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L-1020

Memorandum 85-110

Subject: Study L-1020 - Probate Code (Mutual Fund Investments)

At the August 1985 meeting, the Commission considered the provision authorizing the personal representative to invest without prior court approval in mutual funds comprised of U. S. government bonds or of "repurchase agreements." Prob. Code § 584.1. The Commission was concerned about repurchase agreements, thinking they might be riskier than bonds. Before deciding to limit the provision, however, the Commission asked the staff to find the source of the legislation and report back.

The California Bankers Association sponsored the bill (AB 2622, Harris, enacted as 1982 Cal. Stat. ch. 1521). Attorney Michael Harrington, who helped draft the bill, advises that the language is intended to refer to repurchase agreements with respect to U. S. government bonds. The staff proposes to make this clear by revising the section as set out in Exhibit 1. Mr. Harrington has reviewed the proposed amendment and finds it satisfactory. Does the Commission approve this amendment?

The Commission decided to limit subdivision (b) of proposed Section 9701 (Exhibit 1) by requiring the fund to consist "solely" of U. S. government bonds. Mr. Harrington has written to say that the word "solely" fails to recognize that these funds usually have uninvested cash. Mr. Harrington suggests that we either change "solely" to "primarily" in subdivision (b), or add authority for uninvested money to be kept in cash or cash equivalents. Mr. Harrington's letter is attached to this Memorandum as Exhibit 2. Does the Commission wish to accept Mr. Harrington's suggestion?

Respectfully submitted,

Robert J. Murphy III
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 solely 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."

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).

Exhibit 2

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November 7, 1985

Mr. Robert J. Murphy III
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Memorandum 85-100
Subject: Study L-1020

Dear Mr. Murphy:

This letter will confirm our recent telephone conversation, and should be considered an amendment to my letter of October 25, 1985. Your proposed amendment would limit investment to mutual funds which are comprised "solely" of direct obligations of the U.S. maturing not later than one year from the date of making the investment or reinvestment.

I believe that almost all of those type of mutual funds have at least some portion of uninvested cash. As obligations mature, there may be a short waiting period before new government obligations are purchased. In addition, the funds maintain a cash reserve to cover operating costs and related expenses.

It would be appropriate to revise the amendment to limit investments into "Mutual funds which consist primarily of direct obligations of the United States maturing not later than one year from the date of making the investment or reinvestment." If necessary, the Commission might consider an additional limitation that the balance of the fund be invested in cash or cash equivalents. However, the limitation that the fund be comprised primarily of direct obligations of the United States should be sufficient to comply with the intent of limiting the mutual funds to those types of investments and cash.

Very truly yours,

Michael J. Harrington

Michael J. Harrington
of HAHN & HAHN

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cc: Mr. Bruce Norman