

Second Supplement to Memorandum 89-101

Subject: Study L - New Probate Code (Additional Proposed Amendments to Bill)

The following are some additional technical amendments that the staff proposes to make to the Probate Code bill (AB 759). These amendments are directed toward the bill as amended on May 20 and will be added to the set of amendments currently in the hands of the Legislative Counsel. Comments to the conforming revisions in other codes included in this set of amendments are printed at the end of the Comments to new Probate Code.

Conforming Revisions in Other Codes:

AMENDMENT 1

In the first line of the title, after "act" insert:
to amend Sections 683 and 954 of the Civil Code, to amend Sections 852, 952, 6661, 6800, 6804, 6855, 14854, 14860, and 18318.5 of the Financial Code, to amend Section 9751.1 of the Health and Safety Code, and

AMENDMENT 2

On page 1, line 1, after "1." insert:
Section 683 of the Civil Code [as amended by 1989 Cal. Stat. ch. 397] is amended to read:

683. (a) A joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or by transfer from a sole owner to himself or herself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from a husband and wife, when holding title as community property or otherwise to themselves or to themselves and others or to one of them and to another or others, when expressly declared in the transfer to be a

joint tenancy, or when granted or devised to executors or trustees as joint tenants. A joint tenancy in personal property may be created by a written transfer, instrument, or agreement.

(b) Provisions of this section do not apply to a joint account in a financial institution if Part 1 2 (commencing with Section 5100) of Division 5 of the Probate Code applies to such account.

SEC. 2. Section 954 of the Civil Code is amended to read:

954. A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. ~~Upon the death of the owner it passes to his personal representatives, except where, in the cases provided in the Code of Civil Procedure, it passes to his devisees or successor in office.~~

SEC. 3. Section 852 of the Financial Code [as added by 1989 Cal. Stat. ch. 397] is amended to read:

852. A bank account that is a multiple-party account as defined in Section 5132 of the Probate Code is governed by Part 1 2 (commencing with Section 5100) of Division 5 of the Probate Code.

SEC. 4. Section 952 of the Financial Code [as amended by 1989 Cal. Stat. ch. 397] is amended to read:

952. Notice to any bank of an adverse claim (the person making the adverse claim being hereinafter called "adverse claimant") to a deposit standing on its books to the credit of or to personal property held for the account of any person shall be disregarded, and the bank, notwithstanding the notice, shall honor the checks, notes, or other instruments requiring payment of money by or for the account of the person to whose credit the account stands and on demand shall deliver that property to, or on the order of, the person for whose account the property is held, without any liability on the part of the bank; subject, however, to the exceptions provided in subdivisions (a) and (b):

(a) If an adverse claimant delivers to the bank at the office at which the deposit is carried or at which the property is held an affidavit of the adverse claimant stating that of the adverse claimant's own knowledge the person to whose credit the deposit stands or for whose account the property is held is a fiduciary for the adverse claimant and that the adverse claimant has reason to believe

the fiduciary is about to misappropriate the deposit or the property, and stating the facts on which the claim of fiduciary relationship and the belief are founded, the bank shall refuse payment of the deposit and shall refuse to deliver the property for a period of not more than three court days (including the day of delivery) from the date that the bank received the adverse claimant's affidavit, without liability on its part and without liability for the sufficiency or truth of the facts alleged in the affidavit.

(b) If at any time, either before, after, or in the absence of the filing of an affidavit by the adverse claimant, the adverse claimant procures and serves upon the bank at the office at which the deposit is carried or at which the property is held a restraining order, injunction, or other appropriate order against the bank from a court of competent jurisdiction in an action in which the adverse claimant and all persons in whose names the deposit stands or for whose account the property is held are parties, the bank shall comply with the order or injunction, without liability on its part.

(c) This section shall be applicable even though the name of the person appearing on the bank's books to whose credit the deposit stands or for whose account the property is held is modified by a qualifying or descriptive term such as "agent", "trustee", or other word or phrase indicating that the person may not be the owner in his or her own right of the deposit or property.

(d) Nothing in the California Multiple-Party Accounts Law contained in Part 2 (commencing with Section 5100) of Division 5 of the Probate Code limits the applicability of this section.

SEC. 5. Section 6661 of the Financial Code [as amended by 1989 Cal. Stat. ch. 397] is amended to read:

6661. Notice to an association or federal association of an adverse claim to a savings account of, or to personal property held for the account of, any person shall be disregarded, and the association or federal association, notwithstanding the notice, shall honor withdrawal applications and shall pay withdrawals and interest to the person or persons to whose credit the account stands or shall deliver the property to or upon the order of the person for whose account the property is held, without any liability on the part of the association

or federal association; subject, however, to the exceptions provided in subdivisions (a) and (b):

(a) If an adverse claimant delivers to the association or federal association at the office at which the account is carried or the property held an affidavit of the claimant stating that of the claimant's own knowledge the person to whose credit the deposit stands or for whose account the property is held is a fiduciary for the adverse claimant and that the claimant has reason to believe the fiduciary is about to misappropriate the account or the property, and stating the facts upon which the claim of fiduciary relationship and the belief are founded, the association or federal association shall refuse to pay withdrawals or interest on the account and shall refuse to deliver the property for a period of not more than three court days (including the day of delivery) from the date that the association or federal association received the adverse claimant's affidavit, without liability on its part and without liability for the sufficiency or truth of the facts alleged in the affidavit.

(b) If at any time, either before, after, or in the absence of the filing of an affidavit by the adverse claimant, the adverse claimant procures and serves upon the association or federal association at the office at which the account is carried or the property held a restraining order, injunction, or other appropriate order against the association or federal association from a court of competent jurisdiction in an action in which the adverse claimant and all persons in whose names the account stands or for whose account the property is held are the parties, the association or federal association shall comply with the order or injunction, without liability on its part.

