

#L-642

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10/07/86

Memorandum 86-87

Subject: Study L-642 - Trusts (Application of Trust Law)

At the September meeting, the Commission decided that we should attempt to amend the Trust Law and the definition of "trust" in Probate Code Section 82 before the Trust Law becomes operative. Attached to this memorandum is a draft of a recommendation for this purpose. The draft recommendation also proposes some technical corrections, as explained in the comments and notes following the sections.

Respectfully submitted,

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Staff Draft

**RECOMMENDATION**

*relating to*

**THE TRUST LAW**

**Introduction**

The 1986 session of the California Legislature enacted a new Trust Law<sup>1</sup> on recommendation of the Law Revision Commission.<sup>2</sup> The present recommendation proposes substantive and technical revisions in the legislation enacted in 1986, to become operative on July 1, 1987, at the same time as the new Trust Law. The substantive revisions are discussed below; recommended technical changes are explained in the comments to the provisions in the proposed legislation following.

**Application of Trust Law to Entities and Relationships  
Excluded from Definition of "Trust"**

The Trust Law is designed to govern express trusts, both private and charitable, but it may also be applied to a trust that a court has determined should be administered in the manner of an express trust.<sup>3</sup> Various types of entities and relationships are specifically excluded from the definition of trust, such as certain business and investment

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1. 1986 Cal. Stat. ch. 820 (operative July 1, 1987), enacting Prob. Code §§ 15000-18201.

2. See *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1986).

3. See Prob. Code § 82(a)-(b) ("trust" defined).

trusts, voting trusts, security arrangements, liquidation trusts, and pension trusts.<sup>4</sup>

The parties or a court may find it useful to be able to borrow principles and procedures from the Trust Law and, where appropriate, apply them in circumstances that would be excluded by the definition of trust. Where a matter is not covered by the relevant law, it is beneficial to be able to adopt statutory principles that apply in analogous situations under the Trust Law. In the case of a fiduciary relationship that is not specifically excluded by the definition of trust, the power of the courts under the common law to apply relevant principles is recognized in the new law.<sup>5</sup> However, the specific exclusion of an entity from the definition of trust would appear to preclude the application of the Trust Law.

The Commission has concluded that the Trust Law should be neutral on the issue of whether it may be borrowed and applied to excluded entities and relationships. Thus, while the Trust Law itself applies only to express trusts, the new law should be revised to make clear that its principles and procedures may be applied to excluded entities and relationships pursuant to statutory or common law principles, by court order or rule, or by contract.

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4. Prob. Code § 82(c). This provision reads in full as follows:

(c) "Trust" excludes other constructive trusts, and it excludes resulting trusts, guardianships, conservatorships, personal representatives, Totten trust accounts, custodial arrangements pursuant to the Uniform Gifts to Minors Act or the Uniform Transfer to Minors Act of any state, business trusts that are taxes as partnerships or corporations, investment trusts subject to regulation under the laws of this state or any other jurisdiction, common trust funds, voting trusts, security arrangements, transfers in trust or purpose of suit or enforcement of a claim or right, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

5. See Prob. Code §§ 82(b) (trust administered in manner of express trust on court order), 15002 (common law as law of state), 15003(b) (repeal of Civil Code trust provisions not intended to affect general fiduciary principles applicable to confidential relationships).

## Proposed Legislation

The Commission's recommendations would be effectuated by enactment of the following measure:

An act to amend Sections 16063 and 16303 of, to add Section 15002.5 to, and to repeal and add Section 82 to the Probate Code, relating to trusts, and declaring the urgency thereof, to take effect immediately.

*The people of the State of California do enact as follows:*

### Probate Code § 82 (repealed), "Trust" defined

SEC. 1. Section 82 of the Probate Code, as added by Chapter 820 of the Statutes of 1986, is repealed.

