

First Supplement to Memorandum 86-95

Subject: Study 642 - Recommendation Relating to Technical Revisions in
the Trust Law

Attached to this supplement is a copy of the *Recommendation Relating to Technical Revisions in the Trust Law* (December 1986). With the exception of the matters noted in Memorandum 86-95, the material in this recommendation has already been approved by the Commission for printing and introduction in the 1987 legislative session.

We do not plan to discuss this material at the December meeting, but are distributing it for your information and for reference when Memorandum 86-95 is considered. You should also note that the version of Section 16062 set out in the recommendation differs slightly from the version set out in the memorandum. The staff prefers the version in the recommendation as being easier to understand.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

STATE OF CALIFORNIA
California Law Revision Commission

RECOMMENDATION
relating to
TECHNICAL REVISIONS IN THE TRUST LAW

December 1986

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

December 5, 1986

To: The Honorable George Deukmejian
Governor of California and
The Legislature of California

The new Trust Law was enacted by Chapter 820 of the Statutes of 1986 upon recommendation of the Law Revision Commission. See *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1986). The Commission has continued to review the law relating to trusts to determine whether any corrections need to be made in the comprehensive trust legislation before it becomes operative on July 1, 1987. As a result of this review, the Commission recommends an amendment to make clear that the Trust Law may, where appropriate, be applied to entities that are not express trusts. The Commission also recommends several amendments to make technical changes.

This recommendation is submitted as part of the Commission's project to revise the Probate Code and is made pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Arthur K. Marshall
Chairperson

RECOMMENDATION*relating to***TECHNICAL REVISIONS IN THE TRUST LAW****Introduction**

The 1986 session of the California Legislature enacted a new Trust Law¹ on recommendation of the Law Revision Commission.² The present recommendation proposes substantive and technical revisions in the Trust Law, to become operative on July 1, 1987, at the same time as the new 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.³ Various types of entities and relationships are specifically excluded from the definition of trust, such as certain business and investment trusts, voting trusts, security arrangements, liquidation trusts, and pension trusts.⁴

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) (as amended by 1986 Cal. Stat. ch. 820, § 28) ("trust" defined).

4. Prob. Code § 82(c) (as amended by 1986 Cal. Stat. ch. 820, § 28). This provision reads in full as follows:

(c) "Trust" excludes other constructive trusts, and it excludes resulting trusts, guardianships, conservatorships,

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 otherwise 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.⁵ 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.

personal representatives, Totten trust accounts, custodial arrangements pursuant to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state, business trusts that are taxed 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) (as amended by 1986 Cal. Stat. ch. 820, § 28) (trust administered in manner of express trust on court order), 15002 (as added by 1986 Cal. Stat. ch. 820, § 40) (common law as law of state), 15003(b) (as added by 1986 Cal. Stat. ch. 820, § 40) (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 5110, 5125, and 5127 of the Civil Code, to amend Sections 104, 13504, 15003, 16062, 16063, and 16303 of, and to repeal and add Section 82 of 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:

Civil Code § 5110 (technical amendment). Community property presumptions

SEC. 1. Section 5110 of the Civil Code is amended to read:

5110. Except as provided in Sections 5107, 5108, and 5126, all real property situated in this state and all personal property wherever situated acquired during the marriage by a married person while domiciled in this state, and property held in trust pursuant to Section ~~5113-5~~ 5110.150, is community property; but whenever any real or personal property, or any interest therein or encumbrance thereon, is acquired prior to January 1, 1975, by a married woman by an instrument in writing, the presumption is that the same is her separate property, and if so acquired by the married woman and any other person the presumption is that she takes the part acquired by her, as tenant in common, unless a different intention is expressed in the instrument; except, that when any of the property is acquired by husband and wife by an instrument in which they are described as husband and wife, unless a different intention is expressed in the instrument, the presumption is that the property is the community property of the husband and wife. The presumptions in this section mentioned are conclusive in favor of any person dealing in good faith and for a valuable consideration with a married woman or her legal representatives or successors in interest, and regardless of any change in her marital status after acquisition of the property.

In cases where a married woman has conveyed, or shall hereafter convey, real property which she acquired prior to May 19, 1889, the

husband, or his heirs or assigns, of the married woman, shall be barred from commencing or maintaining any action to show that the real property was community property, or to recover the real property from and after one year from the filing for record in the recorder's office of the conveyances, respectively.

As used in this section, personal property does not include and real property does include leasehold interests in real property.

Comment. Section 5110 is amended to correct a cross-reference.

Civil Code § 5125 (technical amendment). Management and control of community personal property

SEC. 2. Section 5125 of the Civil Code, as amended by Chapter 1091 of the Statutes of 1986, is amended to read:

5125. (a) Except as provided in subdivisions (b), (c), and (d) and Sections ~~5113-5~~ 5110.150 and 5128, either spouse has the management and control of the community personal property, whether acquired prior to or on or after January 1, 1975, with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse.

(b) A spouse may not make a gift of community personal property, or dispose of community personal property without a valuable consideration, without the written consent of the other spouse.

(c) A spouse may not sell, convey, or encumber community personal property used as the family dwelling, or the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the other spouse or minor children which is community personal property, without the written consent of the other spouse.

(d) Except as provided in subdivisions (b) and (c), and in Section 5127, a spouse who is operating or managing a business or an interest in a business that is all or substantially all community personal property has the primary management and control of the business or interest. Primary management and control means that the managing spouse may act alone in all transactions but shall give prior written notice to the other spouse of any sale, lease, exchange, encumbrance or other disposition of all or substantially all of the personal property used in the operation of the business (including personal property used for agricultural purposes), whether or not title to that property is

held in the name of only one spouse. Written notice is not, however, required when prohibited by the law otherwise applicable to the transaction.

