

Memorandum 83-4

Subject: Study L-640 - Trusts (Scope of Study)

Background

The Commission is in the initial stages of considering Division 3 of the California Probate Code which is entitled Administration of Estates of Decedents. (See Memorandum 83-5, on the agenda for the January meeting.) Chapter 19 (commencing with Section 1120) of this division of the Probate Code deals with the administration of trusts. It was decided to split off the study of trust administration from the probate administration study at the September 1982 meeting. It was felt that proposed legislation on this subject could be prepared for the 1984 legislative session. The Commission's tentative outline for the Probate Code study locates trust provisions as a new Division 3, commencing with Section 1100. This memorandum outlines the staff's tentative views on the scope of the trust project.

Reference Materials

Attached to this memorandum is a copy of Article VII of the UPC (see Exhibit 1), including the Comments of the Joint Editorial Board of the UPC. Also attached is a copy of the main body of California statutes relating to trusts. You will find it useful to refer to these materials during the course of considering the memorandums on trusts at this meeting and at future meetings.

Scope of Study

The Legislature directed the Commission to study whether the California Probate Code should be revised, including, but not limited to, whether California should adopt, in whole or in part, the Uniform Probate Code. 1980 Cal. Stats. res. ch. 37. Since trust administration provisions appear in Division 3 of the Probate Code and also as Article VII of the UPC, the starting point for this study is the material covered by Probate Code Section 1120-1139.19.

Related provisions appear in the Civil Code in several places. California has also adopted several uniform acts bearing on trusts such as the Uniform Common Trust Fund Act (Fin. Code § 1564), the Revised Uniform Principal and Income Act (Civil Code §§ 730-730.17), the Uniform

Supervision of Trustees for Charitable Purposes Act (Gov't Code §§ 12580-12597), the Uniform Testamentary Additions to Trusts Act (Prob. Code §§ 170-173, to be renumbered as Prob. Code §§ 6300-6303 by AB 25, a Commission bill), and the Uniform Management of Institutional Funds Act (Civil Code §§ 2290.1-2290.12).

The staff has chosen to start this study with a comparison of the UPC trust administration provisions with those of California law. See the First Supplement to Memorandum 83-4. The UPC trust administration provisions have been drafted to achieve several objectives that the staff believes should guide the Commission: to eliminate procedure distinctions between testamentary and inter vivos trusts, to locate nonmandatory judicial proceedings for trustees and beneficiaries in a convenient court fully competent to handle all problems that may arise, to facilitate judicial proceedings concerning trusts by comprehensive provisions for obtaining jurisdiction over interested persons by notice, and to strengthen the ability of owners to select trustees by eliminating formal qualification of trustees and restrictions on the place of administration. See the General Comment to Article VII of the UPC (attached as Exhibit 1).

It should be noted that not all of the relevant provisions concerning trust administration appear in the Probate Code. Some Civil Code provisions are necessarily involved, no matter how strictly one limits the subject of trust administration. The staff considers trust administration to properly include the following topics, among others: jurisdiction over trusts, venue, notice of proceedings relating to trusts, transfer of the place of administration within and without the state, the "prudent man" investment rule, trustee accountings, trustee liability to beneficiaries and to third persons, removal of trustees, filling vacancies, compensation, and modification of trusts. Provisions relating to trustees' powers appear in both the Probate Code (see Section 1120.2) and the Civil Code (see Sections 2267-2272) and in the UPC administrative provisions (the Uniform Trustees' Powers Act is suggested for consideration as Part 4 of Article VII of the UPC). Accordingly, we propose to study trustees' powers as a part of administration. See the Second Supplement to Memorandum 83-4.

After the more important trust administration matters are covered, the Commission may want to clean up the remaining Field Code provisions that populate parts of the Civil Code. See Civil Code §§ 852-871, 2215-2289 (attached as Exhibit 2). Many of these provisions no longer have any particular utility, if they ever did. One commentator suggested that the Field Code provisions adopted in the Civil Code are "about as functional as a vermiform appendix and if the present statutes are not likely to induce peritonities in the body politic, they contain real potentialities of some mild belly aches." Evans, Observations on the State, Etc., of the California Law of Uses and Trusts, 28 S. Cal. L. Rev. 111 (1955). This same writer noted, almost 30 years ago, that "there is hope today in a California Law Revision Commission which did not exist when the earlier articles [pointing out inadequacies in California statutory law relating to trusts] were published and these observations are submitted for its consideration." Id., at 121. In line with Professor Evans' suggestions, the staff would like eventually to consolidate trust law in the Probate Code to the extent practicable.

Respectfully submitted,

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EXHIBIT 1

UNIFORM PROBATE CODE

ARTICLE VII
TRUST ADMINISTRATION

PART 1

TRUST REGISTRATION

Section

- 7-101. [Duty to Register Trusts.]
- 7-102. [Registration Procedures.]
- 7-103. [Effect of Registration.]
- 7-104. [Effect of Failure to Register.]
- 7-105. [Registration, Qualification of Foreign Trustee.]

PART 2

JURISDICTION OF COURT CONCERNING TRUSTS

- 7-201. [Court; Exclusive Jurisdiction of Trusts.]
- 7-202. [Trust Proceedings; Venue.]
- 7-203. [Trust Proceedings; Dismissal of Matters Relating to Foreign Trusts.]
- 7-204. [Court; Concurrent Jurisdiction of Litigation Involving Trusts and Third Parties.]
- 7-205. [Proceedings for Review of Employment of Agents and Review of Compensation of Trustee and Employees of Trust.]
- 7-206. [Trust Proceedings; Initiation by Notice; Necessary Parties.]

PART 3

DUTIES AND LIABILITIES OF TRUSTEES

- 7-301. [General Duties Not Limited.]
- 7-302. [Trustee's Standard of Care and Performance.]
- 7-303. [Duty to Inform and Account to Beneficiaries.]
- 7-304. [Duty to Provide Bond.]
- 7-305. [Trustee's Duties; Appropriate Place of Administration; Deviation.]
- 7-306. [Personal Liability of Trustee to Third Parties.]
- 7-307. [Limitations on Proceedings Against Trustees After Final Account.]

GENERAL COMMENT

Several considerations explain the presence in the Uniform Probate Code of procedures applicable to inter vivos and testament-

ary trusts. The most important is that the Court assumed by the Code is a full power court which appropriately may receive jurisdiction over trustees. Another is that personal representatives under Articles III and IV and conservators under Article V, have the status of trustees. It follows naturally that these fiduciaries and regular trustees should bear a similar relationship to the Court. Also, the general move of the Code away from the concept of supervisory jurisdiction over any fiduciary is compatible with the kinds of procedural provisions which are believed to be desirable for trustees.

The relevance of trust procedures to those relating to settlement of decedents' estates is apparent in many situations. Many trusts are created by will. In a substantial number of states, statutes now extend probate court control over decedents' estates to testamentary trustees, but the same procedures rarely apply to inter vivos trusts. For example, eleven states appear to require testamentary trustees to qualify and account in much the same manner as executors, though quite different requirements relate to trustees of inter vivos trusts in these same states. Twenty-four states impose some form of mandatory court accountings on testamentary trustees, while only three seem to have comparable requirements for inter vivos trustees.

From an estate planning viewpoint, probate court supervision of testamentary trustees causes many problems. In some states, testamentary trusts cannot be re-

leased to be administered in another state. This requires complicated planning if inconvenience to interested persons is to be avoided when the beneficiaries move elsewhere. Also, some states preclude foreign trust companies from serving as trustees of local testamentary trusts without complying with onerous or prohibitive qualification requirements. Regular accountings in court have proved to be more expensive than useful in relation to the vast majority of trusts and sometimes have led to the ill-advised use of legal life estates to avoid these burdens.

The various restrictions applicable to testamentary trusts have caused many planners to recommend use of revocable inter vivos trusts. The widely adopted Uniform Testamentary Addition to Trusts Act has accelerated this tendency by permitting testators to devise estates to trustees of previously established receptacle trusts which have and retain the characteristics of inter vivos trusts for purpose of procedural requirements.

The popularity of this legislation and the widespread use of pour-over wills indicates rather vividly the obsolescence and irrelevance of statutes contemplating supervisory jurisdiction.

One of the problems with inter vivos and receptacle trusts at the present time, however, is that persons interested in these arrangements as trustees or beneficiaries frequently discover that there are no simple and efficient statutory or judicial remedies available to them to meet the

special needs of the trust relationship. Proceedings in equity before courts of general jurisdiction are possible, of course, but the difficulties of obtaining jurisdiction over all interested persons on each occasion when a judicial order may be necessary or desirable are commonly formidable. A few states offer simplified procedures on a voluntary basis for inter vivos as well as testamentary trusts. In some of these, however, the legislation forces inter vivos trusts into unpopular patterns involving supervisory control. Nevertheless, it remains true of the legislation in most states that there is too little for inter vivos trusts and too much for trusts created by will.

Other developments suggest that enactment of useful, uniform legislation on trust procedures is a matter of considerable social importance. For one thing, accelerating mobility of persons and estates is steadily increasing the pressure on locally oriented property institutions. The drafting and technical problems created by lack of uniformity of trust procedures in the several states are quite serious. If people cannot obtain efficient trust service to preserve and direct wealth because of state property rules, they will turn in time to national arrangements that eliminate property law problems. A general shift away from local management of trustee wealth and increased reliance on various contractual claims against national funds seems the most likely consequence if the local law of trusts remains nonuniform and provincial.

Modestly endowed persons who are turning to inter vivos trusts to avoid probate are of more immediate concern. Lawyers in all parts of the country are aware of the trend toward reliance on revocable trusts as total substitutes for wills which recent controversies about probate procedures, have stimulated. There would be little need for concern about this development if it could be assumed also that the people involved are seeking and getting competent advice and fiduciary assistance. But there are indications that many people are neither seeking nor receiving adequate information about trusts they are using. Moreover, professional fiduciaries are often not available as trustees for small estates. Consequently, neither settlors nor trustees of "do-it-yourself" trusts have much idea of what they are getting into. As a result, there are corresponding dangers to beneficiaries who are frequently uninformed or baffled by formidable difficulties in obtaining relief or information.

Enactment of clear statutory procedures creating simple remedies for persons involved in trust problems will not prevent disappointment for many of these persons but should help minimize their losses.

Several objectives of the Code are suggested by the preceding discussion. They may be summarized as follows:

1. To eliminate procedural distinctions between testamentary and inter vivos trusts.
2. To strengthen the ability of owners to select trustees by elim-

UNIFORM PROBATE CODE

Art. 7

inating formal qualification of trustees and restrictions on the place of administration.

3. To locate nonmandatory judicial proceedings for trustees and beneficiaries in a convenient court fully competent to handle all problems that may arise.

4. To facilitate judicial proceedings concerning trusts by comprehensive provisions for obtaining jurisdiction over interested persons by notice.

5. To protect beneficiaries by having trustees file written statements of acceptance of trusts with suitable courts, thereby acknowledging jurisdiction and providing some evidence of the trust's existence for future beneficiaries.

6. To eliminate routinely required court accountings, substituting clear remedies and statutory duties to inform beneficiaries.

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 [Purdon's] Pa.Stat. § 2080.309.) In addition, the registration acknowledges that a particular court will be accessible to the parties on a permissive basis with-

out 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.

Section 7-101. [Duty to Register Trusts.]

The trustee of a trust having its principal place of administration in this state shall register the trust in the Court of this state at the principal place of administration. Unless otherwise designated in the trust instrument, the principal place

of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of co-trustees, the principal place of administration, if not otherwise designated in the trust instrument, is (1) the usual place of business of the corporate trustee if there is but one corporate co-trustee, or (2) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate co-trustee, and otherwise (3) the usual place of business or residence of any of the co-trustees as agreed upon by them. The duty to register under this Part does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release.

COMMENT

This section rests on the assumption that a central "filing office" will be designated in each county where the Court may sit in more than one place.

The scope of this section and of Article VII is tied to the definition of "trustee" in section 1-201. It was suggested that the definition should be expanded to include "land trusts." It was con-

cluded, however, that the inclusion of this term, which has special meaning principally in Illinois, should be left for decision by enacting states. Under the definition of "trust" in this Code, custodial arrangements as contemplated by legislation dealing with gifts to minors, are excluded, as are "trust accounts" as defined in Article VI.

Section 7-102. [Registration Procedures.]

Registration shall be accomplished by filing a statement indicating the name and address of the trustee in which it acknowledges the trusteeship. The statement shall indicate whether the trust has been registered elsewhere. The statement shall identify the trust: (1) in the case of a testamentary trust, by the name of the testator and the date and place of domiciliary probate; (2) in the case of a written inter vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument; or (3) in the case of an oral trust, by information identifying the settlor or other source of funds and describing the time and manner of the trust's creation and the terms of the trust, including the subject matter, beneficiaries and time of performance. If a trust has been registered elsewhere, registration in this state is ineffective until the earlier registration is released by order of the Court where prior registration occurred, or an instrument

executed by the trustee and all beneficiaries, filed with the registration in this state.

COMMENT

Additional duties of the clerk register trusts is stated in Section 7-101. Section 1-305. The duty to

Section 7-103. [Effect of Registration.]

(a) By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the Court in any proceeding under 7-201 of this Code relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding shall be delivered to the trustee, or mailed to him by ordinary first class mail at his address as listed in the registration or as thereafter reported to the Court and to his address as then known to the petitioner.

(b) To the extent of their interests in the trust, all beneficiaries of a trust properly registered in this state are subject to the jurisdiction of the court of registration for the purposes of proceedings under Section 7-201, provided notice is given pursuant to Section 1-401.

