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10/28/85

L-1020

Memorandum 85-100

Subject: Study L-1020 - Probate Code (Court Approval of Certain Mutual Fund Investments)

At the August 1985 meeting, the Commission considered the powers and duties provision authorizing the personal representative to invest without prior court approval in mutual funds comprised of U. S. government bonds or of "repurchase agreements" (existing Prob. Code § 584.1). The Commission was concerned about the repurchase agreement provision, thinking that it might be a riskier investment than U. S. bonds. Before deciding to limit the provision, the Commission asked the staff to determine who sponsored the original legislation and to report back to the Commission.

The staff has determined that the California Bankers Association sponsored the legislation (AB 2622, Harris, enacted as 1982 Cal. Stat. ch. 1521). Attorney Michael Harrington, now with Hahn & Hahn in Pasadena, participated in drafting the bill. Mr. Harrington was present at the last meeting of the Commission and volunteered the information that it was the intent of the legislation to authorize investment in mutual funds consisting of repurchase agreements only with respect to U. S. government bonds, although the statute is not expressly so limited.

If the statute were limited as originally intended, that would appear to take care of the Commission's concern. Accordingly, the staff recommends that the draft section be revised as indicated in Exhibit 1 to this Memorandum, consistent with its original intent.

Respectfully submitted,

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Staff Counsel

Exhibit 1§ 9701. Investment in direct obligations of the United States, certain mutual funds, and common trust funds

9701. Pending settlement of the estate, the personal representative may, without prior court authorization, invest and reinvest in any or all of the following:

(a) Direct obligations of the United States maturing not later than one year from the date of making the investment or reinvestment.

(b) Mutual funds which are comprised solely¹ of direct obligations of the United States maturing not later than one year from the date of making the investment or reinvestment.

(c) Mutual funds which are comprised of repurchase agreements with respect to ~~any obligation~~ direct obligations of the United States, regardless of maturity, in which the fund is authorized to invest.

(d) Units of a common trust fund described in Section 1564 of the Financial Code. Such common trust fund shall have as its objective investment primarily in short term fixed income obligations and shall be permitted to value investments at cost pursuant to regulations of the appropriate regulatory authority.

Comment. Subdivisions (a), (b), and (c) of Section 9701 continue the substance of former Section 584.1 with two exceptions:

(1) The requirement has been added in subdivision (b) that a mutual fund must be comprised "solely" of the permitted obligations.

(2) The limitation has been added in subdivision (c) that a mutual fund must be comprised of repurchase agreements with respect to "direct obligations of the United States," rather than with respect to any obligation as formerly.

Subdivision (d) continues the substance of former Section 585.1.

For the comparable provisions in guardianship-conservatorship law, see Sections 2574-2575. See also Section [59] ("personal representative" defined).

¹ The Commission decided to add the word "solely" to subdivision (b) at the August 1985 meeting.