

Memorandum 90-133

Subject: Study L - General Probate Bill for 1991

The staff recommends that the Commission combine in one general bill in 1991 all of its noncontroversial recommendations to the 1991 legislature. This is the practice we have followed with success in the past.

The staff recommends that the following recommendations (which are believed to be noncontroversial) be included in the general probate bill:

- (1) Debts That are Contingent, Disputed, or Not Due.
- (2) Remedies of Creditor where Personal Representative Fails to Give Notice.
- (3) Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death).
- (4) Disposition of Small Estate Without Probate.
- (5) Right of Surviving Spouse to Dispose of Community Property.
- (6) Litigation Involving Decedents.
- (7) Compensation in Guardianship and Conservatorship Proceedings.
- (8) Gifts in View of Death.

If any of the recommended legislation listed above becomes controversial, the staff would delete it from the general probate bill and present it as a separate bill. This would permit the remainder of the bill to go forward expeditiously.

Other recommendations (listed on page 2203 of the staff draft of the Annual Report for 1990) would be presented as separate bills. See Memorandum 90-132.

In addition, the staff recommends that the technical amendments set out in Exhibit 1 attached be included in the general probate bill.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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

SEC. __. Section 2051 of the Financial Code is amended to read:

2051. (a) 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 the 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 trusters and beneficiaries under the trusts so sold after such transfer to nominate another or succeeding trustee of the trust so transferred.~~

(b) If a trust is transferred under this section, the transfer is good cause for removal of the trustee under the Trust Law, Division 9 (commencing with Section 15000) of the Probate Code.

Comment. Subdivision (b) is added to Section 2051 to clarify the rules concerning removal and replacement of trustees following the transfer of a trust business from one trustee to another. Subdivision (b) replaces the provision formerly appearing in the last clause of this section and incorporates the general rules governing removal and replacement of trustees provided by the Trust Law. See, e.g., Prob. Code §§ 15640, 15642, 15660, 17200(b)(10). For background on this addition, see *Recommendation Relating to Trustees' Fees*, 20 Cal. L. Revision Comm'n Reports 179 (1990).

Note. The amendment to Financial Code Section 2051 is a conforming amendment proposed in the *Recommendation Relating to Trustees Fees*. The amendment was lost when AB 831 was dropped. The remainder of the recommendation was enacted as a part of the new Probate Code, enacted by Chapter 79 of the Statutes of 1990 (AB 759).

Probate Code § 3909 (amended). Uniform Transfers to Minors Act

SEC. __. Section 3909 of the Probate Code, as enacted by Chapter 79 of the Statutes of 1990, is amended to read:

3909. (a) Custodial property is created and a transfer is made whenever any of the following occurs:

(1) An uncertificated security or a certificated security in registered form is either:

(A) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ under the
(Name of Minor)
California Uniform Transfers to Minors Act."

(B) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subdivision (b).

(2) Money is paid or delivered to , or a security held in the name of a broker, financial institution, or its nominee is transferred to, a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words:

"as custodian for _____ under the
(Name of Minor)
California Uniform Transfers to Minors Act."

(3) The ownership of a life or endowment insurance policy or annuity contract is either:

(A) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words:

"as custodian for _____ under the
(Name of Minor)
California Uniform Transfers to Minors Act."

(B) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is

followed in substance by the words:

"as custodian for _____ under the
(Name of Minor)

California Uniform Transfers to Minors Act."

(4) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words:

"as custodian for _____ under the
(Name of Minor)

California Uniform Transfers to Minors Act."

(5) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words:

"as custodian for _____ under the
(Name of Minor)

California Uniform Transfers to Minors Act."

(6) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(A) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words:

"as custodian for _____ under the
(Name of Minor)

California Uniform Transfers to Minors Act."

(B) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words:

"as custodian for _____ under the
(Name of Minor)

California Uniform Transfers to Minors Act."

(7) An interest in any property not described in paragraphs (1) through (6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subdivision (b).

(b) An instrument in the following form satisfies the requirements of subparagraph (A) of paragraph (1) and paragraph (7) of subdivision (a):

"TRANSFER UNDER THE CALIFORNIA UNIFORM TRANSFERS TO MINORS ACT under the California Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

I, _____

(Name of Transferor or Name and Representative
Capacity if a Fiduciary)

hereby transfer to _____ ,

(Name of Custodian)

as custodian for _____ under

(Name of Minor)

the California Uniform Transfers to Minors Act, the following:

(insert a description of the custodial property sufficient to identify it).

Dated: _____

(Signature)

_____ acknowledges receipt of

(Name of Custodian)

the property described above as custodian for the minor named above under the California Uniform Transfers to Minors Act.

Dated: _____

(Signature of Custodian)

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

Comment. Subdivision (a)(2) of Section 3909 is amended to make a technical revision to fill in a gap in the statute. The amendment covers the situation where a security held in the name of a broker, financial institution, or its nominee is to be transferred to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, as custodian for a designated minor. This revision is believed to have been adopted by the National Conference of Commissioners on Uniform State Laws in 1986.