COMMENT

This section provides for jurisdiction over the parties. Subject matter jurisdiction for proceedings involving trusts is described in Section 7-201 and 7-202. The basic jurisdictional concept in Section 7-103 is that reflected in widely adopted long-arm statutes, that a state may properly entertain proceedings when it is a reasonable forum under all the circumstances, provided adequate notice is given. Clearly the trustee can be deemed to consent to jurisdiction by virtue of registration. This basis for consent jurisdiction is in addition to and not in lieu of other bases of jurisdiction during or after registration. Also, incident to an order releasing registration under Section 7-305, the Court could condition the release on registration of the trust in another state or court. It also seems reasonable to require beneficiaries to go to the seat of the trust when litigation has been initiated there concerning a trust in which they claim beneficial interests, much as the rights of shareholders of a corporation can be determined at a corporate seat. The settlor has indicated a principal place of administration by his selection of a trustee or otherwise, and it is reasonable to subject rights under the trust to the jurisdiction of the Court where the trust is properly administered. Although most cases will fit within traditional concepts of jurisdiction, this section goes beyond established doctrines of personam or quasi in rem jurisdiction as regards a nonres-

ident beneficiary's interests in section affords due process and foreign land of chattels, but the represents a worthwhile step for- National Conference believes the ward in trust proceedings.

Section 7-104. [Effect of Failure to Register.]

A trustee who fails to register a trust in a proper place as required by this Part, for purposes of any proceedings initiated by a beneficiary of the trust prior to registration, is subject to the personal jurisdiction of any Court in which the trust could have been registered. In addition, any trustee who, within 30 days after receipt of a written demand by a settlor or beneficiary of the trust, fails to register a trust as required by this Part is subject to removal and denial of compensation or to surcharge as the Court may direct. A provision in the terms of the trust purporting to excuse the trustee from the duty to register, or directing that the trust or trustee shall not be subject to the jurisdiction of the Court, is ineffective.

COMMENT

Under Section 1-108, the holder of a presently exercisable general power of appointment can control all duties of a fiduciary to beneficiaries who may be changed by exercise of the power. Hence, if the settlor of a revocable inter vivos trust directs the trustee to refrain from registering a trust, no liability would follow even though another beneficiary demanded registration. The ability of the general power holder to control the trustee ends when the power is terminated.

Section 7-105. [Registration, Qualification of Foreign Trustee.]

A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if it maintains the principal place of administration of any trust within the state. A foreign co-trustee is not required to qualify in this state solely because its co-trustee maintains the principal place of administration in this state. Unless otherwise doing business in this state, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage or acquire property located in this state, or maintain litigation. Nothing in this section affects a determination of what other acts require qualification as doing business in this state.

COMMENT

Section 7-105 deals with non-resident trustees in a fashion which should correct a widespread deficiency in present regulation of trust activity. Provisions limiting business of foreign corporate trustees constitute an unnecessary limitation on the ability of a trustee to function away from its principal place of business. These restrictions properly relate more to continuous pursuit of general trust business by foreign corporations than to isolated instances of litigation and management of the assets of a particular trust. The ease of avoiding foreign corporation qualifi-

cation statutes by the common use of local nominees or sub-trustees, and the acceptance of these practices, are evidence of the futility and undesirability of more restrictive legislation of the sort commonly existing today. The position embodied in this section has been recommended by important segments of the banking and trust industry through a proposed model statute, and the failure to adopt this reform has been characterized as unfortunate by a leading trust authority. See 5 Scott on Trusts § 558 (3rd ed. 1967).

PART 2

JURISDICTION OF COURT CONCERNING TRUSTS

Section 7-201. [Court; Exclusive Jurisdiction of Trusts.]

(a) The Court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

- (1) appoint or remove a trustee;
- (2) review trustees' fees and to review and settle interim or final accounts;
- (3) ascertain beneficiaries, determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, to instruct trustees, and determine the existence or non-existence of any immunity, power, privilege, duty or right; and
- (4) release registration of a trust.

(b) Neither registration of a trust nor a proceeding under this section result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval or other action of any court, subject to the jurisdiction of the Court as invoked by interested parties or as otherwise exercised as provided by law.

COMMENT

Derived in small part from Statutes, (Purdon) 32080.101 et Florida Statutes 1965, Chapters seq. 737 and 87, and Title 20, Penna.

Section 7-202. [Trust Proceedings; Venue.]

Venue for proceedings under Section 7-201 involving registered trusts is in the place of registration. Venue for proceedings under Section 7-201 involving trusts not registered

in this state is in any place where the trust properly could have been registered, and otherwise by the rules of civil procedure.

Section 7-203. [Trust Proceedings; Dismissal of Matters Relating to Foreign Trusts.]

The Court will not, over the objection of a party, entertain proceedings under Section 7-201 involving a trust registered or having its principal place of administration in another state, unless (1) when all appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration or (2) when the interests of justice otherwise would seriously be impaired. The Court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the Court may grant a continuance or enter any other appropriate order.

COMMENT

While recognizing that trusts which are essentially foreign can be the subject of proceedings in this state, this section employs the concept of forum non conveniens to center litigation involving the trustee and beneficiaries at the principal place of administration of the trust but leaves open the possibility of suit elsewhere when necessary in the interests of justice. It is assumed that under this section a court would refuse to entertain litigation involving the foreign registered trust unless for jurisdictional or other reasons, such as the nature and location of the property or unusual interests of the parties, it is manifest that substantial injustice would result if the parties were referred to the court of registration. As regards litigation involving third parties, the trustee may sue and be sued as any owner and manager of property under the usually applicable rules of civil procedure and also as provided in Section 7-203.

The concepts of res judicata and full faith and credit applicable to any managing owner of property have generally been applicable to trustees. Consequently, litigation by trustees has not involved the artificial problems historically found when personal representatives maintain litigation away from the state of their appointment, and a prior adjudication for or against a trustee rendered in a foreign court having jurisdiction is viewed as conclusive and entitled to full faith and credit. Because of this, provisions changing the law, analogous to those relating to personal representatives in Section 4-401 do not appear necessary. See also Section 3-408. In light of the foregoing, the issue is essentially only one of forum non conveniens in having litigation proceed in the most appropriate forum. This is the function of this section.

Section 7-204. [Court; Concurrent Jurisdiction of Litigation Involving Trusts and Third Parties.]

The Court of the place in which the trust is registered has concurrent jurisdiction with other courts of this state of actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors of trusts, and of other actions and proceedings involving trustees and third parties. Venue is determined by the rules generally applicable to civil actions.

Section 7-205. [Proceedings for Review of Employment of Agents and Review of Compensation of Trustee and Employees of Trust.]

On petition of an interested person, after notice to all interested persons, the Court may review the propriety of employment of any person by a trustee including any attorney, auditor, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed, and the reasonableness of the compensation determined by the trustee for his own services. Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds.

COMMENT

In view of the broad jurisdiction conferred on the probate court, description of the special proceeding authorized by this section might be unnecessary. But the Code's theory that trustees may fix their own fees and those of their attorneys marks an important departure from much existing practice under which fees are determined by the Court in

the first instance. Hence, it seems wise to emphasize that any interested person can get judicial review of fees if he desires it. Also, if excessive fees have been paid, this section provides a quick and efficient remedy. This review would meet in part the criticism of the broad powers given in the Uniform Trustees' Powers Act.

Section 7-206. [Trust Proceedings; Initiation by Notice; Necessary Parties.]

Proceedings under Section 7-201 are initiated by filing a petition in the Court and giving notice pursuant to Section 1-401 to interested parties. The Court may order notification of additional persons. A decree is valid as to all who are given notice of the proceeding though fewer than all interested parties are notified.

PART 3

DUTIES AND LIABILITIES OF TRUSTEES

Section 7-301. [General Duties Not Limited.]

Except as specifically provided, the general duty of the trustee to administer a trust expeditiously for the benefit of the beneficiaries is not altered by this Code.

Section 7-302. [Trustee's Standard of Care and Performance.]

Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.

COMMENT

This is a new general provision designed to make clear the standard of skill expected from trustees both individual and corporate, nonprofessional and professional. It differs somewhat from the standard stated in § 174 of the Restatement of Trusts, Second, which is as follows:

"The trustee is under a duty to the beneficiary in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property; and if the trustee has or procures his appointment as trustee by representing that he has greater skill than that of a rea-

sonable man of ordinary prudence, he is under a duty to exercise such skill."

By making the basic standard align to that observed by a prudent man in dealing with the property of another, the section accepts a standard as it has been articulated in some decisions regarding the duty of a trustee concerning investments. See *Estate of Cook*, (Del.Chanc.1934) 20 Del.Ch. 123, 171 A. 730. Also, the duty as described by the above section more clearly conveys the idea that a trustee must comply with an external, rather than with a personal, standard of care.

Section 7-303. [Duty to Inform and Account to Beneficiaries.]

The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration. In addition:

(a) Within 30 days after his acceptance of the trust, the trustee shall inform in writing the current beneficiaries and if possible, one or more persons who under Section 1-403 may

represent beneficiaries with future interests, of the Court in which the trust is registered and of his name and address.

(b) Upon reasonable request, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration.

(c) Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee.

COMMENT

Analogous provisions are found in Section 3-705.

This provision does not require regular accounting to the Court nor are copies of statements furnished beneficiaries required to be filed with the Court. The parties are expected to assume the usual ownership responsibility for their interests including their own record keeping. Under Section 1-108, the holder of a general power of appointment or of revocation can negate the trustee's duties to any other person.

This section requires that a reasonable selection of beneficiaries is entitled to information so that the interests of the future beneficiaries may adequately be protected. After mandatory notification of registration by the trustee to the beneficiaries, further information may be obtained by the beneficiary upon request.

This is to avoid extensive mandatory formal accounts and yet provide the beneficiary with adequate protection and sources of information. In most instances, the trustee will provide beneficiaries with copies of annual tax returns or tax statements that must be filed. Usually this will be accompanied by a narrative explanation by the trustee. In the case of the charitable trust, notice need be given only to the attorney general or other state officer supervising charitable trusts and in the event that the charitable trust has, as its primary beneficiary, a charitable corporation or institution, notice should be given to that charitable corporation or institution. It is not contemplated that all of the individuals who may receive some benefit as a result of a charitable trust be informed.

Section 7-304. [Duty to Provide Bond.]

A trustee need not provide bond to secure performance of his duties unless required by the terms of the trust, reasonably requested by a beneficiary or found by the Court to be necessary to protect the interests of the beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. On petition of the trustee or other interested person the Court may excuse a requirement of

bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be filed in the Court of registration or other appropriate Court in amounts and with sureties and liabilities as provided in Sections 3-604 and 3-606 relating to bonds of personal representatives.

COMMENT

See Sections 3-603 and 3-604; 1949, § 390.911(b) [20 Purdon's 60 Okla.Stats.1961, § 175.24 [60 Pa.Stat. § 390.911(b)]; cf. Tenn. Okl.St. Ann. § 175.24]; Pa.Fid.Act, Code Ann. § 35-113.

Section 7-305. [Trustee's Duties; Appropriate Place of Administration; Deviation.]

A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate for any reason, the Court may enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee and appointment of a trustee in another state. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee control unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries shall be given weight in determining the suitability of the trustee and the place of administration.

COMMENT

This section and 7-102 are related. The latter section makes it clear that registration may be released without Court order if the trustee and beneficiaries can agree on the matter. Section 1-108 may be relevant, also.

The primary thrust of Article VII is to relate trust administration to the jurisdiction of courts, rather than to deal with substantive matters of trust law. An aspect of deviation, however, is touched here.

Section 7-306. [Personal Liability of Trustee to Third Parties.]

(a) Unless otherwise provided in the contract, a trustee is not personally liable on contracts properly entered into in his fiduciary capacity in the course of administration of the trust estate unless he fails to reveal his representative capacity and identify the trust estate in the contract.

(b) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault.

(c) Claims based on contracts entered into by a trustee in his fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in his fiduciary capacity, whether or not the trustee is personally liable therefor.

(d) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

COMMENT

The purpose of this section is to make the liability of the trust and trustee the same as that of the decedent's estate and personal representative.

Ultimate liability as between the estate and the fiduciary need not necessarily be determined whenever there is doubt about this question. It should be permissible, and often it will be preferable, for judgment to be entered, for example, against the trustee individually for purposes

of determining the claimant's rights without the trustee placing that matter into controversy. The question of his right of reimbursement may be settled informally with beneficiaries or in a separate proceeding in the probate court involving reimbursement. The section does not preclude the possibility, however, that beneficiaries might be permitted to intervene in litigation between the trustee and a claimant and that all questions might be resolved in that action.

Section 7-307. [Limitations on Proceedings Against Trustees After Final Account.]

Unless previously barred by adjudication, consent or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within [6 months] after receipt of the final account or statement. In any event and notwithstanding lack of full disclosure a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of

the location and availability of records for his examination is protected after 3 years. A beneficiary is deemed to have received a final account or statement if, being an adult, it is received by him personally or if, being a minor or disabled person, it is received by his representative as described in Section 1-403(1) and (2).

COMMENT

Final accounts terminating the trustee's obligations to the trust beneficiaries may be formal or informal. Formal judicial accountings may be initiated by the petition of any trustee or beneficiary. Informal accounts may be conclusive by consent or by limitation. This section provides a special limitation supporting informal accounts. With regard to facilitating distribution see Section 5-103.

Section 1-108 makes approval of an informal account or settlement with a trustee by the holder of a presently exercisable general power of appointment binding on all beneficiaries. In addition, the equitable principles of estoppel and laches, as well as general statutes of limitation, will apply in many cases to terminate trust liabilities.

