seq. (notice in trust proceedings).]

405/941

Probate Code § [1240] (amended). Appeals

SEC. ____ . Section [1240] of the Probate Code is amended to read:
1240. An appeal may be taken from an order or the refusal to make an order:

- (a) Granting or revoking letters testamentary or of administration.
- ~~(b) Removing a trustee of a testamentary trust.~~
- ~~(e)~~ (b) Admitting a will to probate or revoking the probate thereof.
- ~~(d)~~ (c) Setting aside an estate claimed not to exceed twenty thousand dollars (\$20,000) in value.
- ~~(e)~~ (d) Setting apart property as a homestead or claimed to be exempt from execution.

- ~~(f)~~ (e) Granting or modifying a family allowance.
- ~~(g)~~ (f) Directing or authorizing the sale or conveyance or confirming the sale of property.
- ~~(h)~~ (g) Directing or authorizing the granting of an option to purchase real property.
- ~~(i)~~ (h) Adjudicating the merits of any claim under Section 851.5, 852 or 853.
- ~~(j)~~ (i) Allocating debts under Section 980.
- ~~(k)~~ (j) Settling an account of an executor or administrator ~~or trustee, or instructing or appointing a trustee.~~
- ~~(l)~~ (k) Instructing or directing an executor or administrator.
- ~~(m)~~ (l) Directing or allowing the payment of a debt, claim, legacy, or attorney's fee.
- ~~(n)~~ Fixing, directing, or allowing payment of a trustee's compensation.
- ~~(o)~~ (m) Determining heirship or the persons to whom distribution should be made ~~or trust property should pass.~~
- ~~(p)~~ (n) Distributing property.
- ~~(q)~~ (o) Determining that property is community property passing or belonging to the surviving spouse pursuant to Section 655.
- ~~(r)~~ (p) Fixing an inheritance tax or determining that none is due.
- ~~(s)~~ (q) Authorizing a personal representative to invest or reinvest any surplus moneys pursuant to Section 584.5.

Comment. [Section [1240] is amended to delete references to orders involving trusts. The substance of the deleted language is continued in Section 1135.]

31784

Probate Code § 6325 (technical amendment). Jurisdiction over trusts for insurance or other employee benefits

SEC. ____ . Section 6325 of the Probate Code is amended to read:
6325. (a) The court in which the proceedings are pending for administration of the estate of the decedent has jurisdiction, before or after payment or transfer of benefits and rights or their proceeds to the trustee, to:

- (1) Determine the validity of the trust.
- (2) Determine the terms of the trust.
- (3) Fill vacancies in the office of trustee.
- (4) Require ~~an undertaking a bond~~ of a trustee ~~or successor trustee~~ in its discretion and in such amount as the court may determine

for the faithful performance of duties as trustee, subject to the provisions of Article 3 (commencing with Section 1540) of Chapter 12 of Division 1 of the Financial Code and Section ~~1127.5~~ 1001 of this code.

(5) Grant additional powers to the trustee, as provided in Section ~~1120.2~~ 801.

(6) Instruct the trustee.

(7) Determine, fix, or allow payment of compensation of a trustee as provided in ~~Section 1122~~ Sections 1040, 1041, and 1042.

(8) Hear and determine adverse claims to the subject of the trust by the personal representative, surviving spouse, or other third person.

(9) Determine the identity of the trustee and the trustee's acceptance or rejection of the office and, upon request, furnish evidence of trusteeship to a trustee.

(10) Order postponement of the payment or transfer of the benefits and rights or their proceeds.

(11) Authorize or direct removal of the trust or assets of the trust to another jurisdiction pursuant to the procedure provided in ~~Article 3 Chapter 4~~ Chapter 4 (commencing with Section ~~1139~~ 1160) of ~~Chapter 19~~ Part 5 of Division 3.

(12) Make any order incident to the foregoing or to the accomplishment of the purposes of this chapter.

(b) The personal representative of the designator's estate, any trustee named in the will or designation or successor to such trustee, or any person interested in the estate or trust may petition the court for an order under this section. Notice of hearing of the petition shall be given in the manner provided in Section ~~1120~~ 1133, except as the court may otherwise order.

Comment. Section 6325 is amended to correct cross-references. For changes in the law applicable to trust administration, see the Comments to the new sections.

Note. Much of this section duplicates material in the trust law and is unneeded. Perhaps insurance trusts should be governed by general trust statutes.

31785

Probate Code § 6326 (technical amendment). Applicability of trust administration provisions

SEC. ____ . Section 6326 of the Probate Code is amended to read:

6326. As to matters not specifically provided in Section 6325, the provisions of ~~Chapter 19~~ Division 3 (commencing with Section ~~1120~~) ~~of Division 3~~ 500) apply to the trust.

Comment. Section 6326 is amended to refer to the statute governing trust administration.