

First Supplement to Memorandum 89-2

Subject: Study L-3010 - Trustees' Fees (Additional Comments on Tentative Recommendation)

Attached to this supplement is a letter commenting on the *Tentative Recommendation Relating to Trustees' Fees* from Hall Palmer, Executive Vice President and Senior Trust Officer of the University National Bank and Trust Company in Palo Alto. Mr. Palmer expresses a dissenting viewpoint from the position of the California Bankers Association. He supports statutory reform to encourage the free market option for trust beneficiaries.

Mr. Palmer also emphasizes a point noted at earlier Commission meetings, that

traditional fiduciary relationships have been substantially eroded in recent years in that entire inventories of Trust accounts are now routinely bought and sold between institutions, to the point where many customers are currently served by organizations they never selected and might well prefer to leave. This represents a profound departure from traditional fiduciary practice, and we believe that beneficiaries so effected should be afforded an "escape hatch" in the event they are disadvantaged by these transactions.

The staff agrees with Mr. Palmer's suggestion that the recommendation should make the point that a bank or trust company has the freedom to sell its whole trust business or the whole trust business of a branch. Fin. Code § 2050. In this case, the selling and purchasing banks enter into an agreement for the transfer of the trusts "subject to the rights of all trustors and beneficiaries under the trusts so sold after such transfer to nominate another or succeeding trustee of the trust so transferred." Fin. Code § 2051. The court with jurisdiction over the trust has no part in this process. *Cf. In re Estate of Barnett*, 97 Cal. App. 138, 141-43, 275 P. 453 (1929) (probate court has no jurisdiction to consider objection to change of trustee through purchase).

Now that Financial Code Section 2051 is before us, it appears that it needs to be amended for consistency with the Trust Law. As it stands, Section 2051 does not adequately state the applicable law concerning the rights of settlors or trust beneficiaries to seek to replace a trustee. It would be better to simply cross-refer to the Trust Law. Accordingly, the staff recommends that the following amendment be included in the proposed legislation:

Financial Code § 2051 (amended). Rights of trust parties on sale of trust business

SECTION 1. Section 2051 of the Financial Code is amended to read:

2051. The selling and purchasing banks shall enter into an agreement of purchase and sale which shall contain all the terms and conditions of the sale and contain proper provision for the payment of all liabilities of the selling bank, or of the business, branch, or branch business sold, and proper provision for the assumption by the purchasing bank of all fiduciary and trust obligations of the selling bank, or business, branch, or branch business sold. The agreement may provide for the transfer of all deposits of the selling bank or of the business, branch, or branch business sold to the purchasing bank, subject to the right of every depositor of the selling bank or of the business, branch, or branch business sold to withdraw his or her deposit in full on demand after such transfer, irrespective of the terms under which it was deposited with the selling bank, and may provide for the transfer of all court and private trusts so sold to the purchasing bank, subject to the rights of ~~all trustees~~ the settlors, cotrustees, and beneficiaries under the trusts so sold after such transfer to ~~nominate another or succeeding trustee of the trust so transferred~~ remove or replace the trustee as provided in the Trust Law, Division 9 (commencing with Section 15000) of the Probate Code.

Comment. Section 2051 is amended to conform to the provisions of the Trust Law relating to removal and replacement of trustees. See, e.g., Prob. Code §§ 15642, 15660, 17200(b)(10).

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

DEC 19 1988

R E C E I V E D

University National Bank & Trust Company
250 LYTTON AVENUE PALO ALTO

HALL PALMER
EXECUTIVE VICE PRESIDENT
AND SENIOR TRUST OFFICER

MAILING ADDRESS: P.O. BOX 89
PALO ALTO, CA 94302
TELEPHONE (415) 327-0210

December 16, 1988

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Suite D - 2
4000 Middlefield Road
Palo Alto, CA 94303-4739

RE: Trustees Fees (Memorandum 88-77)

Dear Mr. DeMouilly:

I have corresponded from time to time with Stan Ulrich of your office concerning the studies you have been conducting regarding Corporate Trustee fees and related matters. Until recently, I have received the Commission's periodic memoranda through the California Banker's Association Governmental Affairs Committee, however, recently it appears that our Bank has been dropped from the distribution on this matter.

We would very much like to get caught up on the current status of this matter, and am writing to request a copy of Memorandum 88-77, reflecting your tentative recommendations.

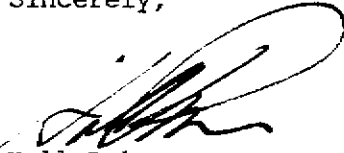
We would also like to go on record on behalf of University National Bank & Trust Company to the effect that the California Banker's Association does not necessarily represent a unified constituency concerning your proposal. Our Bank has at all times advocated statutory reform in the form of a "Trust Portability", or free market, option for Trust beneficiaries.

We further think that your Commission should take into account in your analysis the fact that traditional fiduciary relationships have been substantially eroded in recent years in that entire inventories of Trust accounts are now routinely bought and sold between institutions, to the point where many customers are currently served by organizations they never selected and might well prefer to leave. This represents a profound departure from traditional fiduciary practice, and we believe that beneficiaries so effected should be afforded an "escape hatch" in the event they are disadvantaged by these transactions.

Mr. John H. DeMouilly
December 16, 1988
Page 2

I understand that the Commission will be holding another meeting during January of next year. As the California Banker's Association does not represent our views in this area we would appreciate an opportunity to present a contrary position on behalf of some members of our industry, and therefore, we ask that we be advised of the time and place of any future hearings to enable us to do so.

Sincerely,



Hall Palmer
Executive Vice President
and Senior Trust Officer

HP:kg