PART 4
POWERS OF TRUSTEES

GENERAL COMMENT

There has been considerable interest in recent years in legislation giving trustees extensive powers. The Uniform Trustees' Powers Act, approved by the National Conference in 1964 has been adopted in Idaho, Kansas, Mississippi and Wyoming. New York and New Jersey have adopted similar statutes which differ somewhat from the Uniform Trustees' Powers Act, and Arkansas, California, Colorado, Florida, Iowa, Louisiana, Oklahoma, Penn-

sylvania, Virginia and Washington have comprehensive legislation which differ in various respects from other models. The legislation in Connecticut, North Carolina and Tennessee provides lists of powers to be incorporated by reference as draftsmen wish.

Comprehensive legislation dealing with trustees' powers appropriately may be included in the Code package at this point.

Exhibit 2

SELECTED CALIFORNIA TRUST STATUTES

Civil Code §§ 852-871

TITLE 4

Uses and Trusts

- § 852. Trusts must be in writing.
 § 853. Transfer to one for money paid by another.
 § 856. Purchasers protected.
 § 858. Vesting of mortgage powers.
 § 859. (Effective until July 1, 1983) Rents and profits liable to creditors in certain cases.
 § 859. (Operative July 1, 1983) Surplus of rents and profits; Satisfaction of money judgment
 § 860. Exercise of vested powers.
 § 863. Trustees of express trusts to have whole estate.
 § 864. Author of trust may devise, etc.
 § 865. Title of grantee or devisee of trust property.
 § 866. Interests remaining in grantor of express trust.
 § 867. Restraining disposition of trusts.
 § 869. Effect of omitting trust in conveyance.
 § 869a. Conveyance in trust, not indicating or naming beneficiary.
 § 870. Certain sales, etc., by trustees, void.
 § 871. When estate of trustee to cease.

Cal Forms-42:21.

§ 852. Trusts must be in writing. No trust in relation to real property is valid unless created or declared:

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing;

2. By the instrument under which the trustee claims the estate affected; or,

3. By operation of law. [1872.] *Cal Jur 3d Agency § 152, Deeds of Trust §§ 4, 10, Limitation of Actions § 112, Trusts §§ 4, 34; Cal Practice § 138:4; Cal Forms-42:22, 42:79, 42:291; Witkin Summary (8th ed) p 5377.*

§ 853. [Transfer to one for money paid by another.] When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made. [1872; 1873-74 ch 612 § 114.] *Cal Jur 3d Trusts §§ 4, 263, 272, 278, 335, Wills § 201; Witkin Summary (8th ed) p 5484.*

§ 856. Purchasers protected. No implied or resulting trust can prejudice the rights of

a purchaser or encumbrancer of real property for value and without notice of the trust. [1872.] *Cal Jur 3d Trusts §§ 4, 361; Witkin Summary (8th ed) p 5450.*

§ 858. [Vesting of mortgage powers.] Where a power to sell real property is given to a mortgagee, or other encumbrancer, in an instrument intended to secure the payment of money, the power is to be deemed a part of the security, and vests in any person who, by assignment, becomes entitled to the money so secured to be paid, and may be executed by him whenever the assignment is duly acknowledged and recorded. [1873-74 ch 612 § 117.] *Cal Jur 3d Acknowledgments §§ 4-6, Deeds of Trusts §§ 108, 198, 231, Trusts § 4.*

§ 859. [(Effective until July 1, 1983) Rents and profits liable to creditors in certain cases.] Where a trust is created to receive the rents and profits of real or personal property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may

be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of such persons, in the same manner as personal property which cannot be reached by execution. [1872; 1935 ch 408 § 1.]

§ 859. [(Operative July 1, 1983) Surplus of rents and profits; Satisfaction of money judgment] Where a trust is created to receive the rents and profits of real or personal property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, may be applied to the satisfaction of a money judgment against the person as provided in Section 709.010 of the Code of Civil Procedure. [1872; 1935 ch 408 § 1; 1982 ch 497 § 3, operative July 1, 1983.] *Cal Jur 3d Trusts §§ 4, 91, 96, 97, 98; 19 Cal Practice Rev, Ch 422C, Action Against Beneficiary of Spend-thrift Trust for Breach of Contract To Assign Funds; Cal Forms-41:634, 42:191, 42:194; Witkin Summary (8th ed) p 5458.*

§ 860. [Exercise of vested powers.] Where a power is vested in several persons, all must unite in its execution; but, in case any one or more of them is dead, is legally incapable of exercising the power, or releases the power, the power may be executed by the others, unless otherwise prescribed by the terms of the power. [1873-74 ch 612 § 118; 1969 ch 113 § 1.] *Cal Jur 3d Trusts §§ 4, 63, 109; Witkin Summary (8th ed) p 1984.*

§ 863. Trustees of express trusts to have whole estate. Except as hereinafter otherwise provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust. [1872.] *Cal Jur 3d Estates § 30, Mortgages § 11, Trusts §§ 4, 74, 76, 77, 80, 82; 19 Cal Practice Rev, Ch 422, Action To Enforce Performance of Express Trust in Real Property, Ch 422A, Action by Beneficiary To Enforce Rights by Following Trust Property, Ch 422C, Action Against Beneficiary of Spend-thrift Trust for Breach of Contract To Assign Funds, Ch 425B, Proceeding To Remove Trustee; Witkin Summary (8th ed) pp 5418, 5419, 5445.*

§ 864. Author of trust may devise, etc. Notwithstanding anything contained in the last section, the author of a trust may, in its

creation, prescribe to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust. [1872.] *Cal Jur 3d Trusts §§ 4, 75.*

§ 865. Title of grantee [or devisee] of trust property. The grantee or devisee of real property subject to a trust acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them. [1872.] *Cal Jur 3d Trusts §§ 4, 75.*

§ 866. Interests remaining in grantor of express trust. Where an express trust is created in relation to real property, every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust or his successors. [1872.] *Cal Jur 3d Trusts §§ 4, 74.*

§ 867. [Restraining disposition of trusts.] The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, may be restrained from disposing of his interest in such trust, during his life or for a term of years, by the instrument creating the trust. [1872; 1873-74 ch 612 § 120.] *Cal Jur 3d Annuities §§ 7, 10, Trusts §§ 4, 80, 91; Cal Forms-42:191; Witkin Summary (8th ed) pp 5452, 5453.*

§ 869. [Effect of omitting trust in conveyance.] Where an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee, or in an instrument signed by him, and recorded in the same office with the grant to the trustee, such grant must be deemed absolute in favor of purchasers from such trustees without notice, and for a valuable consideration. [1872; 1873-74 ch 612 § 122.] *Cal Jur 3d Trusts §§ 4, 361; Cal Forms-42:291.*

§ 869a. [Conveyance in trust, not indicating or naming beneficiary.] Whenever any estate or interest in, or lien on or encumbrance on real property is conveyed, created, aliened, mortgaged, encumbered or affected by an instrument in writing to or in favor of a person or persons in trust, or (a) where such person is designated "trustee" or "as trustee," or (b) where such persons are designated "trustees" or "as trustees," and regardless of whether a joint tenancy or right of survivorship as between such persons is expressed or not, then, if no beneficiary be indicated or named in said instru-

ment, it shall be presumed that said person or persons, as the case may be, holds or hold the title to the estate, interest, lien or encumbrance absolutely in his or their own individual right and free from any trust, and an instrument executed by such person or persons, whether purporting to be the act of such person or persons in his or their individual right, or in his or their capacity as trustee or trustees, shall prima facie affect such estate, interest, lien, or encumbrance according to the tenor of such instrument. As to such instrument last mentioned and any judgment against such person affecting the title, such presumption shall be and become conclusive as to such undisclosed beneficiary and the original grantor or trustor and anyone claiming under them in favor of a purchaser or encumbrancer in good faith and for valuable consideration upon the filing of such instrument last mentioned for record in the office of the recorder of the county wherein the land affected thereby is situated.

In any action or proceeding involving the estate, interest, lien or encumbrance affected by the instrument first mentioned instituted against such person or persons, he or they shall be deemed the only necessary representative of such undisclosed beneficiary and of the original grantor or trustor and anyone claiming under them, and any judgment or decree shall be binding upon and conclusive against them as to all matters finally adjudicated therein.

Provided, however, that as to such instruments so filed for record prior to the taking

effect of this act, such presumption shall not become conclusive except in favor of a purchaser or encumbrancer in good faith and for a valuable consideration until one year after the taking effect of this act when it shall become conclusive without any qualification whatsoever and no action to avoid or impugn any such instrument last mentioned shall be commenced after the time when such presumption becomes conclusive as hereinbefore provided; and further provided, that nothing herein contained shall be construed as depriving such original grantor or trustor or undisclosed beneficiary, or anyone claiming under them, from commencing and maintaining actions other than actions affecting the land the subject of such instruments. [1923 ch 134 § 1; 1943 ch 312 § 1.] *Cal Jur 3d Trusts §§ 4, 30, 362; Cal Forms-42:293; Witkin Summary (8th ed) p 5451.*

§ 870. **Certain sales, etc., by trustees, void.** Where a trust in relation to real property is expressed in the instrument creating the estate every transfer or other act of the trustees, in contravention of the trust, is absolutely void. [1872.] *Cal Jur 3d Deeds of Trust § 277, Trusts §§ 4, 106, 152, 361; Cal Forms-42:117; Witkin Summary (8th ed) pp 5418, 5429, 5436.*

§ 871. **When estate of trustee to cease.** When the purpose for which an express trust was created ceases, the estate of the trustee also ceases. [1872.] *Cal Jur 3d Deeds of Trust §§ 77, 158, Homesteads § 29, Trusts §§ 4, 77, 243, 249; Witkin Summary (8th ed) pp 5471, 5472.*

TITLE 8

Trust[s]

Chapter

1. Trusts in General. §§ 2215-2244.
2. Trusts for the Benefit of Third Persons. §§ 2250-2289.
3. Uniform Management of Institutional Funds Act. §§ 2290.1-2290.12.

CHAPTER 1

Trusts in General

Article

1. Nature and Creation of a Trust. §§ 2215-2224.
2. Obligations of Trustees. §§ 2228-2240.
3. Obligations of Third Persons. §§ 2243, 2244.

ARTICLE 1

Nature and Creation of a Trust

- § 2215. Trusts classified.
- § 2216. Voluntary trust, what.
- § 2217. Involuntary trust, what.
- § 2218. Parties to the contract.
- § 2219. What constitutes one a trustee.
- § 2220. Purpose of trust
- § 2221. Voluntary trust, how created as to trustor.
- § 2222. How created as to trustee.
- § 2223. Involuntary trustee, who is.
- § 2224. Involuntary trusts of wrongful gains

Cal Forms-42:21.

§ 2215. Trusts classified. A trust is either:

1. Voluntary; or,
2. Involuntary. [1872.] *Cal Jur 3d Family Law § 492, Trusts §§ 1, 2; 19 Cal Practice Rev, Ch 422B, Proceeding To Establish Membership in Class of Beneficiaries.*

§ 2216. Voluntary trust, what. A voluntary trust is an obligation arising out of a personal confidence reposed in, and volunta-

rily accepted by, one for the benefit of another. [1872.] *Cal Jur 3d Trusts §§ 1, 2; Cal Forms-42:1; Witkin Summary (8th ed) pp 5367, 5368.*

§ 2217. Involuntary trust, what. An involuntary trust is one which is created by operation of law. [1872.] *Cal Jur 3d Trusts §§ 1, 2; Cal Forms-42:1; Witkin Summary (8th ed) p 5367.*

§ 2218. Parties to the contract. The per-

son whose confidence creates a trust is called the trustor; the person in whom the confidence is reposed is called the trustee; and the person for whose benefit the trust is created is called the beneficiary. [1872.] *Cal Jur 3d Trusts* § 1; *Cal Forms-42:1*; *Witkin Summary (8th ed)* p 5375.

§ 2219. What constitutes one a trustee. Everyone who voluntarily assumes a relation of personal confidence with another is deemed a trustee, within the meaning of this chapter, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he, by such confidence, obtains any control. [1872.] *Cal Jur 3d Trusts* §§ 1, 3; *Witkin Procedure 2d*, p 56; *Summary (8th ed)* p 5368.

§ 2220. [Purpose of trust] A trust in relation to real and personal property, or either of them, may be created for any purpose or purposes for which a contract may be made. [1872; 1929 ch 146 § 1.] *Cal Jur 3d Trusts* §§ 1, 15; *Cal Forms-42:23*; *Witkin Summary (8th ed)* pp 5389, 5472.

§ 2221. Voluntary trust, how created as to trustor. Subject to the provisions of section eight hundred and fifty-two, a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty:

1. An intention on the part of the trustor to create a trust, and,

2. The subject, purpose and beneficiary of the trust. [1872.] *Cal Jur 3d Charities* §§ 26, 28, *Trusts* §§ 1, 13, 17, 20, 341; *Cal Forms-42:22, 42:79*; *Witkin Summary (8th ed)* pp 5375, 5376, 5383, 5384.

§ 2222. How created as to trustee. Subject to the provisions of section eight hundred and fifty-two, a voluntary trust is created, as to the trustee, by any words or acts of his indicating, with reasonable certainty:

1. His acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence; and,

2. The subject, purpose, and beneficiary of the trust. [1872.] *Cal Jur 3d Trusts* §§ 1, 20, 39, 53; *Cal Forms-42:79*; *Witkin Summary (8th ed)* p 5376.

§ 2223. Involuntary trustee, who is. One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner. [1872.] *Cal Jur 3d Trusts* §§ 1, 289, 291; *Witkin Summary (8th ed)* 5488, 5491.

§ 2224. [Involuntary trusts of wrongful gains] One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it. [1872.] *Cal Jur 3d Decedents' Estates* § 57, *Logs and Timber* § 12, *Trusts* §§ 1, 289, 291, 295, 296, 305, *Wills* § 221; *Cal Practice* § 239:6; *Witkin Summary (8th ed)* p 5488, 5491.