~~82. (a) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created, but does not include a charitable trust that is not subject to the jurisdiction of the Attorney General.~~

~~(b) "Trust" includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.~~

~~(c) "Trust" excludes other constructive trusts, and it excludes resulting trusts, guardianships, conservatorships, personal representatives, Totten trust accounts, custodial arrangements pursuant to the Uniform Gifts to Minors Act or the Uniform Transfer to Minors Act of any state, business trusts that are taxes as partnerships or corporations, investment trusts subject to regulation under the laws of this state or any other jurisdiction, common trust funds, voting trusts, security arrangements, transfers in trust or purpose of suit or enforcement of a claim or right, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.~~

Comment. Former Section 82 is superseded by a new Section 82 which reorganizes the provisions of the former section and makes some substantive changes as noted in the Comment to new Section 82.

Probate Code § 82 (added). "Trust" defined

SEC. 2. Section 82 is added to the Probate Code, to read:

82. (a) "Trust" includes:

(1) An express trust, private or charitable, with additions thereto, wherever and however created.

(2) A trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust.

(b) "Trust" excludes the following:

(1) Constructive trusts, other than those described in paragraph (2) of subdivision (a), and resulting trusts.

(2) Guardianships and conservatorships.

(3) Personal representatives.

(4) Totten trust accounts.

(5) Custodial arrangements pursuant to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state.

(6) Business trusts that are taxed as partnerships or corporations.

(7) Investment trusts subject to regulation under the laws of this state or any other jurisdiction.

(8) Common trust funds.

(9) Voting trusts.

(10) Security arrangements.

(11) Transfers in trust for purpose of suit or enforcement of a claim or right.

(12) Liquidation trusts.

(13) Trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind.

(14) Any arrangement under which a person is nominee or escrowee for another.

(c) For the purposes of Division 9 (commencing with Section 15000) (Trust Law), "trust" does not include a charitable trust that is not subject to the jurisdiction of the Attorney General.

(d) This section is subject to Section 15002.5.

Comment. Section 82 restates and reorganizes the provisions of former Section 82 and makes some substantive changes as noted below.

Subdivision (a)(1) of Section 82 restates part of subdivision (a)

of former Section 82 without substantive change.

Subdivision (a)(2) restates subdivision (b) of former Section 82 without substantive change.

Subdivision (b) restates subdivision (c) of former Section 82 without substantive change. This subdivision is drawn in part from Section 1-201(45) of the Uniform Probate Code (1977), but also includes references to various arrangements that were listed in former Probate Code Section 1138.

Subdivision (c) restates the last part of subdivision (a) of former Section 82, as that provision applied to the Trust Law, without substantive change. For the purpose of the Trust Law, subdivision (c) eliminates charitable trusts that are not under the jurisdiction of the Attorney General from the general definition of trusts. See Section 15004 (application of Trust Law to charitable trusts).

Subdivision (d) makes clear that the limitations provided in this section are subject to Section 15002.5 which permits the application of the Trust Law to entities and relationships that are excluded from the definition of "trust" in this section.

**Probate Code § 15002.5 (added). Application of division to entity or relationship not included in definition of "trust"**

SEC. 3. Section 15002.5 is added to the Probate Code, to read:

15002.5. Nothing in this division or in Section 82 is intended to prevent the application of all or part of the principles or procedures of this division to an entity or relationship that is excluded from the definition of "trust" provided by Section 82 where these principles or procedures are applied pursuant to statutory or common law principles, by court order or rule, or by contract.

**Comment.** Section 15002.5 is new. This provision is intended to avoid the implication that the principles and procedures of the Trust Law cannot be applied to entities and relationships that are excluded from the definition of "trust" as it is used in this division. The Trust Law, by its terms, governs trusts as defined in Section 82. See Section 15001. Under Section 15002.5, the Trust Law is neutral on the question of whether it may be applied to other types of entities and relationships, such as those excluded from the definition of "trust" by subdivision (b) of Section 82. The Trust Law is thus made available when it may appropriately be applied by statute, common law, court order or rule, or contract. See also Sections 15002 (common law as law of state), 15003 (constructive and resulting trusts and fiduciary relationships not affected).

