

Memorandum 86-95

Subject: Study L-642 - Trusts (Clean-up Bill)

At the October meeting, the Commission approved several amendments to be made to the Trust Law before it becomes operative. In addition, the Commission decided that it would consider further amendments only if they need to be included in the urgency clean-up bill.

The following is an amendment dealing with transitional problems concerning the duty to account under pre-July 1977 testamentary trusts that should be made before the Trust Law becomes operative on July 1, 1987:

Probate Code § 16062 (amended), Duty to account to beneficiaries

SEC. . Section 16062 of the Probate Code is amended to read:

16062. (a) Except as provided in Section 16064, the trustee shall account at least annually, at the termination of the trust, and upon a change of trustees, to each beneficiary to whom income or principal is required or authorized in the trustee's discretion to be currently distributed.

(b) ~~A trustee of a~~ Subdivision (a) does not apply to the following:

(1) A living trust created by an instrument executed before July 1, 1987, ~~or of a~~

(2) A trust created by a will executed before July 1, 1987, is not subject to the duty to account provided in this section, but unless the trust is removed from continuing court jurisdiction pursuant to Article 2 (commencing with Section 17350) of Chapter 4 of Part 5. If a trust created by a will executed before July 1, 1987, has been removed from continuing court jurisdiction pursuant to former Section 1120.1a of the Probate Code, the requirement of an account pursuant to former Section 1120.1a of the Probate Code continues to apply after July 1, 1987, and may be satisfied by furnishing an account that satisfies the requirements of Section 16063.

Comment. Subdivision (b) of Section 16062 is amended to clarify the application of the annual accounting requirement to testamentary trusts created by wills executed before July 1, 1987. The rule in subdivision (b)(1) relating to living trusts executed before July 1, 1987, remains unchanged.

Subdivision (b)(2) provides that trusts that were not

subject to continuing court jurisdiction--i.e., trusts created by wills executed between July 1, 1977, and June 30, 1987, and trusts created by earlier wills that were republished during that time--are not subject to the annual accounting requirement of subdivision (a).

Under subdivision (b)(2), the annual accounting requirement of subdivision (a) applies to trusts that have been removed from continuing jurisdiction under new Sections 17350-17345. In addition, subdivision (b)(2) makes clear that, where a trust was removed from continuing jurisdiction under former law, the annual accounting required by former Probate Code Section 1120.1a(b) is still required, notwithstanding the repeal of Section 1120.1a. For the sake of administrative simplicity, however, this requirement may be satisfied by compliance with Section 16063 (contents of accounting).

In addition, we have discovered five sections that contain an incorrect cross-reference, Civil Code Sections 5110, 5125, and 5127 and Probate Code Sections 104 and 13504. These sections refer to Civil Code Section 5113.5 which has been superseded by Civil Code Section 5110.150 relating to revocable living trusts of community property. These are purely technical changes that should be made before the new statute becomes operative.

Respectfully submitted,

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