Any change of the form of a business is not subject to the requirement of written notice.

Remedies for the failure by a managing spouse to give prior written notice as required by this subdivision are only as specified in Section 5125.1. A failure to give prior written notice shall not adversely affect the validity of a transaction nor of any interest transferred.

(e) Each spouse shall act in good faith with respect to the other spouse in the management and control of the community property in accordance with the general rules which control the actions of persons having relationships of personal confidence as specified in Section 5103, until such time as the property has been divided by the parties or by a court. This duty includes the obligation to make full disclosure to the other spouse of the existence of assets in which the community has an interest and debts for which the community may be liable, upon request. The case law defining the standard of care applicable to Section 5103, but not the case law applicable to Title 8 (commencing with Section 2215) of Part 4 of Division 3, applies to this section. In no event shall this standard be interpreted to be less than that of good faith in confidential relations nor as high as that established by Title 8 (commencing with Section 2215) of Part 4 of Division 3.

Comment. Subdivision (a) of Section 5125 is amended to correct a cross-reference.

Civil Code § 5127 (technical amendment). Management and control of community real property

SEC. 3. Section 5127 of the Civil Code is amended to read:

5127. Except as provided in Sections ~~5113-5~~ 5110.150 and 5128, either spouse has the management and control of the community real property, whether acquired prior to or on or after January 1, 1975, but both spouses either personally or by duly authorized agent, must join in executing any instrument by which such community real property or any interest therein is leased for a longer period than one year, or is

sold, conveyed, or encumbered; provided, however, that nothing herein contained shall be construed to apply to a lease, mortgage, conveyance, or transfer of real property or of any interest in real property between the husband and wife; provided, also, however, that the sole lease, contract, mortgage or deed of the husband, holding the record title to community real property, to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed prior to January 1, 1975, and that the sole lease, contract, mortgage, or deed of either spouse, holding the record title to community real property to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed on or after January 1, 1975. No action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of either spouse alone, executed by the spouse alone, shall be commenced after the expiration of one year from the filing for record of such instrument in the recorder's office in the county in which the land is situate, and no action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of the husband alone, which was executed by the husband alone and filed for record prior to the time this act takes effect, in the recorder's office in the county in which the land is situate, shall be commenced after the expiration of one year from the date on which this act takes effect.

Comment. Section 5127 is amended to correct a cross-reference.

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

SEC. 4. Section 82 of the Probate Code, as amended 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 Transfers to Minors Act of any state, business trusts that are taxed 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 for 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. 5. Section 82 is added to the Probate Code, to read:

82. (a) "Trust" includes the following:

(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.

Comment. Section 82 restates and reorganizes the provisions of former Section 82. Subdivision (a)(1) of Section 82 restates the first part of subdivision (a) of former Section 82 without substantive change. The last part of subdivision (a) of former Section 82 relating to charitable trusts that are not subject to the jurisdiction of the Attorney General is omitted. For a provision concerning the application of Trust Law to charitable trusts, see Section 15004. 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, like its predecessor, is drawn in part from Section 1-201(45) of the Uniform Probate Code (1977), but also includes references to various entities that were listed in former Probate Code Section 1138. See also Section 15003(c) (application of the Trust Law to entities and relationships that are excluded from the definition of "trust" in this section).

Probate Code § 104 (technical amendment). Community property held in revocable trust

SEC. 6. Section 104 of the Probate Code is amended to read:

104. Notwithstanding Section 100, community property held in a revocable trust described in Section ~~5113.5~~ 5110.150 of the Civil Code is governed by the provisions, if any, in the trust for disposition in the event of death.

Comment. Section 104 is amended to correct a cross-reference.

Probate Code § 13504 (technical amendment). Property held in revocable trust

SEC. 7. Section 13504 of the Probate Code is amended to read:

13504. Notwithstanding the provisions of this part, community property held in a revocable trust described in Section ~~5113.5~~ 5110.150 of the Civil Code is governed by the provisions, if any, in the trust for disposition in the event of death.

Comment. Section 13504 is amended to correct a cross-reference.

Probate Code § 15003 (amended). Effect of division on constructive and resulting trusts, fiduciary relationships, and entities and relationships not included in definition of "trust"

SEC. 8. Section 15003 of the Probate Code is amended to read:

15003. (a) Nothing in this division affects the law relating to constructive or resulting trusts.

(b) The repeal of Title 8 (commencing with Section 2215) of Part 4 of Division 3 of the Civil Code as provided in the act that added this division to the Probate Code is not intended to alter the rules applied by the courts to fiduciary and confidential relationships, except as to express trusts governed by this division.

(c) 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. Subdivision (c) is added to Section 15003 to avoid the implication that the provisions 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 15003, 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).

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

SEC. 9. 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.~~

(c) Except as provided in Section 16064, 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 (as repealed by Chapter 820 of the Statutes of 1986), 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 under prior law--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.

Subdivision (c) 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). The introductory clause of subdivision (c) also makes clear that the accounting requirement is subject to relevant exceptions in Section 16064, such as where the beneficiary waives the right to an account.

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

SEC. 10. Section 16063 of the Probate Code 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~~ as of the end of the period covered by the 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 for clarity.

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

SEC. 11. Section 16303 of the Probate Code 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 Proceeds 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.

Operative Date

SEC. 12. Sections 1 to 11, inclusive, of this act shall become operative on July 1, 1987.

Urgency Declaration

SEC. 13. 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.