**Probate Code § 16063 (technical amendment). Contents of account**

SEC. 4. Section 16063 of the Probate Code, as added by Chapter 820 of the Statutes of 1986, is amended to read:

16063. An account furnished pursuant to Section 16062 shall contain the following information:

(a) A statement of receipts and disbursements of principal and income that have occurred during the last complete fiscal year of the trust or since the last account.

(b) A statement of the assets and liabilities of the trust as of the end of the last complete fiscal year of the trust ~~or since the last account.~~

(c) The trustee's compensation for the last complete fiscal year of the trust or since the last account.

(d) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the last complete fiscal year of the trust or since the last account.

(e) A statement that the recipient of the account may petition the court pursuant to Section 17200 to obtain a court review of the account and of the acts of the trustee.

(f) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives an account or report disclosing facts giving rise to the claim.

Comment. Subdivision (b) of Section 16063 is revised to delete unneeded language.

Note. This proposed change would eliminate surplus language that does not make sense in the context of giving a statement of the assets and liabilities of the trust at a particular time.

**Probate Code § 16303 (technical amendment). Income and principal**

SEC. 5. Section 16303 of the Probate Code, as added by Chapter 820 of the Statutes of 1986, is amended to read:

16303. (a) Income is the return in money or property derived from the use of principal, including return received as any of the following:

(1) Rent of real or personal property, including sums received for cancellation or renewal of a lease.

(2) Interest on money lent, including sums received as consideration for the prepayment of principal except as provided in Section 16307 on bond premium and bond discount.

(3) Receipts allocated to income as provided in Section 16304.

(4) Income earned during administration of a decedent's estate as provided in Section 16305.

(5) Corporate distributions as provided in Section 16306.

(6) Accrued increment on bonds or other obligations issued at discount as provided in Section 16307.

(7) Receipts from business and farming operations as provided in Section 16308.

(8) Receipts from disposition of natural resources as provided in Section 16309.

(9) Receipts from other principal subject to depletion as provided in Section 16310.

(10) Receipts from disposition of underproductive property as provided in Section 16311.

(b) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainder beneficiary while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes the following:

(1) Consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal.

(2) Proceeds of property taken on eminent domain proceedings.

(3) Proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary.

(4) Receipts allocated to principal as provided in Section 16304.

(5) Stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in Section 16306.

(6) Receipts from the disposition of ~~corporate~~-~~securities~~ bonds and other obligations for the payment of money as provided in Section 16307.

(7) Royalties and other receipts from disposition of natural resources as provided in Section 16309.

(8) Receipts from other principal subject to depletion as provided in Section 16310.

(9) Any profit resulting from any change in the form of principal except as provided in Section 16311 on underproductive property.



(10) Receipts from disposition of underproductive property as provided in Section 16311.

(11) Any allowances for depreciation established under Section 16308 and paragraph (2) of subdivision (b) of Section 16312.

Comment. Subdivision (b)(6) of Section 16303 is revised to correct a defect in the description of the type of property designated as principal in Section 16307. This revision is technical and makes no substantive change.

Note. *The Revised Uniform Principal and Income Act originated this erroneous cross-reference, which was carried into the California enactment and then carried forward in the Trust Law revision of the RUIPA. Section 16307, and its predecessors, contain no reference to corporate securities. Corporate securities are covered in Section 16306, and its predecessors, which is cross-referenced in subdivision (b)(5). Maryland and Wisconsin have corrected this cross-reference in their versions of the RUIPA.*

#### Urgency Declaration

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to facilitate and coordinate the implementation of the Trust Law, which will become operative July 1, 1987, it is necessary that this act go into immediate effect.

#### Operative Date

SEC. 7. This act shall become operative on July 1, 1987.