ARTICLE 2

Obligations of Trustees

§ 2228. Trustee's obligation to good faith.

§ 2229. Trustee not to use property for his own profit.

§ 2230. Certain transactions forbidden.

§ 2231. Trustee's influence not to be used for his advantage.

§ 2232. Trustee not to assume a trust adverse to interest of beneficiary.

§ 2233. To disclose adverse interest.

§ 2234. Trustee guilty of fraud, when.

§ 2235. Presumption against trustee

§ 2236. Commingling of trust property

§ 2237. Measure of liability for breach of trust.

§ 2238. Same.

§ 2239. Co-trustees, how far liable for each other.

§ 2240. Depositing and holding in securities depository.

§ 2228. Trustee's obligation to good faith. In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind. [1872.] *Cal Jur 3d Corporations* § 225, *Trusts* §§ 116, 128; *19 Cal Practice Rev, Ch 422A, Action by Beneficiary To Enforce Rights by Following Trust Property, Ch 424, Action Against Trustee for Commingling Personal and Trust Funds, Ch 425, Action Against Trustee To Enjoin Breach of Trust, Ch 425A, Action Against Trustee for Damages or Restitution for Breach of Trust, Ch 425B, Proceeding To Remove Trustee; Cal Forms-37:64; Witkin Summary (8th ed) p 731.*

§ 2229. Trustee not to use property for his own profit. A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner. [1872.] *Cal Jur 3d Corporations* § 238, *Trusts* §§ 120, 122, 185; *Cal Practice* § 56:83.

§ 2230. Certain transactions forbidden. Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or anyone for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so;

2. When the beneficiary not having capacity to contract, the proper court, upon the like information of the facts, grants the like permission; or,

3. When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the proper court for the latter, in the manner above prescribed. [1872.] *Cal Jur 3d Corporations* § 230, *Trusts* §§ 106, 117, 119, 120, 184; *Cal Practice* § 56:83; *Witkin Summary (8th ed) p 279.*

§ 2231. Trustee's influence not to be used for his advantage. A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary. [1872.] *Cal Jur 3d Trusts* § 128; *Cal Practice* § 56:83; *Cal Forms-37:64.*

§ 2232. Trustee not to assume a trust adverse to interest of beneficiary. No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter. [1872.] *Cal Jur 3d Trusts* § 121.

§ 2233. To disclose adverse interest. If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed. [1872.] *Cal Jur 3d Trusts* §§ 66, 68, 117, 121; *Cal Forms-37:64, 42:24; Witkin Summary (8th ed) p 5394.*

§ 2234. Trustee guilty of fraud, when. Every violation of the provisions of the preceding sections of this article is a fraud against the beneficiary of a trust. [1872.] *Cal Jur 3d Trusts* §§ 116, 117, 121, 122, 128.

§ 2235. [Presumption against trustee] All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence. The presumptions established by this section do not apply to the provisions of an agreement between a trustee and his beneficiary relating to the hiring or compensation of the trustee. [1872; 1963 ch 1215 § 1.] *Cal Jur 3d Attorneys at Law* §§ 294, 205, *Evidence* § 100, *Trusts* §§ 130, 131, 133, 134, *Wills* § 212; *Cal Practice* §§ 56:83, 79:17, 79:23, 239:20; *Cal Forms-37:64, 42:144; Witkin Criminal Procedure p 337; Evidence pp 194, 217, 254; Procedure 2d pp 56, 58, 59, 60, 61, 62; Summary (8th ed) pp 279, 280, 5419.*

§ 2236. [Commingling of trust property] A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events, and for the value of its use. [1872; 1905 ch 456 § 1.] *Cal Jur 3d Trusts* § 123; *Cal Practice* §§ 12:142, 56:83; *Witkin Summary (8th ed) pp 5420, 5421.*

§ 2237. Measure of liability for breach of trust. A trustee who uses or disposes of the trust property, contrary to section two thousand two hundred and twenty-nine, may, at the option of the beneficiary, be required to account for all profits so made,

or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds with interest. [1872.] *Cal Jur 3d Accounts and Accounting* § 60, *Trusts* §§ 185, 186, 350, 352; *Witkin Summary* (8th ed) pp 5421, 5427, 5445.

§ 2238. Same. A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interests of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error. [1872.] *Cal Jur 3d Trusts* §§ 185, 186; *Witkin Summary* (8th ed) pp 5421, 5427, 5445.

§ 2239. Co-trustees, how far liable for each other. A trustee is responsible for the wrongful acts of a co-trustee to which he consented, or which, by his negligence, he

enabled the latter to commit, but for no others. [1872.] *Cal Jur 3d Trusts* § 183; *Cal Forms-42:123*; *Witkin Summary* (8th ed) p 5421.

§ 2240. [Depositing and holding in securities depository.] Unless the instrument creating the trust contains a provision to the contrary, securities held by any trustee may, with the consent of any cofiduciary or cofiduciaries, be deposited in a securities depository, as defined in Section 30004 of the Financial Code, which is licensed under Section 30200 of the Financial Code or exempted from licensing thereunder by Section 30005 or 30006 of the Financial Code, and such securities may be held by such securities depository in the manner authorized by Section 775 of the Financial Code. [1972 ch 1057 § 8.] *Cal Jur 3d Trusts* § 143.

ARTICLE 3

Obligations of Third Persons

§ 2243. Third persons, when involuntary trustee.

§ 2244. When third person must see to application of trust property.

§ 2243. Third persons, when involuntary trustee. Everyone to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith, and for a valuable consideration. [1872.] *Cal Jur 3d Trusts* §§ 291, 360, 361; *Witkin Summary* (8th ed) p 5449.

§ 2244. When third person must see to

application of trust property. One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof, and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them. [1872.] *Cal Jur 3d Trusts* § 153.

CHAPTER 2

Trusts for the Benefit of Third Persons

Article

1. Nature and Creation of the Trust. §§ 2250-2254.
2. Obligations of Trustees. §§ 2258-2264.
3. Powers of Trustees. §§ 2267-2272.
4. Rights of Trustees. §§ 2273-2275.
5. Termination of the Trust. §§ 2279-2283.
6. Succession or Appointment of New Trustees. §§ 2287-2289.

ARTICLE 1

Nature and Creation of the Trust

§ 2250. Who are trustees within scope of this chapter.

§ 2251. Creation of trust.

§ 2252. Trustees appointed by court.

§ 2253. Declaration of trust.

§ 2254. Same.

Cal Forms-41:21.

§ 2250. Who are trustees within scope of this chapter. The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators, and guardians, as such. [1872.] *Cal Jur 3d Decedents' Estates* § 392, *Trusts* §§ 73, 105; *19 Cal Practice Rev, Ch 422A, Action by Beneficiary To Enforce Rights by Following Trust Property, Ch 422B, Proceeding To Establish Membership in Class of Beneficiaries.*

§ 2251. Creation of trust. The mutual consent of a trustor and trustee creates a trust of which the beneficiary may take advantage at any time prior to its rescission. [1872.] *Cal Jur 3d Trusts* §§ 31, 55, 73, 105; *Witkin Summary (8th ed) pp 5376, 5377, 5445.*

§ 2252. Trustees appointed by court. When a trustee is appointed by a court or public officer, as such, such court or officer is the trustor, within the meaning of the last section. [1872.] *Cal Jur 3d Trusts* §§ 55, 73, 105.

§ 2253. Declaration of trust. The nature, extent, and object of a trust are expressed in the declaration of trust. [1872.] *Cal Jur 3d Trusts* §§ 13, 73, 105; *Cal Forms-42:22.*

§ 2254. Same. All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein. [1872.] *Cal Jur 3d Trusts* §§ 73, 105, 337.

ARTICLE 2

Obligations of Trustees

§ 2258. Trustees must obey declaration of trust.

§ 2259. Degree of care and diligence in execution of trust.

§ 2260. Duty of trustee as to appointment of successor.

§ 2261. Investment of funds.

§ 2262. Interest, simple or compound, on omission to invest trust moneys.

§ 2263. Purchase by trustee of claims against trust fund.

§ 2264. "Transfer in trust of a pecuniary amount"; Valuation of property other than money

Cal Forms-42:1, 42:111.

§ 2258. Trustees must obey declaration of trust. A trustee must fulfill the purpose of the trust, as declared at its creation, and must follow all the directions of the trustor given at that time except as modified by the consent of all parties interested, in the same manner, and to the same extent, as an employee. [1872.] *Cal Jur 3d Trusts* §§ 105, 110, 184, 254; *19 Cal Practice Rev, Ch 425, Action Against Trustee To Enjoin Breach of Trust, Ch 425A, Action Against Trustee for Damages or Restitution for Breach of Trust, Ch 425B, Proceeding To Remove Trustee; Cal Forms-42:79, 42:111, 42:183, 42:103, 42:301; Witkin Summary (8th ed) p 5429.*

§ 2259. Degree of care and diligence in execution of trust. A trustee, whether he receives any compensation or not, must use

at least ordinary care and diligence in the execution of his trust. [1872.] *Cal Jur 3d Trusts* § 112; *Cal Forms-42:121; Witkin Summary (8th ed) p 5420.*

§ 2260. Duty of trustee as to appointment of successor. If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge. [1872.] *Cal Jur 3d Trusts* § 64; *Cal Forms-42:24.*

§ 2261. [Investment of funds.] (1) In investing, reinvesting, purchasing, acquiring, exchanging, selling and managing property for the benefit of another, a trustee shall exercise the judgment and care, under the

circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of their capital. Within the limitations of the foregoing standard, and subject to any express provisions or limitations contained in any particular trust instrument, a trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, and stock, preferred or common, which men of prudence, discretion and intelligence acquire for their own account.

(2) In the absence of express provisions to the contrary in the trust instrument, a trustee may continue to hold property received into a trust at its inception or subsequently added to it or acquired pursuant to proper authority if and as long as the trustee, in the exercise of good faith and of reasonable prudence, discretion and intelligence, may consider that retention is in the best interests of the trust. Such property may include stock in the trustee, if a corporation, and stock in any corporation controlling, controlled by, or under common control with such trustee.

(3) In the absence of express provisions to the contrary in the trust instrument, a deposit of trust funds at interest in any bank (including the trustee, if a bank) shall be a qualified investment to the extent that such deposit is insured under any present or future law of the United States, or to such greater extent as a court of competent jurisdiction may authorize. Nothing in this section shall be construed as limiting the right of trustees in proper (sic) cases to make deposits of trust moneys in banks, subject, in the case of interest-bearing deposits, to such notice or other conditions respecting withdrawal as may be prescribed by law or governmental regulation affecting such deposits.

(4) Nothing in this section shall abrogate or restrict the power of the appropriate court in proper cases to direct or permit the trustee to deviate from the terms of the trust regarding the making or retention of investments.

(5) The provisions of this section shall apply to all trusts now existing or hereafter created. Where, in trusts now existing or

hereafter created, the term "investments permissible by law for investment of trust funds," or "authorized by law for investment of trust funds," "legal investments," or "authorized investments," or other words of similar import are used in defining the powers of the trustee relative to investments, such language, in the absence of other controlling or modifying provisions of the trust instrument, shall be construed as authorizing any investment permitted by the terms of subdivision (1) of this section.

(6) The term "property" as used in this section includes life insurance, endowment and annuity contracts issued by legal reserve companies authorized to do business in this state. [1872; 1943 ch 811 § 1; 1967 chs 688 § 1, 1706 § 1; 1968 ch 161 § 1; 1969 ch 259 § 1.] *Cal Jur 3d Cemeteries § 41, Trusts §§ 112, 156 et seq.; Cal Forms-42:122, 42:141, 42:164, 42:165; Witkin Summary (8th ed) pp 5423-5426, 5436.*

§ 2262. **Interest, simple or compound, on omission to invest trust moneys.** If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful. [1872.] *Cal Jur 3d Trusts § 156; Witkin Summary (8th ed) p 5423.*

§ 2263. **Purchase by trustee of claims against trust fund.** A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed, by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same. [1872.] *Cal Jur 3d Trusts § 119.*

§ 2264. **["Transfer in trust of a pecuniary amount"; Valuation of property other than money]** As used in this section, the term "transfer in trust of a pecuniary amount" means a transfer under a trust instrument of a fixed amount, is either expressly stated in the instrument or determinable by the provisions of the instrument. Whether a transfer in trust is a transfer in trust of a pecuniary amount depends upon the intention of the trustor.

Where a trust instrument authorizes the trustee to satisfy a transfer in trust of a pecuniary amount wholly or partly by transfer of property other than money, then, unless the instrument otherwise expressly provides, the assets selected for that purpose shall be valued at their respective fair mar-

ket values on the date or dates of transfer. If the trustee is allowed by the provisions of the instrument to value the assets selected for such transfer as of a date other than the date of transfer, then, unless the instrument otherwise expressly provides, the assets selected by the trustee for that purpose shall have an aggregate fair market value on the date or dates of transfer which, when added to any cash transferred, will amount to no

less than the amount of such transfer in trust, as stated in, or determined by, the provisions of the instrument.

This section shall apply to any transfer, including any division, allocation or distribution, after the effective date hereof, whether the trust instrument was executed before or after such date. No inference shall be drawn from the enactment of this section as to heretofore existing law. [1st Ex Sess 1966 ch 50 § 2.] *Cal Jur 3d Trusts § 163.*

ARTICLE 3

Powers of Trustees

- § 2267. Trustee's powers as agent.
- § 2268. All must act.
- § 2269. Discretionary powers.
- § 2270. Powers with respect to shares of stock
- § 2271. Private foundation or charitable trust
- § 2271.1. Split-interest trust
- § 2271.2. Tax proceedings; Lis pendens
- § 2272. Leasing trust property

Cal Forms-41:601, 41:612.

§ 2267. Trustee's powers as agent. A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust and by this chapter, and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal. [1872.] *Cal Jur 3d Corporations § 537, Trusts §§ 105, 108, 190; 19 Cal Practice Rev, Ch 425C, Proceeding for Modification of Terms of a Trust; Cal Forms-42:141; Witkin Summary (8th ed) pp 5429, 5436, 5460.*

§ 2268. All must act. Where there are several co-trustees, all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides. [1872.] *Cal Jur 3d Trusts § 109; Cal Forms-42:116, 42:141, 42:169, 42:172; Witkin Summary (8th ed) p 5430.*

§ 2269. [Discretionary powers]. (a) Except as provided in subdivision (c), a discretionary power conferred upon a trustee is presumed not to be left to his or her arbitrary discretion, but shall be exercised reasonably.

(b) The exercise of a discretionary power is subject to review by a court of competent jurisdiction.

(c) Except as provided in subdivision (d), where a trust instrument confers absolute,

sole, or uncontrolled discretion upon a trustee, the trustee shall act in accordance with fiduciary principles and shall not act in bad faith or in disregard of the purposes of the trust.

(d) Notwithstanding the trustor's use of terms such as "absolute", "sole", or "uncontrolled", a person who is the beneficiary of the trust, either individually or as trustee or cotrustee, and who holds a power to take or distribute income or principal to or for the benefit of himself or herself pursuant to a standard shall exercise that power reasonably and in accordance with the standard. In any case in which the standard governing the exercise of the power does not clearly indicate that a broader power is intended, such a holder of the power may exercise it in his or her favor only for his or her health, education, support, or maintenance, and the exercise of the power shall be subject to review by a court of competent jurisdiction.

(e) Unless specifically so authorized, a person who holds a power to appoint or distribute income or principal to or for the benefit of others, either individually or in a fiduciary capacity, may not use the power to discharge his or her legal obligations. [1872; 1981 ch 1046 § 1.] *Cal Jur 3d Trusts §§ 103, 104; Cal Forms-42:120, 42:141, 42:142; Witkin Summary (8th ed) pp 5432, 5433.*

§ 2270. [Powers with respect to shares

of stock] A trustee may give proxies to vote any shares of stock of a corporation, whether domestic or foreign, held in trust, or to exercise any voting rights attaching to or arising from property held in trust. He may waive notice of and consent to any meeting of shareholders or property owners or authorize by a writing any action which could be taken by shareholders. [1939 ch 538 § 3.] *Cal Jur 3d Trusts § 162; Cal Forms-42:141, 42:165; Witkin Summary (8th ed) pp 4424, 4427.*

§ 2271. [Private foundation or charitable trust] The trustee or trustees of every trust (whenever created), during any period or periods such trust is deemed to be a "private foundation" as defined in Section 509 of the Internal Revenue Code of 1954, as added by Section 101 of the Tax Reform Act of 1969 (all references in this article to the Internal Revenue Code shall refer to such code as amended by such act), or a "charitable trust" as defined in paragraph (1) of subsection (a) of Section 4947 of such code, shall distribute its income for each taxable year (and principal if necessary) at such time and in such manner as not to subject the assets of such trust to tax under Section 4942 of such code (as modified by paragraph (3) of subsection (f) of Section 101 of the Tax Reform Act of 1969). The trustee or trustees of every such trust shall not engage in any act of self-dealing as defined in subsection (d) of Section 4941 of such code (as modified by paragraph (2) of subsection (f) of Section 101 of the Tax Reform Act of 1969), retain any excess business holdings as defined in subsection (c) of Section 4943 of such code, make any investments in such manner as to subject the assets of said trust to tax under Section 4944 of such code, or make any taxable expenditure as defined in subsection (d) of Section 4945 of such code (as modified by paragraph (5) of subsection (f) of Section 101 of the Tax Reform Act of 1969).

The provisions of this section shall be deemed to be contained in the instrument or instruments creating every trust to which this section applies, and any provision of such instrument or instruments inconsistent therewith or to the contrary thereof shall be without effect. [1971 ch 717 § 1, effective August 24, 1971.] *Cal Forms-42:141, 42:243.*

§ 2271.1. [Split-interest trust] (a) The trustee or trustees of every trust (whenever created), during any period or periods such trust is deemed to be a "split-interest trust"

as described in paragraph (2) of subsection (a) of Section 4947 of the Internal Revenue Code of 1954, shall not:

(1) Engage in any act of self-dealing as defined in subsection (d) of Section 4941 of such code (as modified by paragraph (2) of subsection (f) of Section 101 of the Tax Reform Act of 1969).

(2) Retain any excess business holdings as defined in subsection (c) of Section 4943 of such code.

(3) Make any investments in such manner as to subject the assets of such trust to tax under Section 4944 of such code.

(4) Make any taxable expenditure as defined in subsection (d) of Section 4945 of such code (as modified by paragraph (5) of subsection (f) of Section 101 of the Tax Reform Act of 1969).

(b) Paragraphs (2) and (3) of subdivision (a) shall not apply to any trust described in paragraph (3) of subsection (b) of Section 4947 of the Internal Revenue Code of 1954.

(c) This section shall not apply with respect to:

(1) Any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under subparagraph (b) of paragraph (2) of subsection (f) of Section 170, subparagraph (b) of paragraph (2) of subsection (e) of Section 2055, or subparagraph (b) of paragraph (2) of subsection (c) of Section 2522 of such code; or

(2) Any amounts in trust other than amounts for which a deduction was allowed under Section 170, paragraph (2) of subsection (b) of Section 545, paragraph (2) of subsection (b) of Section 556, subsection (c) of Section 642, Section 2055, paragraph (2) of subsection (a) of Section 2106, or Section 2522 of such code, if such amounts are segregated, as that term is defined in paragraph (3) of subsection (a) of Section 4947 of such code, from amounts for which no deduction was allowable; or

(3) Any amounts transferred in trust before May 27, 1969.

(d) The provisions of this section shall be deemed to be contained in the instrument or instruments creating every trust to which this section applies, and any existing provision of such instrument or instruments inconsistent therewith or to the contrary thereof shall be without further effect. [1971 ch 717 § 2, effective August 24, 1971.]

§ 2271.2. [Tax proceedings; Lis pendens] (a) The superior court shall have jurisdiction

to hear and determine any proceedings contemplated by paragraph (3) of subsection (i) of Section 101 of the Tax Reform Act of 1969. Such proceedings may be brought by the organization involved. All specifically named beneficiaries of such organization and the Attorney General shall be parties to such proceedings. This provision shall not be exclusive, and is not intended to limit any jurisdiction which otherwise exists.

(b) Whenever the instrument or instruments creating any trust affected by this section have been recorded, a notice of pendency of such judicial proceedings shall be recorded in a similar manner within 10 days from the commencement thereof. A duly certified copy of any final judgment or decree in such proceedings shall be similarly recorded. [1971 ch 717 § 3, effective August 24, 1971.]

§ 2272. [Leasing trust property] When the term of a trust is of uncertain or indefi-

nite duration or is terminable on the death of one or more persons and the trustee is given the power, expressly or by implication, to lease the trust property, and the instrument creating the trust contains no provision to the contrary, the trustee may lease the trust property for any reasonable period of time and such lease shall not be impaired by reason of the termination of the trust prior to the expiration of the lease. As to the lessee, his successors in interest and holders of encumbrances or charges on the leasehold estate, the reasonableness of the term of the lease shall be conclusively presumed; provided, that in the case of testamentary trusts such presumption shall only apply if an order of court is obtained pursuant to Section 1120 of the Probate Code authorizing or confirming the making of the lease by the trustee. [1947 ch 506 § 1.] *Cal Jur 3d Evidence § 104, Trusts § 154; Cal Forms-22:241, 42:141, 42:160; Witkin Summary (8th ed) pp 2113, 5431.*

ARTICLE 4

Rights of Trustees

§ 2273. Indemnification of trustee.

§ 2274. Compensation of trustee.

§ 2275. Involuntary trustee.

Cal Forms-42:141.

§ 2273. Indemnification of trustee. A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate. [1872.] *Cal Jur 3d Deeds of Trust § 244, Trusts §§ 201, 202, 203; Cal Forms-42:131, 42:134; Witkin Procedure 2d, p 3269; Summary (8th ed) pp 5441, 5442.*

§ 2274. [Compensation of trustee.] If the declaration of trust contains provisions for a trustee's compensation, the trustee shall be entitled to be compensated in accordance therewith. Upon proper showing, the court may fix or allow greater compensation than could be allowed under the provisions of the trust (1) where the duties of the trustee are substantially greater than those contemplated at the creation of the trust, or (2) where the compensation in accordance with the provisions of the trust would be inequitable or unreasonably low or (3) in other extraordinary circumstances calling for equi-

table relief. If a declaration of trust does not specify the trustee's compensation, the trustee shall be entitled to such compensation as may be reasonable under the circumstances. Unless the declaration of trust provides or the trustees agree otherwise, if there are two or more trustees, the compensation shall be apportioned among the trustees according to the services rendered by them respectively. The superior court shall have jurisdiction to determine any compensation provided by this section in an action, brought by the trustee, to which all interested persons are made parties. [1872; 1889 ch 224 § 1; 1909 ch 151 § 1; 1937 ch 536 § 1; 1967 ch 661 § 1; 1972 ch 937 § 1.] *Cal Jur 3d Trusts §§ 194, 195, 196, 197, 224; Cal Forms-42:41, 42:131; Witkin Summary (8th ed) pp 5373, 5439-5441, 5757, 5658.*

§ 2275. Involuntary trustee. An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article. [1872.] *Cal Jur 3d Trusts §§ 194, 200, 202.*

ARTICLE 5

Termination of the Trust

- § 2279. Trust, how extinguished.
 § 2279.1. Defeat or substantial impairment of trust purpose
 § 2280. Revocation of trusts.
 § 2281. Trustee's office, how vacated.
 § 2282. Discharge of trustee
 § 2283. Removal by superior court.

§ 2279. Trust, how extinguished. A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful. [1872.] *Cal Jur 3d Deeds of Trust § 158, Trusts §§ 243, 244; 19 Cal Practice Rev, Ch 425D, Proceeding To Terminate a Trust; Witkin Summary (8th ed) p 5471.*

§ 2279.1. [Defeat or substantial impairment of trust purpose] (a) If the superior court shall at any time determine that the fair market value of the principal of a trust has become so low, in relation to the costs of administration thereof, that continuance of the trust pursuant to its existing terms will defeat or substantially impair the accomplishment of the purposes of the trust, the court may, in its discretion in a manner which conforms as nearly as possible to the intention of the trustor, order that the trustee be changed, that the terms of the trust be modified, or that the trust be terminated, in whole or in part.

(b) If the court orders termination of the trust, in whole or in part, it shall direct that the principal and undistributed income be distributed to the beneficiaries in a manner which conforms as nearly as possible to the intention of the trustor; and may make such other and further orders as it deems necessary or appropriate to protect the interests of the beneficiaries.

(c) Nothing in this section shall limit any power of the court to permit modification or termination of any trust, as such power existed before the adoption of this section.

(d) The existence of a spendthrift or similar protective provision in the trust, shall not make this section inapplicable. [1973 ch 506 § 1.] *Cal Jur 3d Trusts § 245; 19 Cal Practice Rev, Ch 425C, Proceeding for Modification of Terms of a Trust; Cal Forms-42:26, 42:175; Witkin Summary (8th ed) pp 5373, 5471, 5472, 5754.*

§ 2280. [Revocation of trusts.] Unless expressly made irrevocable by the instru-

ment creating the trust, every voluntary trust shall be revocable by the trustor by writing filed with the trustee. When a voluntary trust is revoked by the trustor, the trustee shall transfer to the trustor its full title to the trust estate. Trusts created prior to the date when this act shall become a law shall not be affected hereby. [1872; 1931 ch 950 § 1.] *Cal Jur 3d Deeds of Trust § 4, Powers §§ 34, 35, Trusts §§ 250, 251, 252; Cal Forms-42:26, 42:301, 42:315, 42:317; Witkin Summary (8th ed) pp 1497, 1988, 1992, 5474.*

§ 2281. Trustee's office, how vacated. The office of a trustee is vacated:

(1) In the case of an individual trustee, by—

- (a) His discharge;
- (b) His death;
- (c) Appointment of a conservator or guardian of his person or estate; or

(d) The filing by him of a petition for adjudication of bankruptcy or for approval of an arrangement, composition or other extension under the National Bankruptcy Act, or the approval for a petition filed against him for any of said purposes.

(2) In the case of a corporate trustee by—

- (a) Its discharge;
- (b) Revocation of its charter or suspension of its corporate powers, if its charter shall remain revoked or its powers remain suspended for a period of thirty (30) days;

(c) Appointment of a receiver for such trustee if such appointment shall not be vacated within a period of thirty (30) days; or

(d) The filing by it of a petition for adjudication of bankruptcy or for approval of an arrangement, composition or other extension under the National Bankruptcy Act, or the approval of a petition filed against it for any of said purposes.

Provided, that any bona fide transaction entered into with such trustee by any person acting without actual knowledge that his or its office has been vacated as herein provided shall be binding on all parties.

The provisions of this section shall extend and apply to trustees under deeds of trust given to secure obligations. [1872; 1961 ch 1042 § 1.] *Cal Jur 3d Trusts § 58; Cal Forms-42:24; Witkin Summary (8th ed) p 5396.*

§ 2282. [Discharge of trustee] A trustee can be discharged from his trust only as follows:

1. By the extinction of the trust;
2. By the completion of his duties under the trust;
3. By such means as may be prescribed by the declaration of trust;
4. By the consent of the beneficiary, if he have capacity to contract.
5. By the judgment of a competent tribunal, in a direct proceeding for that purpose,

that he is an incompetent as defined by Section 1435.2 of the Probate Code; or,

6. By the superior court. [1872; 1883 ch 5 § 1; 1961 ch 1042 § 2.] *Cal Jur 3d Trusts §§ 59, 60; Cal Forms-42:95; Witkin Summary (8th ed) p 5393.*

§ 2283. [Removal by superior court.] The superior court may remove any trustee who has violated or is unfit to execute the trust, or may accept the resignation of a trustee. This section shall not, however, apply to a trustee of a trust created by a will admitted to probate in any court of this state. [1872; 1880 ch 41 § 23; 1969 ch 272 § 1.] *Cal Jur 3d Trusts §§ 66, 67, 70; 19 Cal Practice Rev, Ch 425B, Proceeding To Remove Trustee; Cal Forms-42:24; Witkin Summary (8th ed) pp 5393, 5394, 5396, 5446.*

ARTICLE 6

Succession or Appointment of New Trustees

§ 2287. Appointment to fill vacancy

§ 2288. Survivorship between co-trustees.

§ 2289. Appointment by court

§ 2287. [Appointment to fill vacancy] The superior court shall appoint a trustee whenever there is a vacancy and the declaration of trust does not provide a practical method of appointment. Other things being equal, the court shall give preference to the nominee of beneficiaries of the trust who are over fourteen years of age. [1872; 1880 ch 41 § 24; 1911 ch 67 § 1; 1913 ch 237 § 1; 1933 ch 970 § 1.] *Cal Jur 3d Deeds of Trust § 12, Trusts §§ 55, 56, 57; 19 Cal Practice Rev, Ch 425B, Proceeding To Remove Trustee; Cal Forms-42:24, 42:96; Witkin Summary (8th ed) p 5393.*

§ 2288. Survivorship between co-trustees. On the death, renunciation, or discharge of one of several co-trustees the trust sur-

vives to the others. [1872.] *Cal Jur 3d Trusts § 63; Cal Forms-42:24, 42:170; Witkin Summary (8th ed) p 5393.*

§ 2289. [Appointment by court] When a trust exists without any appointed trustee, or where all the trustees renounce, die, or are discharged, the superior court of the county where the trust property, or some portion thereof, is situated, must appoint another trustee, and direct the execution of the trust. The court may, in its discretion, appoint the original number, or any less number of trustees. [1872; 1880 ch 41 § 25.] *Cal Jur 3d Trusts §§ 55, 56; Cal Forms-42:22, 42:24, 42:72; Witkin Summary (8th ed) pp 5376, 5393.*

CHAPTER 19

Administration of Trusts

ARTICLE 1

Testamentary Trusts

- § 1120. Continuing jurisdiction; Accounting; Petition for instructions and authority; Hearing; Appointment of guardian ad litem
- § 1120.1. Same: Additions to trust.
- § 1120.1a. Notices to beneficiaries; Annual statement; Summary; Petition to remove court's jurisdiction
- § 1120.2. Court discretion to confer powers not expressly contained in will.
- § 1120.5. Request for special notice by beneficiary.
- § 1120.6. Modification or termination if trust purpose defeated or impaired by corpus deficiencies.
- § 1121. Accounting; Application: Order.
- § 1122. Compensation of trustee.
- § 1123. Conclusiveness of decree: Persons not in being.
- § 1123.5. Removal of trustee: Procedure.
- § 1123.6. Same: Preliminary surrender of trust assets and suspension of powers of trustee.
- § 1123.7. Same: Exclusiveness of jurisdiction and procedure.
- § 1124. Declination of trustee named in will: Procedure.
- § 1125. Appointment of trustee to fill vacancy: Application: Notice.
- § 1125.1. Resignation after distribution: Petition: Notice of hearing: Liability on bond.
- § 1126. Trusteeship vacancy.
- § 1127. Bond of trustee.
- § 1127.5. Designating charitable corporation as substitute or successor trustee without requiring bond.
- § 1128. Transfer of trust proceedings to other county: Petition.
- § 1129. Hearing and notice: Who may appear and oppose: Order for transfer: Duties of clerk: Jurisdiction of court to which proceedings are transferred: Practice.
- § 1130. Vouchers in support of trustee's account: Withdrawal on leaving certified copy on file: To be produced on demand: When may be destroyed or delivered to trustee.
- § 1130.1. Certificate of appointment.
- § 1132. Order for transfer of places of administration or trust assets.
- § 1133. Administration of more than one trust as a single trust.

§ 1120. Continuing jurisdiction; Accounting; Petition for instructions and authority; Hearing; Appointment of guardian ad litem. (a) A trust created by a will is not subject to the continuing jurisdiction of the superior court, unless the testator provides otherwise. Article 2 (commencing with Section 1138) shall be applicable to the trust to the extent that the will or article does not provide otherwise.

(b) When a trust created by a will continues after distribution, and the testator provides that the superior court shall not lose jurisdiction of the estate by final distribution, the superior court shall retain jurisdiction for the purpose of determining to whom the property shall pass and be delivered upon final or partial termination of the trust, to the extent that the determination is not concluded by the decree of distribution, of settling the accounts and passing upon the acts of the trustee, of authorizing the trustee to accept additions to the trust from sources other than the estate of the decedent, and for the other purposes hereinafter set forth. Any trustee appointed by will, or appointed

to execute a trust created by will, may, from time to time pending the execution of the trust, or at the termination thereof, render for settlement his or her accounts and report his or her acts as trustee, before the superior court in which the will was probated. For that purpose, the trustee shall present to the court a verified account and report, setting forth the accounts in detail, reporting his or her acts as trustee, and showing the condition of the trust estate. If the trustee dies or becomes incompetent, the account and report shall be presented by the trustee's executor, administrator, guardian, or conservator. In the event the trustee dies or becomes incompetent, and there is no executor, administrator, guardian, or conservator appointed for the trustee's estate, or in the event the trustee absconds, the court may compel the attorney for the deceased, incompetent, or absconding trustee to present the account and report to the extent that the attorney has information or records available for that purpose. The account and report of the attorney need not be verified. A fee shall

be allowed to the attorney by the court for this service.

The trustee may also petition such court, from time to time, for instructions as to the administration of the trust for authority to accept additions to the trust from any source or sources other than the estate of the decedent, and for authority to exercise the powers authorized by Section 1120.2 of this code. The court may hear the petition and instruct or authorize the trustee by order rendered before or after any distribution to the trustee. When the trustee files the petition before any distribution of the estate to the trustee, the trustee shall, in addition to any other notice required, cause notice of the hearing to be mailed to the personal representative and shall further cause notice of the hearing to be mailed to all persons, including heirs, legatees, and devisees, at their last known address, to whom the court may order notice to be given, and shall, upon filing the petition and before giving notice thereof, secure from the court an order designating the persons in addition to the personal representative and the beneficiaries to whom the court requires that notice be given, or an order that notice to the personal representative and the beneficiaries is the only notice that shall be required.

When it appears from the allegations of the petition that the trustee seeks instructions to exercise a power not conferred upon the trustee or seeks authority to exercise the powers authorized by Section 1120.2, the petition shall set forth the particulars of and the necessity for the action sought to be taken.

The clerk shall set the hearing upon the account and report or petition for settlement or instructions. The trustee shall cause notice of the hearing to be given to the beneficiaries, including all persons in being who shall or may participate in the corpus or income of the trust, at their last known addresses, as provided in Section 1200.5, whether they have requested special notice or given notice of appearance or not. In addition to the above notice, when the petition relates to the exercise of a power not conferred or seeks authority to exercise the powers authorized by Section 1120.2, a copy of the petition shall be attached to and mailed with copies of the notice which are mailed and the court or judge shall, at least 10 days before the return day, appoint a suitable person who shall appear and act as guardian ad litem of any person or persons of a designated class, who are not ascer-

tained, or who are not in being, and who may become beneficiaries or may so participate in the trust. None of the provisions of Section 373 of the Code of Civil Procedure shall apply to the appointment.

(c) In addition to the provisions of subdivision (b), the personal representative of the decedent's estate, prior to final distribution, or the trustee, beneficiary, or remainderman, before or after final distribution, may petition the superior court to amend or conform the trust provisions of the decedent's will in the manner required to qualify the decedent's estate for the charitable estate tax deduction permitted by federal law. The petition may include a request to add to the trust provisions of the decedent's will the mandatory governing instrument requirements for a charitable remainder trust, as required by final regulations and rulings of the United States Internal Revenue Service. Notice of the petition shall be given to the Attorney General. No amendment or conformation may be ordered by the court without having first received written agreement to the proposed changes or disclaimer of interest from all interested parties in the trust. The execution of an agreement shall not be construed to be a contest under any provisions of the will prohibiting will contests. The existence of a spendthrift or similar protective provision in the trust shall not make this subdivision inapplicable to that trust. [1931; 1933 ch 969 § 14; 1953 ch 696 § 1; 1959 ch 864 § 1; 1963 ch 863 § 1; 1965 ch 1477 § 1; 1967 ch 1219 § 1; 1975 ch 474 § 1.5, effective August 30, 1975, operative January 1, 1976; 1976 ch 860 § 3; 1980 ch 955 § 25.3; 1982 ch 1199 § 1.] *Cal Jur 3d Accounts and Accounting § 60, Actions § 19, Decedents' Estates §§ 102, 110, 899, Jury § 15, Mandamus and Prohibition § 100, Trusts §§ 4, 57 et seq., 154, 167, 210, 228 et seq.; Cal Practice Rev Ch 423 Action Against Trustee to Compel Accounting; Cal Forms-22:241, 41:642; Witkin Procedure 2d, pp 710, 1264, 2913, 4193; Summary (8th ed) pp 5372, 5751-5753, 5755, 5757, 5760, 5761, 5820.*

§ 1120.1. Same: Additions to trust. Whenever a trustee receives additions to the trust in accordance with a decree rendered pursuant to Section 1120 of this code, such additions shall be subject to the jurisdiction of the court in the same respects as property received by the trustee from the decedent's estate. [1959 ch 864 § 2.] *Cal Jur 3d Decedents' Estates § 110, Trusts § 232; Cal*

Forms 37:312; Witkin Summary (8th ed) p 5753.

§ 1120.1a. Notices to beneficiaries; Annual statement; Summary; Petition to remove court's jurisdiction. This section shall only apply to trusts described in subdivision (a) of Section 1120 which were created by a will executed before July 1, 1977.

(a) The trustee of such a trust shall give notice on or before July 1, 1983, or within six months after the initial funding of the trust, whichever occurs later, by registered or certified mail to each beneficiary, including all persons in being who shall or may participate in the corpus or income of the trust, at their last known addresses, containing the following information:

(1) A statement that as of January 1, 1983, Section 1120 of the Probate Code was amended to remove the necessity for mandatory court supervision of the trust.

(2) A statement that, unless the terms of trust limit or eliminate such authority, Section 1138.1 of the Probate Code gives the beneficiary and remainderman the right to petition a court to determine important matters relating to the administration of the trust, and a copy of the text of Section 1138.1.

(3) A statement that each income beneficiary, as defined in subdivision (1) of Section 730.01 of the Civil Code, and any other beneficiary or remainderman upon written request to the trustee, is entitled to a statement of the income and principal receipts and disbursements of the trust at least annually.

(4) A statement that the beneficiary or remainderman is entitled to petition a court to settle the accounts and pass upon the acts of the trustee.

(5) The name and location of the superior court in the county in which it is appropriate to file a petition pursuant to Section 1138.1.

(6) When no trustee is a trust company, as defined in Section 107 of the Financial Code, a statement that a hearing will be held by the superior court named in paragraph (5) to obtain approval of the court and determine the conditions, if any, for the removal of the trust from the continuing jurisdiction of the court.

The trustee shall file with the court which previously had jurisdiction over the administration of the trust proof of service of the notice set forth in this subdivision on or before August 1, 1983, or within seven

months after the initial funding of the trust, whichever occurs later.

(b) The trustee shall furnish, at least annually, and at termination of the trust, a statement of the income and principal receipts and disbursements that have occurred since the immediately preceding statement to each income beneficiary, as defined in subdivision (1) of Section 730.01 of the Civil Code, and to each other beneficiary or remainderman who has made written request therefor.

(c) Within 90 days after the end of each fiscal year of the trust, the trustee shall furnish to each of the persons described in subdivision (b) a summary setting forth the following:

(1) The cost of each trust asset.

(2) The present value of each asset as of the end of the fiscal year of the trust.

(3) The total present value of all assets as of the end of the current and immediately preceding fiscal year of the trust.

(4) The net income for the current and immediately preceding fiscal year of the trust.

(5) Trustee compensation for the current and immediately preceding fiscal year of the trust.

The summary shall also state that the recipient may petition a court pursuant to Section 1138.1 to obtain a court review, shall set forth a copy of the text of Section 1138.1, and shall give the name and location of the appropriate court in which to file a petition.

(d) Notwithstanding the provisions of subdivision (a) of Section 1120, with respect to a trust where no trustee is a trust company, as defined in Section 107 of the Financial Code, the trustee may only remove the trust from the continuing jurisdiction of the superior court with the approval of the court. To obtain such approval the trustee shall file a verified petition with the clerk setting forth the trust accounts in detail, reporting his or her acts as trustee, showing the condition of the trust estate, and attaching a true copy of the trust instrument. Thereupon the clerk shall set the petition for hearing by the court. Notice of the hearing shall be given, along with the notice required by subdivision (a), at least 30 days before the hearing to all those persons who are entitled to receive the notice required by subdivision (a). At the hearing the court may receive testimony from any interested person and may grant or deny the petition, or require a bond as a condition of granting

the petition, as the court in its discretion deems fit.

(e) When a beneficiary or remainderman is a minor, ward or conservatee, any notice, statement, or summary required to be sent to the beneficiary or remainderman by this section shall be sent to the parent, guardian, or conservator, as the case may be, of the beneficiary or remainderman. In addition, if the trustee, at the time the notice required by subdivision (a) is sent, has actual knowledge that a beneficiary or remainderman who is not a minor, ward, or conservatee is being assisted by another individual in the handling of his or her personal affairs, the trustee shall send the notice required by subdivision (a) to both that individual and the beneficiary or remainderman and, upon the written request of either of them, shall also send the statements and summaries required by subdivisions (b) and (c) to both of them.

(f) Where the trust is a charitable trust subject to Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code, upon the vesting of any charitable interest created by the trust the trustee shall thereafter furnish to the Attorney General the statements and summaries required by subdivisions (b) and (c) without the necessity of any written request. A charitable interest is deemed to be vested within the meaning of this subdivision as of the time when it is first ascertainable that income or corpus is, or in the future will be, paid to a charity or applied for a charitable purpose. Notwithstanding the provisions of Section 1138, the Attorney General may petition the court to settle the account and pass upon the acts of the trustee as provided in Section 1138.1. [1982 ch 1199 § 2.]

§ 1120.2. Court discretion to confer powers not expressly contained in will. On petition of the trustee, made at any time, or on petition of the executor or administrator included in a petition for preliminary or final distribution, where after hearing it appears to be necessary or desirable in order to carry out the purposes of the trust that the trustee be given powers not expressly contained in the will or otherwise conferred by law, the court may in its discretion confer upon the trustee any or all of the following powers when it appears to the court that such powers are not inconsistent with the provisions or purposes of the trust; such powers conferred may be of a continuing nature or

may be exercised only in specific instances, as the court may determine:

(1) To manage, control, sell, convey, divide, and to sell upon deferred payments; to lease for terms within or extending beyond the duration of the trust for any purpose including exploration for and removal of gas, oil, or other minerals; to enter into community oil leases.

(2) To retain property, including stock of the trustee, and invest and reinvest as provided by law from time to time existing, including investments in any common trust fund now or hereafter established by the trustee.

(3) To borrow; to place, replace, renew or extend any encumbrance upon any trust property.

(4) To participate in voting trusts, pooling agreements, foreclosures, reorganization, consolidation, mergers, and liquidations and in connection therewith, to deposit securities with and transfer title and delegate discretions to any protective or other committee as the trustee may deem advisable.

(5) To acquire or dispose of an asset, for cash or on credit, at public or private sale; and to exchange, partition, change the character of, or abandon a trust asset or any interest therein.

(6) To make ordinary or extraordinary repairs or alterations in buildings or other trust property, to demolish any improvements, to raze existing or erect new party walls or buildings.

(7) To subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration.

(8) To grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset.

(9) To vote a security, in person or by general or limited proxy.

(10) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

(11) To sell or exercise stock subscription or conversion rights.

(12) To hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the security so held.

(13) To insure the assets of the trust

against damage or loss, and the trustee against liability with respect to third persons.

(14) To advance money for the protection of the trust, and for all expenses, losses, and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary.

(15) To pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible; to institute, compromise and defend actions and proceedings.

(16) To pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust.

(17) To continue or participate in any business or other enterprise and to effect incorporation, dissolution, or other change in the form of organization of the business or enterprise.

(18) To exercise any other power or powers which to the court appear necessary or desirable.

Except as specifically provided in the will, the provisions of this section apply to any will executed before or after the effective date of this section and to any trust asset acquired by the trustee of the trust created by such will, before or after the effective date of this section.

If any provision of this section or the application thereof to any person, property or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. [1967 ch 1219 § 2.] *Cal Jur 3d Decedents' Estates § 110, Trusts §§ 224, 233; Cal Forms-41:638; Witkin Summary (8th ed) pp 5373, 5429, 5755, 5756.*

§ 1120.5. Request for special notice by beneficiary. When any beneficiary under a trust shall have made a request for special notice pursuant to Section 1202, a copy of the petition and a copy of the account and report provided for in Section 1120 shall be attached to the notice of hearing required to be mailed by the trustee to such beneficiary pursuant to Section 1120. [1965 ch 1944 § 1.] *Cal Jur 3d Decedents' Estates § 110, Trusts § 234; Witkin Summary (8th ed) p 5757.*

§ 1120.6. Modification or termination if trust purpose defeated or impaired by corpus deficiencies. (a) If upon petition of the trustee or any beneficiary of a trust, the superior court shall at any time determine that the fair market value of the principal of a trust has become so low, in relation to the costs of administration thereof, that continuance of the trust pursuant to its existing terms will defeat or substantially impair the accomplishment of the purposes of the trust, the court may, in its discretion in a manner which conforms as nearly as possible to the intention of the trustor, order that the trustee be changed, that the terms of the trust be modified, or that the trust be terminated, in whole or in part.

(b) If the court orders termination of the trust, in whole or in part, it shall direct that the principal and undistributed income be distributed to the beneficiaries in a manner which conforms as nearly as possible to the intention of the trustor; and may make such other and further orders as it deems necessary or appropriate to protect the interests of the beneficiaries.

(c) Nothing in this section shall limit any power of the court to permit modification or termination of any trust, as such power existed before the adoption of this section.

(d) The existence of a spendthrift or similar protective provision in the trust shall not make this section inapplicable to such trust. [1973 ch 506 § 2.] *Cal Jur 3d Trusts § 245; Cal Practice Rev Ch 425C Proceeding to Remove Trustee, Ch 425D Proceeding for Modification of Terms of Trust. Witkin Summary (8th ed) pp 5754, 5755.*

§ 1121. Accounting: Application: Order. Upon application of any beneficiary of the trust, or the guardian or conservator of a beneficiary, the court, in its discretion, or a judge thereof, may order the trustee, after citation, to render his account; and such application shall not be denied where no account has been rendered to the court within six months. [1931; 1967 ch 719 § 5.5] *Cal Jur 3d Accounts and Accounting § 60, Decedents' Estates § 110, Trusts §§ 228, 230; Cal Practice Rev Ch 423 Action Against Trustee to Compel Accounting; Witkin Summary (8th ed) pp 5444, 5757.*

§ 1122. Compensation of trustee. If the will contains provisions for a trustee's compensation, the trustee shall be entitled to be compensated in accordance therewith. Upon proper showing, the court may in the decree of distribution or thereafter fix or allow

greater compensation than could be allowed under the provisions of the will (1) where the duties of the trustee are substantially greater than those contemplated by the testator at the time of the signing of the will, or (2) where the compensation in accordance with the provisions in the will would be inequitable or unreasonably low or (3) in other extraordinary circumstances calling for equitable relief. If the will does not specify a trustee's compensation, the trustee shall be entitled to such compensation as may be reasonable under the circumstances and the court may, in the decree of distribution or thereafter, determine such reasonable compensation and, in its discretion, fix or allow a periodic compensation for the trustee or trustees, to continue as long as it may deem proper. Unless the will provides or the trustees agree otherwise, if there are two or more trustees, the compensation shall be apportioned among the trustees according to the services rendered by them respectively. On settlement of each account the court shall allow the testamentary trustee his proper expenses and compensation for services as provided herein. [1967 ch 661 § 3; 1972 ch 937 § 2.] *Cal Jur 3d Decedents' Estates § 110, Trusts §§ 194 et seq., 204; Witkin Summary (8th ed) pp 5439-5441, 5757, 5836.*

§ 1123. Conclusiveness of decree: Persons not in being. A decree rendered under the provisions of this chapter, when it becomes final, shall be conclusive upon all persons in interest, whether or not they are in being. [1931.] *Cal Jur 3d Decedents' Estates § 110, Judgments § 285, Trusts §§ 222, 227, 225; Witkin Summary (8th ed) p 5752.*

§ 1123.5. Removal of trustee: Procedure. The court in which the administration is pending or, after final distribution, the court sitting in probate which has jurisdiction over a testamentary trust shall have power to remove a trustee of a testamentary trust, whether or not any property has been distributed to him or her, who has violated or is unfit to execute the trust or has acquired any interest or become charged with any duty adverse to the interest of any beneficiary in the subject of the trust. The court may remove one or all of the cotrustees of a testamentary trust and appoint new trustees where the court determines that hostility, ill feeling, or continued lack of cooperation among and between cotrustees has impaired

the proper administration of the trust. The proceeding may be initiated by the court upon its own motion or by verified petition of a beneficiary of, or any other person interested in, the trust, including any person in being who shall or may participate in the corpus or income of the trust. The clerk shall set the matter for hearing. The trustee whose removal is sought shall be personally served with a copy of the motion or petition and with notice of the time and place of the hearing thereon, at least 10 days before the hearing, provided, that if the trustee is not a resident of this state, or has absconded or concealed himself or herself from the state, the court may fix the manner of giving notice to him or her by mail, publication or otherwise, as the court may determine, and the court may proceed upon the notice as if the trustee had been personally served. In addition, the petitioner, or the court when acting upon its own motion, shall cause a copy of the petition or motion and of the notice of hearing to be mailed to the personal representative, if any part of the estate remains to be distributed to the trustee, and to each cotrustee and to the beneficiaries, including therein all persons in being who shall or may participate in the corpus or income of the trust, at their last known or other addresses, as provided in Section 1200, whether any of the persons to whom notice is to be given have requested special notice or given notice of appearance, or to be personally served upon those persons. [1969 ch 272 § 2; 1976 ch 553 § 1; 1982 ch 1543 § 11.] *Cal Jur 3d Decedents' Estates § 110, Trusts §§ 66 et seq.; Cal Practice Rev Ch 425B Proceeding To Remove Trustee; Witkin Summary (8th ed) pp 5396, 5742, 5753.*

§ 1123.6. Same: Preliminary surrender of trust assets and suspension of powers of trustee. The court, whenever it appears from the verified petition of a beneficiary of the trust or other person interested in the trust, or from facts coming to its attention, that the assets of the trust or the interests of a beneficiary may suffer loss or injury during the time required for hearing and decision by the trial court under Section 1123.5 and appellate review, if any, may compel the trustee whose removal is sought to surrender any assets of the trust in his possession or subject to his control to a custodian designated by the court or to a cotrustee and may suspend the powers of the trustee to such extent as the court deems necessary. [1969 ch 272 § 3.] *Cal Jur 3d Decedents' Estates*

§ 110, *Trusts* § 70; *Cal Practice Rev Ch 425B Proceeding To Remove Trustee; Witkin Summary (8th ed) p 5396.*

§ 1123.7. **Same: Exclusiveness of jurisdiction and procedure.** The jurisdiction and procedure provided by Sections 1123.5 and 1123.6 shall be exclusive. [1969 ch 272 § 4.] *Cal Jur 3d Decedents' Estates* § 110, *Trusts* § 70; *Witkin Summary (8th ed) p 5396.*

§ 1124. **Declination of trustee named in will: Procedure.** Any person named or designated as a trustee in a will may, at any time before distribution of any of the estate to him, decline to act as such trustee, by a writing filed with the clerk of the court where the estate proceedings are pending and within five days from the filing of said writing, shall mail a copy thereof, postage prepaid, from a post office within this State, addressed to the executor or administrator at his place of residence, if known to the person declining, if not, at the county seat of the county where the proceedings are pending. [1931; 1939 ch 537 § 1.] *Cal Jur 3d Decedents' Estates* § 110, *Trusts* § 53; *Witkin Summary (8th ed) pp 5340, 5376, 5393, 5754.*

§ 1125. **Appointment of trustee to fill vacancy: Application: Notice.** The court in which the administration is pending shall have power, at any time before final distribution, to appoint some fit and proper person to fill any vacancy in the office of trustee under the will, whether resulting from such declination, removal, or otherwise, if such appointment is necessary to carry out the trust. Such appointment may be made by the court upon the written application of any person interested in the trust, filed in the probate proceedings, and shall be made only after notice to all parties interested in the trust, given as required by Section 328 upon a petition for the probate of a will. [1931; 1933 ch 969 § 15; 1977 ch 88 § 1.] *Cal Jur 3d Charities* § 27, *Decedents' Estates* § 110, *Trusts* §§ 55, 57, 58; *Witkin Summary (8th ed) p 5754.*

§ 1125.1. **Resignation after distribution: Petition: Notice of hearing: Liability on bond.** Any person named or designated as trustee in a will or any successor trustee, may, at any time after the distribution of any of the estate to him, file with the court a petition tendering his resignation as such trustee and setting forth the names and addresses of all living beneficiaries known to said resigning trustee. The clerk shall set the

petition for hearing by the court and give notice thereof by causing a notice to be posted at the courthouse of the county where the petition is filed, giving the name of the decedent, the name of the petitioner and the time when the petition will be heard. Such notice must be given at least ten days before the hearing. The clerk shall cause a similar notice to be mailed, postage prepaid, to the beneficiaries named in the petition, at least ten days before the hearing, addressed to them at their respective post office addresses, as set forth in the petition, otherwise at the county seat of the county where the proceedings are pending. The court shall accept such resignation, making any order which may be necessary for the preservation of the estate.