(c) The provisions of this section shall be applicable even though the name of the person appearing on the books to whose credit the account stands or for whose account the property is held is modified by a qualifying or descriptive term such as "agent," "trustee," or other word or phrase indicating that the person may hold the account or property in a fiduciary capacity.

(d) Nothing in the California Multiple-Party Accounts Law contained in Part 1 2 (commencing with Section 5100) of Division 5 of the Probate Code limits the applicability of this section.

SEC. 6. Section 6800 of the Financial Code [as added by 1989 Cal. Stat. ch. 397] is amended to read:

6800. An account in an association or federal association that is a multiple-party account as defined in Section 5132 of the Probate Code is governed by Part 1 2 (commencing with Section 5100) of Division 5 of the Probate Code.

SEC. 7. Section 6804 of the Financial Code [as amended by 1989 Cal. Stat. ch. 397] is amended to read:

6804. No association or federal association paying any survivor in accordance with Part 1 2 (commencing with Section 5100) of Division 5 of the Probate Code shall, because of the payment, be liable for any estate, inheritance, or succession taxes that may be due this state.

SEC. 8. Section 6855 of the Financial Code [as amended by 1989 Cal. Stat. ch. 397] is amended to read:

6855. No association paying any fiduciary, beneficiary, or designated person in accordance with this article or the California Multiple-Party Accounts Law contained in Part 1 2 (commencing with Section 5100) of Division 5 of the Probate Code shall, because of the payment, be liable for any estate, inheritance, or succession taxes that may be due this state.

SEC. 9. Section 14854 of the Financial Code is amended to read:

14854. Subject to Section 14860, a credit union share account that is a multiple-party account, as defined in Section ~~5101~~ 5132 of the Probate Code, is governed by Part 1, 2 (commencing with Section 5100) of Division 5 of the Probate Code.

SEC. 10. Section 14860 of the Financial Code is amended to read:

14860. Except as provided in this section and Part 1 2 (commencing with Section 5100) of Division 5 of the Probate Code, no credit union shall exercise trust powers except upon qualifying as a trust company pursuant to Division 1 (commencing with Section 99).

(a) Notwithstanding any other provisions of law relating to trusts and trust authority, subject to the regulations of the commissioner, a credit union may act as a trustee or custodian, and may

receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States which is a part of a pension plan for its members or groups or organizations of its members, which qualifies or has qualified for specific tax treatment under Section 401 or 408 of the Internal Revenue Code, Title 26 of the United States Code, or any deferred compensation plan for the benefit of the credit union's employees, provided the funds received pursuant to these plans are invested as provided in Section 16040 of the Probate Code. All funds held by a credit union trustee or in a custodial capacity shall be maintained in accordance with applicable laws and rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over such trust or custodial accounts. The credit union shall maintain individual records for each participant or beneficiary which show in detail all transactions relating to the funds of each participant or beneficiary.

The trust instrument or agreement shall provide for the appointment of a successor trustee or custodian by a person, committee, corporation, or organization other than the credit union or any person acting in his or her capacity as a director, employee, or agent of the credit union, upon notice from the credit union or the commissioner that the credit union is unwilling or unable to continue to act as trustee or custodian.

(b) Shares may be issued in a revocable or irrevocable trust subject to the following:

(1) When shares are issued in a revocable trust, the settlor shall be a member of the credit union issuing the shares in his or her own right.

(2) When shares are issued in an irrevocable trust, the settlor or the beneficiary shall be a member of this credit union in his or her own rights. For purposes of this section, shares issued pursuant to a pension plan authorized by this section shall be treated as an irrevocable trust unless otherwise indicated in rules and regulations issued by the commissioner.

(3) This subdivision does not apply to trust accounts established prior to the effective date of this subdivision.

SEC. 11. Section 18318.5 of the Financial Code [as added by 1989 Cal. Stat. ch. 397] is amended to read:

18318.5. An investment or thrift certificate that is a multiple-party account as defined in Section 5132 of the Probate Code is governed by Part ~~1~~ 2 (commencing with Section 5100) of Division 5 of the Probate Code.

SEC. 12. Section 8751.1 of the Health and Safety Code is amended to read:

8751.1. In addition to the requirements of Section 8751, the funds may be invested and reinvested and kept invested in investments of the type and in the manner as provided in ~~Section 2261~~ Part 4 (commencing with Section 16000) of Division 9 of the Civil Probate Code.

SEC. 13.

Additional Technical Amendments:

AMENDMENT 3

On page 1, line 2, strike out "2" and insert:

14

AMENDMENT 11

On page 419, line 25, strike out "the"

AMENDMENT 21

On page 760, following line 6, change operative date section number 15.

§ 10006. Cotenants' consent to sale:

One of the changes in the Commission's miscellaneous probate revisions is, where there is an estate sale of the decedent's interest in property, to allow cotenants to have their interests sold along with it. This should enable the property to go for a higher price.

Mr. Muhs of San Francisco raised the question of the basis for determining overbids where all interests are being sold together. The

staff does not believe there is a problem here. The original bid will be returned to court on the basis of all interests being sold. The overbid statute requires an offer "for an amount at least 10 percent more on the first ten thousand dollars (\$10,000) of the original bid and 5 percent more on the amount of the original bid in excess of ten thousand dollars (\$10,000)". This clearly bases the overbid on the all interests being sold, which the staff believes is appropriate and which, in fact, is one of the solutions proposed by Mr. Muhs. The staff believes no further revision of the statutes is required.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel