

## Memorandum 75-20

Subject: Study 81 - Transfer of Out-of-State Trusts to California

Attached hereto is a revised draft of the proposed tentative recommendation relating to transfer of out-of-state trusts to California, a brief analysis of the Uniform Probate Code provisions as compared with present and proposed California law (Exhibit II), and a copy of the Uniform Supervision of Trustees for Charitable Purposes Act (Govt. Code § 12580 et seq.)(Exhibit I).

The proposed statute has been altered to comply with the decisions and the philosophy expressed by the Commission at the June meeting. Initially, as recommended by the Commission, the statute has been altered to deal with the fact that there are a large number of trusts which are handled by trustees in California and other jurisdictions and which never come under the jurisdiction of any court. Restriction of the statute permitting transfer of trusts to California to only those trusts "subject to continuing supervision over administration" would eliminate a number of trusts which otherwise would and should be transferable. Thus, Sections 1139.10 and 1139.12 have been modified to encompass trusts "administered" in another jurisdiction. The Commission suggested that perhaps the wording should be changed to allow transfer of trusts "created" in another jurisdiction. However, after examination, it appeared to the staff that the term "created" would not be as precise and descriptive a term for the particular fact situation with which the statute is intended to deal. A trust might be "created" in one jurisdiction (i.e., the settler's residence) but always administered in another jurisdiction (i.e., the trustee's principal place of business), and indeed might have been originally "created" in California but always administered in New York and supervised by the New York courts.

In conformity with this change, the requirements for the petition under Section 1139.12(b) has been amended so that a statement that a request for transfer in the court in the jurisdiction in which the trust is administered is required only where the trust is subject to supervision over administration in another jurisdiction and where an order granting transfer would be required in that jurisdiction.

The other basic change in the new proposed statute from the draft presented at the June meeting involves transfer of those trusts which are excluded by definition from administration under Article 2.5 (commencing with Section 1138). As noted by the Commission, the mere fact that the procedure under Article 2.5 provides a convenient and simple manner dealing with questions of administration involving several types of California trusts should not control which trusts should be permitted to be transferred to California. It would appear more reasonable to permit those trusts which come within the purview of Article 2.5 to be transferred and administered under that article. If the court, in its discretion, determines that, a trust which does not come within the definition of "trust" under Section 1138 and therefore could not be administered under Article 2.5 should be transferred to California, that trust, after transfer, should be administered in the same manner as a California trust of the same type would be administered.

For example, the Commission requested that the staff report on the method of supervision of charitable trusts in California, some of which are excluded under Section 1138. Charitable trusts are enforced and supervised by the California Attorney General under the Uniform Supervision of Trustees for Charitable Purposes Act (Govt. Code § 12580 et seq.)(Attached as Exhibit II); Under the act, all charitable corporations and trustees are required to file a copy of the instrument providing for its powers or duties (Section 12585). The act provides for reports by trustees on administration and assets of

the trust and investigation and enforcement by the Attorney General who is authorized to make rules and regulations (Sections 12586, 12587). The Attorney General may investigate transactions and may require persons to give information, and so on. (Section 12588.) Additionally, the Attorney General is given the power to institute court proceedings to secure compliance and to invoke the jurisdiction of the court. (Section 12591.) Charitable trusts are thus subject to primary supervision by the Attorney General. However, in the event of a dispute, the Attorney General may institute a court proceeding. See Brown v. Memorial Nat'l Home Foundation, 162 Cal. App.2d 513, 329 P.2d 118 (1958). Trustees may file court proceedings (Holt v. College of Osteopathic Physicians & Surgeons, 61 Cal.2d 750, 40 Cal. Rptr. 186 (1971)) and, in proper cases, strangers may sue to enforce the trust. See San Diego County Council, Boy Scouts of America v. City of Escondido, 14 Cal. App.3d 189, 92 Cal. Rptr. 186 (1971).

Finally, it should be noted that those charitable trusts which have a private beneficiary or remainderman who has or may claim an interest therein, or are exempt from supervision by the Attorney General under Government Code Section 12583 (the United States, state, religious corporations, cemetery corporations, educational institutions, or hospitals), are subject to the provisions of Article 2.5.

Section 1138 excludes from the definition of "trust" a number of miscellaneous "trusts" which, by their nature, are not susceptible to transfer from another jurisdiction pursuant to the proposed statute. A trust subject to court supervision under Article I (commencing with Section 1120)(testamentary trust remaining after probate in this state), or a trust subject to court supervision under Chapter 10 (commencing with Section 175) of Division 1 of the Probate Code (insurance, pension, or annuity trust where trustee named in <sup>/probated in California</sup> will), is by definition already subject to the California courts and therefore

not within the category of trusts which could be transferred into California from another state.

Totten trusts, deeds of trust, voting trusts, and transfers in trust for enforcement of claims similarly are not by definition the type of "trust" which would be transferred to California for purposes of administration in this state. If the California courts have jurisdiction to act with regard to these "trusts," the jurisdiction of the California courts would be based on the subject matter, and the courts would not take general supervision of the trust because of transfer under the proposed new statute.

If the court in its discretion determines that a business trust, a common trust fund, or a pension or employee benefit trust should be transferred to California, these trusts would be required to comply with the particular provisions of California law applicable to such trust. For example, a business trust would be required to comply with the Corporate Securities Law of 1968 (Corp. Code § 25000 et seq.) and would be subject to taxation under the Corporation Income Tax Act. It has been held that a business trust organized in another state may be forced to comply with the statutes governing foreign corporations in any state in which it seeks to do business regardless of the fact that it was not considered a corporation in the state of its creation. Hemphill v. Orloff, 277 U.S. 537 (1928); see Hill-Davis Co. v. Atwell, 215 Cal. 444, 10 P.2d 463 (1932). If some dispute arises with regard to a trust of this nature transferred to California under the proposed statute, it would be determined in a civil action in the same manner as a dispute regarding a California trust of this type.

It is therefore recommended that a trust which comes within the purview of Section 1138 be administered under Article 2.5, and that any other trust which the court in its discretion transfers to California be administered in accordance with general law regarding that type of trust. See Section 1139.16.

Additional editorial and technical changes have been made in the tentative recommendation and the proposed statute as determined by the Commission at the June meeting.

Respectfully submitted,

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EXHIBIT I

Article 7

UNIFORM SUPERVISION OF TRUSTEES FOR  
CHARITABLE PURPOSES ACT

Sec.

- 12580. Citation.
- 12581. Charitable corporations and trustees to whom article applies.
- 12582. Trustee defined.
- 12582.1 Charitable corporation defined.
- 12583. Trustees to whom article does not apply.
- 12584. Establishment of register of charitable corporations and trustees.
- 12585. Filing of copy of articles of incorporation or instrument providing for trustee's title, powers or duties.
- 12586. Filing of additional reports as to nature of assets held and administration thereof; rules and regulations; time for filing.
- 12587. Additional rules and regulations.
- 12588. Investigation of transactions and relationships of corporations and trustees; authority to require persons to give information, produce books, etc.
- 12589. Order setting forth time and place when attendance required; obedience of orders; review.
- 12590. Public inspection of register and reports.
- 12591. Proceedings to secure compliance with article; powers of attorney general; jurisdiction of court.
- 12592. Application of article.
- 12593. Furnishing copies of instruments and records to attorney general; duty of custodian of records.
- 12594. Filing of applications for tax exemption.
- 12595. Construction of act.

**§ 12580. Citation.** This article may be cited as the Uniform Supervision of Trustees for Charitable Purposes Act.

**§ 12581. Charitable corporations and trustees to whom article applies.** This article applies to all charitable corporations and trustees holding property for charitable purposes over which the State or the Attorney General has enforcement or supervisory powers.

**§ 12582. Trustee defined.** "Trustee" means (a) any individual, group of individuals, corporation, or other legal entity holding property in trust pursuant to any charitable trust, (b) any corporation which has accepted property to be used for a particular charitable corporate purpose as distinguished from the general purposes of the corporation, and (c) a corporation formed for the administration of a charitable trust, pursuant to the directions of the settlor or at the instance of the trustee.

**§ 12582.1 Charitable corporation defined.** "Charitable corporation" means any nonprofit corporation organized under the laws of this State for charitable or eleemosynary purposes and any similar foreign corporation doing business or holding property in this State for such purposes.

**§ 12583. Trustees to whom article does not apply.** This article does not apply to the United States, any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of their agencies or governmental subdivisions, to any religious corporation sole or other religious corporation or organization which holds property for religious purposes, or to any officer, director, or trustee thereof who holds property for like purposes, to a cemetery corporation regulated under Chapter 19 of Division 3 of the Business and Professions Code,<sup>1</sup> or to a charitable corporation organized and operated primarily as a religious organization, educational institution or hospital.

**§ 12584. Establishment of register of charitable corporations and trustees.** The Attorney General shall establish and maintain a register of charitable corporations and trustees subject to this article and of the particular trust or other relationship under which they hold property for charitable purposes and, to that end, may conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports, and records are needed for the establishment and maintenance of the register.

**§ 12585. Filing of copy of articles of incorporation or instrument providing for trustee's title, powers or duties.** Every charitable corporation and trustee subject to this article who has received property for charitable purposes shall file with the Attorney General, within six months after any part of the income or principal is authorized or required to be applied to a charitable purpose, a copy of the articles of incorporation or other instrument providing for his title, powers or duties. If any part of the income or principal is authorized or required to be applied to a charitable purpose at the time this article takes effect, the filing shall be made within six months thereafter.

**§ 12586. Filing of additional reports as to nature of assets held and administration thereof; rules and regulations; time for filing.** (a) Except as otherwise provided and except corporate trustees which are subject to the jurisdiction of the Superintendent of Banks of the State of California or to the Comptroller of Currency of the United States, every charitable corporation and trustee subject to this article shall, in addition to filing copies of the instruments previously required, file with the Attorney General periodic written reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the corporation or trustee, in accordance with rules and regulations of the Attorney General.

(b) The Attorney General shall make rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. He may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required to the ends (1) that he shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, which will enable him to ascertain whether they are being properly administered, and (2) that periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships. The Attorney General may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the Attorney General and after the Attorney General has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by his office.

(c) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules and regulations of the Attorney General, may be filed as a report required by this section.

(d) The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as herein provided, shall be filed not later than four (4) months and fifteen (15) days following the close of the first calendar or fiscal year in which any part of the income or principal is authorized or required to be applied to a charitable purpose. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose at the time this article takes effect, the first report shall be filed at the close of the calendar or fiscal year in which it was registered with the Attorney General or not later than four (4) months and fifteen (15) days following the close of such calendar or fiscal period.

**§ 12587. Additional rules and regulations.** The Attorney General may make additional rules and regulations necessary for the administration of this article.

**§ 12588. Investigation of transactions and relationships of corporations and trustees; authority to require persons to give information, produce books, etc.** The Attorney General may investigate transactions and relationships of corporations and trustees subject to this article for the purpose of ascertaining whether or not the purposes of the corporation or trust are being carried out in accordance with the terms and provisions of the articles of incorporation or other instrument. He may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear.

**§ 12589. Order setting forth time and place when attendance required; obedience of orders; review.** When the Attorney General requires the attendance of any person, as provided in Section 12588, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least 14 days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena and, upon application of the Attorney General, obedience to the order may be enforced by the superior court in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend or postpone all or any part of its provisions.

**§ 12590. Public inspection of register and reports.** Subject to reasonable rules and regulations adopted by the Attorney General, the register, copies of instruments, and the reports filed with the Attorney General shall be open to public inspection. The Attorney General shall withhold from public inspection any instrument so filed whose content is not exclusively for charitable purposes.

**§ 12591. Proceedings to secure compliance with article; powers of attorney general; jurisdiction of court.** The Attorney General may institute appropriate proceedings to secure compliance with this article and to invoke the jurisdiction of the court. The powers and duties of the Attorney General provided in this article are in addition to his existing powers and duties. Nothing in this article shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it, except that no court shall have jurisdiction to modify or terminate any trust of property for charitable purposes unless the Attorney General is a party to the proceedings.

**§ 12592. Application of article.** This article shall apply regardless of any contrary provisions of any instrument.

**§ 12593. Furnishing copies of instruments and records to attorney general; duty of custodian of records.** Every person who offers for probate any instrument which establishes a testamentary trust of property for charitable purposes or who records in any county or city and county any inter vivos transfer of property for charitable purposes shall furnish a copy of such document to the Attorney General. The custodian of the records of a court having jurisdiction of probate matters or of charitable trusts shall furnish such copies of papers, records and files of his office relating to the subject of this article as the Attorney General requires.

**§ 12594. Filing of applications for tax exemption.** Every officer, agency, board, or commission of this State receiving applications for exemption from taxation of any corporation, charitable trust or similar relationship in which the corporation or trustee is subject to this article shall annually file with the Attorney General a list of all applications received during the year.

**§ 12595. Construction of act.** This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

EXHIBIT 11

Procedure for Registration and Administration of Trusts  
Under the Uniform Probate Code

At the June meeting, the Commission requested the staff to report on the procedures adopted under the Uniform Probate Code dealing with supervision over administration of trusts and transfer of trusts from one jurisdiction to another. The Commission requested that the staff report on whether the procedure adopted by the Uniform Probate Code might be suitable for adoption in California. The Uniform Probate Code has been adopted in 10 jurisdictions (Alaska, Arizona, Colorado, Florida, Idaho, Minnesota, Montana, Nebraska, North Dakota, and South Dakota).

Preliminarily, it should be noted that the basic philosophy which underlies the Uniform Probate Code approach, i.e., that the court should be accessible to the parties on a permissive basis without subjecting the trust to compulsory continuing supervision by the court is the same policy which prompted the adoption in 1970 of Section 1138 et seq. of the California Probate Code.<sup>1</sup> Under Probate Code Section 1138 et seq., the trustee, beneficiary, or remainderman may petition the court for instructions or a ruling on a number of matters dealing with the terms of the trust and the duties and responsibilities under the trust. Some of the provisions of Section 1138 et seq. seem to be patterned on the Uniform Probate Code provisions.

The basic scheme of the Uniform Probate Code provides for registration of trusts and transfer by change of registration. The procedure for dealing with trusts is set out in the general comment to the trust article as follows:

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1. See Uniform Prob. Code § 7-201.

## PART 1

### TRUST REGISTRATION

#### GENERAL COMMENT

Registration of trusts is a new concept and differs importantly from common arrangements for retained supervisory jurisdiction of courts of probate over testamentary trusts. It applies alike to inter vivos and testamentary trusts, and is available to foreign-created trusts as well as those locally created. The place of registration is related not to the place where the trust was created, which may lose its significance to the parties concerned, but is related to the place where the trust is primarily administered, which in turn is required (Section 7-305) to be at a location appropriate to the purposes of the trust and the interests of its beneficiaries. Sections 7-102 and 7-305 provide for transfer of registration. The procedure is more flexible than the typical retained jurisdiction in that it permits registration or submission to other appropriate procedures at another place, even in another state, in order to accommodate relocation of the trust at a place which becomes more convenient for its administration. (Cf. 20 [Pardon's] Pa.Stat. § 2080.309.) In addition, the registration acknowledges that a particular court will be accessible to the parties on a permissive basis

without subjecting the trust to compulsory, continuing supervision by the court.

The process of registration requires no judicial action or determination but is accomplished routinely by simple acts on the part of the trustee which will place certain information on file with the court (Section 7-102). Although proceedings involving a registered trust will not be continuous but will be separate each time an interested party initiates a proceeding, it is contemplated that a court will maintain a single file for each registered trust as a record available to interested persons. Proceedings are facilitated by the broad jurisdiction of the court (Section 7-201) and the Code's representation and notice provisions (Section 1-403).

Section 7-201 provides complete jurisdiction over trust proceedings in the court of registration. Section 7-103 above provides for jurisdiction over parties. Section 7-104 should facilitate use of trusts involving assets in several states by providing for a single principal place of administration and reducing concern about qualification of foreign trust companies.

The addition of the legislation providing for transfer of trusts from other jurisdictions presently proposed by the Commission would achieve a result similar to that of the Uniform Act with respect to the large percentage of trusts for which change of place of administration is sought. The Uniform Act does provide a simple method for transfer from one state to another. However, it does not solve the problem of transfer from those

states which have not adopted the Uniform Probate Code and which require appointment of a trustee or some other formal acceptance by the courts of the transferee state.

Since California already has a recently enacted liberal statute permitting trusts to be transferred out of this state, enactment of the Uniform Probate Code provisions with respect to trusts would not provide substantial benefits at this time. Furthermore, the existing California law with regard to some types of trusts (i.e., testamentary trusts continuing after probate under Probate Code Section 1120) differ from the permissive philosophy of the Uniform Probate Code. Any decision on adoption of the Uniform Probate Code provisions should await a thorough study of all types of trusts administered under the California Probate Code.

Staff Draft

Tentative

## RECOMMENDATION

relating to

## TRANSFER OF OUT-OF STATE TRUSTS TO CALIFORNIA

The increasing mobility of individuals and the expansion of investment of assets of trusts in different jurisdictions has created some problems with regard to the proper and most convenient place for administration of trusts involving present California residents or property now located in California. In recognition of the need to change the place of administration in appropriate cases, a number of states have enacted legislation authorizing transfer of a locally administered trust to another state.<sup>1</sup> For example, California, which previously had permitted such transfer only in very limited situations,<sup>2</sup> in 1971 enacted Probate Code Sections 1139-1139.7<sup>3</sup> to give superior courts discretion to order the transfer of trusts or assets of trusts from California to another jurisdiction upon a finding<sup>4</sup> that: (1) the transfer will facilitate the economical and convenient administration of the trust and promote the best interests of the trust and those interested therein, (2) the substantial rights of residents of this state will not be materially affected thereby, (3) the transfer will not violate the terms of the trust, and (4) any new trustee, to whom the trust assets will be transferred, is qualified and able to administer the trust.

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1. See, e.g., Ky. Rev. Stat. § 386.170; Mass. Gen. Laws, Ch. 206, § 29 (1955); Mich. Stat. Ann. §§ 27.3178(364), 27.3178(365) (1962); N.C. Gen. Stat. §§ 36-6 through 36-8 (1966); Va. Code Ann. § 26-64 (1969); Wis. Stat. Ann. § 701.23 (1974).
  2. Prob. Code §§ 1132-1136 (Cal. Stats. 1953, Ch. 350)(repealed). This procedure permitted transfer to another jurisdiction of trusts created by a nonresident decedent which consisted of assets of less than \$7,500 under the jurisdiction of the California court.
  3. Cal. Stats. 1971, Ch. 958, § 9.
  4. Prob. Code § 1139.4.

The legislation in other states usually allows transfer when the beneficiaries reside in the state to which transfer is to be made. Typically, the statutes require that, prior to the transfer, the court in the jurisdiction to which transfer is to be made appoint a qualified trustee with the requisite bond to administer the trust in the transferee state.<sup>5</sup>

The problem in California is the lack of concomitant legislation providing a specific procedure for the acceptance of a transfer to this state of a trust which has been administered in another jurisdiction. Although there have been some cases in which California probate courts have actually accepted such a transfer, it is not at all clear what procedures should be used to effectuate such transfers or in which court jurisdiction should lie.<sup>6</sup> Since California residents are often beneficiaries of trusts originally established and administered elsewhere, it would be appropriate and beneficial for California to adopt a specific procedure to provide for acceptance of transfer of an out-of-state trust when it is in the best interest of the parties.<sup>7</sup>

Accordingly, the Commission recommends the adoption of legislation to provide a specific procedure to facilitate transfer of trusts administered in other jurisdictions to California. The following are the significant features of the recommended legislation.

(1) A trustee or beneficiary of a trust administered in a jurisdiction outside of California may petition the superior court for an order accepting transfer of place of administration to California and appointing a trustee<sup>8</sup> to administer the trust in California.

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5. See statutes cited in note 1 supra. See generally 5 A. Scott, The Law of Trusts § 613 (3d ed. 1967).

6. 3 N. Condee, California Practice, Probate Court Practice § 1850 (2d ed. 1964).

7. See Condee, op. cit., supra note 2; Restatement of Conflict of Law § 271, Comment g.

8. In most cases where trust administration is transferred from another jurisdiction to California, the trustee or a newly appointed trustee will be a resident of California. One important reason for a transfer is to relieve the trustee in the original jurisdiction from the onerous obligations of administering a trust when the assets or the beneficiaries are located in another state. Except

(2) The court may, in its discretion, grant the petition upon a finding that: (a) the transfer will facilitate the economical and convenient administration of the trust and promote the best interests of the trust and those interested therein, (b) the transfer will not violate the terms of the trust, (c) the trustee to be appointed to administer the trust in California is willing and able to serve, and (d) a court in the jurisdiction transferring administration has approved the transfer if such approval is necessary under the law in the other jurisdiction.

(3) When appropriate to facilitate transfer from another jurisdiction, the California court may issue a conditional order prior to approval of the transfer, appointing a trustee to administer the trust in California and indicating that, upon issuance of the order of transfer by the court having jurisdiction over the administration, the transfer to California will be approved.

(4) Upon transfer to California, the nature of supervision of administration of the trust will depend upon the type of trust involved. If the trust is one which comes within the meaning of "trust" as set out in Section 1138, it will be administered in accordance with Article 2.5 (commencing with Section 1138) of Chapter 19 of Division 3 of the Probate Code. This article provides a comprehensive procedure for administration of a variety of written voluntary express trusts which do not fall within the scope of the probate court as ancillary to the administration of a decedent's estate.<sup>9</sup> Under this procedure, a trustee,

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for the restriction on foreign corporations other than national banks serving as trustees in California (Fin. Code § 1503), there is no requirement that a trustee be a California resident. See 7 B. Witkin, Summary of California Law, Trusts § 30 (8th ed. 1974); Restatement (Second) of Trusts § 94 (19 )· see also J. Cohan, Drafting California Irrevocable Inter Vivos Trusts § 14.31 (Cal. Cont. Ed. Bar 1973). If a trustee appointed in another state is qualified, willing, and able to administer the trust in California, the court should have discretion to permit the trustee to administer the trust in California subject to bonding and other statutory requirements. Civil Code Section 1018 requires a nonresident fiduciary to appoint an agent for service for tax purposes.

9. Prob. Code §§ 1138-1138.13. The courts had held that the probate court had no general equity jurisdiction for the administration of trusts which had not come to the probate court as part of the administration of an estate. See *Wells Fargo Bank v. Superior Court*, 32 Cal.2d 1, 193 P.2d 721 (1948); *Gillette v. Gillette*, 122

beneficiary, or remainderman may petition the superior court for a broad array of purposes concerning supervision of trust administration.<sup>10</sup>

This procedure is well suited for trusts transferred to this state from another jurisdiction. If the trust is not one which comes within the meaning of "trust" as set out in Section 1138, the trust will be administered in the same manner as a trust of the same type which has been subject to supervision in California from the time of its creation.

(5) Section 1215.1 which limits the requirement for notice in certain future interest cases should be amended to include within its provisions trusts transferred from other jurisdictions pursuant to the recommended legislation.

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The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 1138, 1138.3, and 1215.1 of, and to add Article 4 (commencing with Section 1139.10) to, the Probate Code, relating to transfer of out-of-state trusts to California.

The people of the State of California do enact as follows:

043/158

§ 1138. "Trust" defined

SECTION 1. Section 1138 of the Probate Code is amended to read:

1138. As used in this article, "trust" means a written voluntary express trust, with additions thereto, whether created by will or other than by will which is entirely administered or to be entirely administered in this state or administration of which is transferred to this

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Cal. App. 640, 10 P.2d 760 (1932). The need for this legislation providing for a procedure for administration of the large number of trusts which do not come within Probate Code Section 1120 was clearly pointed out in Wile, Judicial Assistance in Administration of California Trusts, 14 Stan. L. Rev. 321 (1961).

10. Prob. Code § 1138.1.

state pursuant to Article 4 (commencing with Section 1139.10) of this chapter . As used in this article, "trust" does not mean a trust subject to court supervision under Article 1 (commencing with Section 1120) of this chapter or Chapter 10 (commencing with Section 175) of Division 1, a Totten trust, a business trust which is taxed as a partnership or corporation, an investment trust subject to regulation under the laws of this state or any other jurisdiction, a common trust fund, a voting trust, a deed of trust, a transfer in trust for purpose of suit or enforcement of a claim or right, a trust for the primary purpose of paying debts, dividends, interest, salaries, wages, pensions, or employee benefits of any kind, an arrangement under which a person is a nominee or escrow holder for another, a trust subject to supervision of the Attorney General under Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code during the period when no private beneficiary or remainderman has or may claim an interest therein, nor a trust declared exempt from supervision under Section 12583 of the Government Code.

Comment. Section 1138 is amended to include within the definition of trusts to be administered in accordance with the provisions of this article any trust transferred to this state from another jurisdiction under the provisions of Article 4 (commencing with Section 1139.10).

043/159

§ 1138.3. Venue; "principal place of administration of the trust" defined

SEC. 2. Section 1138.3 of the Probate Code is amended to read:

1138.3. (a) Proceedings under this article shall be commenced in the superior court of the county in which is located the principal place of administration of the trust.

(b) As used in this section, the "principal place of administration of the trust" is ~~the~~ :

(1) The trustee's usual place of business where the day-to-day records pertaining to the trust are kept or the trustee's residence if he has no such place of business.

(2) In the case of cotrustees, the principal place of administration is the usual place of business where such records are kept, or, if none, the usual place of business or residence of any of the cotrustees as agreed upon by them, or, if none, the county in which any trustee resides or maintains a place of business.

(c) In the case of a trust transferred to this state from another jurisdiction for purposes of administration in this state pursuant to Article 4 (commencing with Section 1139.10), proceedings under this article shall be commenced in the superior court of the appropriate county as described in Section 1139.11.

Comment. Section 1138.3(c) makes the proper venue for proceedings under Article 2.5 involving trusts transferred to California from another jurisdiction pursuant to Article 4 the same as the venue for filing the petition under Section 1139.11. If a California resident is appointed as trustee by the court, venue is determined on the basis of "principal place of administration of the trust" as defined in paragraphs (1) and (2) of subdivision (b). If no trustee is a resident of California, venue is proper in the county where either any beneficiary resides or where a substantial portion of the assets are or will be located. See Section 1139.11.

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§§ 1139.10-1139.16 (added)

SEC. 3. Article 4 (commencing with Section 1139.10) is added to Chapter 19 of Division 3 of the Probate Code, to read:

Article 4. Transfer From Another Jurisdiction

§ 1139.10. Application of article

1139.10. (a) This article applies to any written voluntary express trust or portion thereof, whether created by will or otherwise, administered in another jurisdiction outside of this state when transfer of place of administration to this state is sought.

(b) This chapter shall not be construed to prevent transfer of place of administration of a trust or of trust assets to this state from another jurisdiction in any case where judicial approval of the transfer was not required under the law in effect immediately prior to the effective date of this article.

Comment. Section 1139.10 makes Sections 1139.10-1139.16 applicable to the transfer of the place of administration to California of trusts administered in another jurisdiction outside of California. This procedure applies to trusts administered in foreign countries as well as those administered in sister states.

405/814

§ 1139.11. Petition for transfer; venue

1139.11. A petition for an order accepting transfer of place of administration of a trust from another jurisdiction to this state may be filed by the trustee or a beneficiary of the trust as follows:

(a) If the petition requests that a resident of this state be appointed trustee, the petition shall be filed in the superior court of the county where the proposed "principal place of administration of the trust" (as defined by paragraphs (1) and (2) of subdivision (b) of Section 1138.3 of the Probate Code) is located.

(b) If the petition requests that only a nonresident of this state be appointed trustee, the petition shall be filed either (1) where any

beneficiary of the trust resides or (2) where a substantial portion of the assets of the trust are located or will be located.

Comment. Section 1139.11 sets out the venue for a petition for an order accepting transfer of place of administration of a trust from another jurisdiction to this state. If a California resident is to be appointed trustee by the court, venue is determined on the basis of a "principal place of administration of the trust" as defined in paragraphs (1) and (2) of subdivision (b) of Section 1138.3. If no trustee to be appointed by the court to administer the trust is a California resident, venue is proper in the county either where any beneficiary resides or where a substantial portion of the assets are or will be located.

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§ 1139.12. Contents of petition

1139.12. The petition shall be under oath and shall set forth:

(a) The names, ages, and places of residence of:

(1) The trustees administering the trust in the other jurisdiction.

(2) The proposed trustee to whom administration of the trust in this state will be transferred.

(3) All persons who are interested in the trust as beneficiaries as far as known to petitioner.

(b) Whether the trust has been subject to supervision over administration in another jurisdiction outside of California. If so, whether a petition or appropriate request for transfer of place of administration of the trust to this state which complies with the procedural requirements of the court in the jurisdiction outside California has been filed, if necessary, with the court in the other jurisdiction and the status of such petition.

(c) Whether the trustee proposed to administer the trust in this state has agreed to accept the trust and to the change of place of

administration. If the trustee has agreed to accept the trust and to the change of place of administration, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(d) A general statement of the qualification of the trustee who will administer the trust in this state and the amount of fiduciary bond to be requested, if any.

(e) A copy of the trust instrument or a statement of the terms of the trust instrument in effect at the time the petition is filed, including all amendments thereto.

(f) A statement of the character, condition, location, and value of the property comprising the assets of the trust.

(g) A statement of the reasons for the transfer.

Comment. Section 1139.12 sets out the requirements for a petition for an order authorizing transfer of a trust from another jurisdiction to this state. The information to be included in the petition will inform the court on the questions of identification of interested parties, the terms of the trust instrument and assets of the trust, the satisfaction of requirements for transfer in the other jurisdiction, whether administration of the trust has been subject to supervision of a court in another jurisdiction, and the reason for the requested transfer. The section is patterned after Probate Code Section 1139.2.

It should be noted that a foreign corporation other than a national banking association authorized to conduct trust business in this state cannot act as trustee in California. Fin. Code § 1503.

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§ 1139.13. Notice and hearing

1139.13. (a) Upon the filing of the petition, the clerk shall set the petition for hearing, shall give notice of the hearing as provided in Section 1200 at least 30 days before the time set for the hearing,

and shall cause to be mailed to each of the persons named in the petition, at their respective places of residence therein stated, a copy of such notice.

(b) The court for good cause may shorten the time required for performance of any act required by this section.

(c) Any person interested in the trust, either as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

Comment. Section 1139.13 is based upon Section 1139.3. The section sets out the method and time limitations for notification of the hearing. Subdivision (c) allows any interested party to appear and file written opposition to the petition.

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§ 1139.14. Order accepting transfer and appointing trustee

1139.14. The court may, in its discretion, grant the petition and issue an order accepting transfer of place of administration of the trust from another jurisdiction to this state, appoint a trustee to administer the trust in this state, and require the trustee to post appropriate bond, if necessary, if after hearing it appears to the court that:

(a) The transfer of place of administration of the trust to this state from the other jurisdiction will facilitate the economical and convenient administration of the trust and promote the best interests of the trust and those interested therein.

(b) The transfer will not violate the terms of the trust.

(c) The trustee appointed by the court to administer the trust in this state is qualified, willing, and able to administer the trust.

(d) A court in the jurisdiction transferring administration has approved the transfer if such approval is necessary under the law in the

other jurisdiction.

Comment. Section 1139.14 gives the court discretion to transfer place of administration of a trust from another jurisdiction to this state provided that, if the law in the other jurisdiction so requires, the court having jurisdiction has approved the transfer. A foreign corporation, other than a national banking association authorized to conduct trust business in this state, cannot act as trustee in California. Fin. Code § 1503. Section 1139.14 does not require the court to issue formal findings.

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§ 1139.15. Conditional order accepting transfer of place of administration

1139.15. When appropriate to facilitate transfer of place of administration of a trust from another jurisdiction, the court may issue a conditional order appointing a trustee to administer the trust in this state and indicating that transfer of place of administration to this state will be accepted if transfer is approved by the appropriate court of the other jurisdiction.

Comment. Section 1139.15 provides a method whereby the California court can indicate its willingness to accept jurisdiction over a trust presently administered in another jurisdiction where the law of the other jurisdiction requires appointment of a trustee in the proposed new place of administration prior to approving transfer. See, e.g., Mass. Gen. Laws, Ch. 206, § 29 (1955); N.C. Gen. Stat. §§ 36-6 through 36-8 (1966); see Recommendation Relating to Transfer of Out-of-State Trusts to California, 13 Cal. L. Revision Comm'n Reports 0000 (1976).

405/829

§ 1139.16. Administration of transferred trust

1139.16. (a) A trust transferred to this state pursuant to this article which is a "trust" as defined in Section 1138 shall be administered in accordance with Article 2.5 (commencing with Section 1138) of Chapter 19 of Division 3 of this code.

(b) A trust transferred to this state pursuant to this article which is not a "trust" as defined in Section 1138 shall be administered as if the trust had been subject to supervision in this state from the time of its creation.

Comment. Section 1139.16 provides that a trust which comes within the meaning of "trust" under Section 1138 shall be administered in accordance with Article 2.5 (commencing with Section 1138). Thus, for example, a testamentary trust which continues after probate of a will in another jurisdiction could be transferred to California to be administered under that article. A trust which does not come within the meaning of "trust" as set out in Section 1138 shall be administered in the same manner as California trusts of the same type. For example, a charitable trust, during the period when no private beneficiary or remainderman has or may claim an interest would be subject to the supervision of the Attorney General under Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code, and any controversy would be determined by a civil action. See, e.g., Brown v. Memorial Nat'l Home Foundation, 162 Cal. App.2d 513, 329 P.2d 118 (1958).

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§ 1139.17. "Beneficiary" defined

1139.17. For purposes of this article, "beneficiary" means all persons in being who shall or may participate in the corpus or income of the trust.

Comment. Section 1139.17 is the same as Section 1139.7. It eliminates the requirement of appointment of a representative for unborn beneficiaries.

§ 1215.1. Notice in future interests cases

SEC. 4. Section 1215.1 of the Probate Code is amended to read:

1215.1. Subject to other provisions of this article, it is a sufficient compliance with Sections 1120, 1123.5, 1125, 1125.1, 1126, 1138.6 , and 1139.7, and 1139.13, insofar as they require notice to be given to the beneficiaries of, or persons interested in the trust, or to beneficiaries or remaindermen, including all persons in being who shall or may participate in the corpus or income of the trust, to give notice in the cases hereinafter provided, as follows:

(1) When an interest has been limited on any future contingency to persons who shall compose a certain class upon happening of a certain event without further limitation, notice shall be given to the persons in being who would constitute the class if such event had happened immediately before the commencement of the proceedings.

(2) When an interest has been limited to a living person, and the same interest, or a share therein, has been further limited upon the happening of a future event to the surviving spouse or to persons who are, or may be, the distributees, heirs, issue or other kindred of such living person, notice shall be given to such living person.

(3) Except as otherwise provided in subdivision (2), when an interest has been limited upon the happening of any future event to a person, or a class of persons, or both, and the same interest, or a share of such interest, has been further limited upon the happening of an additional future event to another person, or a class of persons, or both, notice shall be given to the person or persons in being who would take the interest upon the happening of the first such event.

Comment. Section 1215.1 is amended to include within its provisions trusts transferred from other jurisdictions pursuant to Article 4 (commencing with Section 1139.10) of Chapter 19 of Division 3 of the Probate Code.