The liability of the said resigning trustee or of the sureties on his bond shall not in any manner be discharged, released, or affected by such resignation, but shall continue until the said trustee has delivered up all of the estate to the person whom the court shall appoint to receive the same. [1939 ch 537 § 2.] *Cal Jur 3d Decedents' Estates* § 110, *Trusts* §§ 60, 64; *Witkin Summary (8th ed) pp 5394, 5754.*

§ 1126. **Trusteeship vacancy.** If after distribution a trustee of a testamentary trust dies, resigns, fails or declines to act, cannot be identified, or is for any reason incapable of acting, or is removed or a vacancy in the trusteeship is otherwise created or exists, the court which has jurisdiction over the trust shall have the power to declare a vacancy and appoint a trustee to fill the vacancy, upon the petition of anyone interested in the trust estate and notice given for the period and in the manner required by Section 1200 of this code. The petitioner shall cause notice of the hearing to be mailed to the beneficiaries and to any trustee as provided in said Section 1200, whether they have requested special notice or given notice of appearance or not. [1931; 1933 ch 969 § 16; 1949 ch 452 § 1.] *Cal Jur 3d Charities* § 27, *Decedents' Estates* § 110, *Trusts* §§ 55, 56, 57, 58, 66; *Witkin Summary (8th ed) pp 5376, 5754.*

§ 1127. **Bond of trustee.** Except as provided in Section 1127.5, the person appointed under Section 1125 or Section 1126 of this code, before acting as trustee, shall give a bond such as is required of a person appointed administrator. He shall be allowed the cost of such bond to the extent provided by Section 541.5. [1933 ch 969 § 17; 1965 ch

1116 § 1.] *Cal Jur 3d Decedents' Estates § 110, Trusts §§ 54, 56, 181, 203; Cal Forms-42:24; Witkin Summary (8th ed) p 5754.*

§ 1127.5. Designating charitable corporation as substitute or successor trustee without requiring bond. Upon the petition of a nonprofit corporation named or designated as trustee in a will or acting as a successor trustee thereunder within the scope of its own charitable purposes and trust, the court may name as substitute or successor trustee, a charitable corporation of which the nonprofit corporation is the sole member without requiring any bond not theretofore required of the nonprofit corporation. [1965 ch 1116 § 1.] *Cal Jur 3d Decedents' Estates § 110, Trusts §§ 56, 62.*

§ 1128. Transfer of trust proceedings to other county: Petition. Where, in accordance with the provisions of section 1120 of this code, jurisdiction is retained of any trust created by will, the superior court in which such proceeding is pending, may, at any time after final distribution, on petition of the trustee, or of any other interested party, make an order transferring further proceedings in reference to such trust, to the superior court of any other county of this State. To obtain such transfer, the person applying therefor shall file in the court in which the proceeding is pending, a verified petition which shall set forth the following:

1. The name of the county to which it is sought to transfer proceedings;

2. The names, ages and places of residence of all trustees and of all persons who are interested as beneficiaries in the trust, so far as the same are known to petitioner;

3. A brief description of the character, condition, value and location of the property included in the trust estate;

4. A brief statement of the reasons for transfer. [1937 ch 549 § 1.] *Cal Jur 3d Decedents' Estates § 110, Trusts §§ 236, 237; Witkin Summary (8th ed) p 5752.*

§ 1129. Hearing and notice: Who may appear and oppose: Order for transfer: Duties of clerk: Jurisdiction of court to which proceedings are transferred: Practice. Upon the filing of such petition, the clerk shall set the same for hearing upon a date not less than 10, nor more than 30 days thereafter and shall cause notice thereof to be given for the time and in the manner specified in Section 1200 of this code. Petitioner shall, at least 10 days prior to the time set for hearing, cause to be mailed to

each of the persons named in such petition, at their respective places of residence as therein set forth, a copy of the notice of hearing. Any person interested in the trust, either as trustee or as beneficiary, may appear and file written grounds in opposition thereto. If, after hearing, it appears to the court that the transfer of proceedings to the court designated in the petition or to the superior court of any other county in this State, will be for the best interests of the estate, or that economical and convenient administration of the trust will be facilitated thereby, the court shall make an order transferring proceedings to such court. Thereupon the clerk shall certify to the clerk of the court to which the proceeding is transferred, a copy of the order of transfer, together with copies of the will or other instrument creating the trust, the decree of distribution, and such other documents or matters of record therein as the court may by its order determine to be necessary to define the powers and obligations of the trustee, or otherwise necessary in connection with the further administration of the trust. The court to which the proceeding is transferred may from time to time require by its order, the filing of certified copies of such additional papers or matters of record from the court of probate, as may be required.

Upon filing of a certified copy of the order of transfer, together with supporting documents, the court to which the proceeding is transferred, shall have with respect to such trust, the same jurisdiction as the court of probate would have retained under the provisions of Section 1120 of this code, but for the transfer.

Except as otherwise specified herein, practice on the presentation and hearing of such petition and of all other matters in relation thereto, shall be in accordance with the provisions of Division 3 of this code, so far as the same may be applicable. [1937 ch 549 § 2; 1951 ch 888 § 1.] *Cal Jur 3d Decedents' Estates § 110, Trusts §§ 236, 237; Witkin Summary (8th ed) p 5752.*

§ 1130. Vouchers in support of trustee's account: Withdrawal on leaving certified copy on file: To be produced on demand: When may be destroyed or delivered to trustee. Any voucher which may have been filed in support of the account of a trustee may be withdrawn on leaving a certified copy on file, but must be produced on demand, unless permanently withdrawn with the permission of the court. Five years from

the date of settlement of the account in support of which a voucher was filed the clerk of the court may destroy the voucher or deliver it to the trustee or to his attorney. [1951 ch 852 § 1.] *Cal Jur 3d Decedents' Estates § 110, Trusts §§ 212 et seq.*

§ 1130.1. **Certificate of appointment.** Upon application of the trustee or trustees of a trust created by a will, the clerk shall issue a certificate that the trustee or trustees are duly appointed and acting trustee or trustees under the will. [1976 ch 717 § 1.] *Cal Jur 3d Trusts § 55; Witkin Summary (8th ed) Trusts § 245.*

§ 1132. **Order for transfer of places of administration or trust assets.** Where, under Section 1120, jurisdiction is retained of any trust created by the will of a decedent, the court may order that the place of administration or assets of the trust be transferred to another jurisdiction, pursuant to the procedure provided by Article 3 (commencing with section 1139) of this chapter. [1971 ch 958 § 3.] *Cal Jur 3d Decedents' Estates*

§ 110, *Trusts § 238; Witkin Summary (8th ed) p 5752.*

§ 1133. **Administration of more than one trust as a single trust.** When a trustee who has already been appointed by a will or appointed by the court to execute a trust created by a will is appointed by another will or appointed by the court to execute a trust created by another will, and the provisions and terms of the decree establishing each trust are substantially identical, the court may upon the petition of the trustee and without notice order the trustee to combine the assets and administer them as a single trust, if it determines that administration as a single trust will (1) be consistent with the intent of the trustor, and (2) facilitate administration of the trust without defeating or impairing the interests of the beneficiaries. [1974 ch 551 § 1.] *Cal Jur 3d Decedents' Estates § 110, Trusts §§ 100 et seq., 135.*

§§ 1134-1136. [Repealed by Stats 1971 ch 958.]

ARTICLE 2 [REPEALED]

§§ 1137-1137.14. [Repealed by Stats 1970 ch 849.]

ARTICLE 2.5

Inter Vivos and Other Trusts

§ 1138. "Trust".

§ 1138.1. **Petition to superior court: Purposes: Who may file: Express limitation on right to petition.**

§ 1138.2. **Scope of court orders and decrees.**

§ 1138.3. **Where to commence proceedings: "Principal place of administration of the trust."**

§ 1138.4. **Contents of petition.**

§ 1138.5. **Grounds to dismiss petition.**

§ 1138.6. **Procedure: Notice: Hearing.**

§ 1138.7. **Grounds to appoint guardian ad litem: Representation of unascertained class: Applicability of Code of Civil Procedure §§ 373, 373.5.**

§ 1138.8. **Trustee: Resignation: Appointment of successor.**

§ 1138.9. **Same: Vacancy: Petition to appoint trustee.**

§ 1138.10. **Appealable orders.**

§ 1138.11. **Remedies as cumulative and nonexclusive.**

§ 1138.12. **Legislative intent.**

§ 1138.13. **Trusts subject to article.**

§ 1138.14. **Applicability of provisions governing distributions in satisfaction of bequests**

Cal Jur 3d Trusts §§ 57 et seq., 223 et seq., 240; Cal Forms-42:78, 42:112, 42:141.

§ 1138. "Trust". (a) 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.

(b) 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, 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. [1970 ch 849 § 2.5; 1976 ch 144 § 1.] *Cal Jur 3d Decedents' Estates* § 110; *19 Cal Practice Rev, Ch 422A, Action by Beneficiary To Enforce Rights by Following Trust Property, Ch 422B, Proceeding To Establish Membership in Class of Beneficiaries, Ch 423, Action Against Trustee To Compel Accounting, Ch 424, Action Against Trustee for Commingling Personal and Trust Funds, Ch 425B, Proceeding To Remove Trustee, Ch 425C, Proceeding for Modification of Terms of a Trust; Cal Forms-42:78; Witkin Summary (8th ed) Trusts* §§ 8, 10.

§ 1138.1. Petition to superior court: Purposes: Who may file: Express limitation on right to petition. (a) A trustee, beneficiary, or remainderman may petition the superior court for any of the following purposes:

(1) Determining to whom the property shall pass or be delivered upon final or partial termination of the trust, to the extent such determination is not concluded by the trust instrument.

(2) Settling the accounts and passing upon the acts of the trustee.

(3) Authorizing the trustee to accept additions to the trust when the trust instrument does not prohibit such additions.

(4) Instructing the trustee.

(5) Compelling the trustee to submit his accounts and report his acts as trustee to a beneficiary or remainderman when it appears that the trustee has failed to submit an accounting and report within 60 days after written request of a beneficiary or remainderman and no accounting and report has

been made within six months preceding such request.

(6) Granting to the trustee powers not expressly contained in the trust instrument to the extent provided in Section 1120.2.

(7) Fixing, directing, or allowing payment of compensation to the trustee in accordance with Section 2274 of the Civil Code.

(8) Appointing a trustee.

(9) Accepting the resignation of a trustee.

(10) Removing a trustee.

(11) Authorizing or directing removal of the trusts or assets of the trust to another jurisdiction pursuant to the procedure provided in Article 3 (commencing with Section 1139) Chapter 19, Division 3.

(12) Directing the relief provided in Section 2279.1 of the Civil Code.

(13) Amending or conforming the trust instrument in the manner required to qualify the decedent's estate for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest.

(b) The terms of a trust subject to this article may expressly or by necessary implication limit or eliminate the authority of any trustee, beneficiary, remainderman or other person to petition the court under this article for any one or more of the purposes enumerated in subdivision (a). [1970 ch 849 § 2; 1971 ch 958 § 8; 1973 ch 506 § 3; 1975 ch 474 § 2, effective August 30, 1975.] *Cal Jur 3d Decedents' Estates* § 110, *Trusts* §§ 57 et seq., 223 et seq.; *Cal Forms-41:642, 42:112, 42:141; Witkin Summary (8th ed) p 5373.*

§ 1138.2. Scope of court orders and decrees. The court may make all orders and decrees and take all other action necessary or proper to dispose of the matters presented by the petition. [1970 ch 849 § 2; 1971 ch 958 § 8.] *Cal Jur 3d Trusts* §§ 220, 227, 235; *Witkin Summary (8th ed) p 5374.*

§ 1138.3. Where to commence proceedings: "Principal place of administration of the trust". 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. As used in this section, the "principal place of administration of the trust" is 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. In the case of co-trustees, 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. [1970 ch 849 § 2.] *Cal Jur 3d Decedents' Estates § 110, Trusts §§ 70, 216, 223, 225, 228, 239, 241; Witkin Summary (8th ed) p 5373.*

§ 1138.4. Contents of petition. Each proceeding under this article shall be commenced by filing a verified petition which shall state facts showing that the petition is authorized under this article and the terms of the trust. [1970 ch 849 § 2.] *Cal Jur 3d Decedents' Estates § 110, Trusts § 225; Witkin Summary (8th ed) p 5374.*

§ 1138.5. Grounds to dismiss petition. The court may dismiss a petition when it appears:

- (a) That the proceeding is not reasonably necessary for the protection of the interests of a trustee or for the protection of the interests of beneficiaries or remaindermen; or
- (b) That nondisclosure of the terms, assets, management, and administration of the trust is in the best interests of the objects of the trust. [1970 ch 849 § 2.] *Cal Jur 3d Trusts §§ 227, 235; Witkin Summary (8th ed) p 5374.*

§ 1138.6. Procedure; Notice; Hearing. (a) Upon the filing of a petition provided for in this article, the clerk shall set the petition for hearing.

At least 30 days before the time set for the hearing of the petition, the petitioner shall cause notice of the time and place of hearing thereof to be mailed to the trustee of the trust when he or she is not the petitioner, to any cotrustee not petitioning, and to all beneficiaries and remaindermen of the trust, including all persons in being who may participate in the corpus or income of the trust, addressed to them at their respective offices or places of residence, if known, and if not known such notice shall be given as the court may require in the manner provided in Section 413.30 of the Code of Civil Procedure.

When a cotrustee not petitioning, a beneficiary, or a remainderman, in person or by counsel, has served and filed a notice of appearance directed to the petitioner or his

or her counsel in connection with the particular petition and proceeding, or a written request for a copy of the petition, and given an address to which notices or a copy may be sent or delivered, the petitioner shall cause a copy of the petition to be sent by mail to the cotrustee or person or counsel within five days after service of notice of appearance or receipt of the request.

Personal delivery is the equivalent of mailing.

Proof of the giving of notice and of mailing or personal delivery of a copy of the petition shall be made at the hearing. If it appears to the satisfaction of the court that the notice has been given as required, the court shall so find in its order, and the order, when it becomes final, shall be conclusive upon all persons.

(b) Proceedings under this article shall be governed, whenever possible, by the provisions of this article, and when the provisions of this article do not appear applicable, the provisions of Division 3 (commencing with Section 300) shall apply.

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

(d) Notice of any petition filed pursuant to paragraph (13) of subdivision (a) of Section 1138.1 shall be given to the Attorney General. [1970 ch 849 § 2; 1975 ch 474 § 3, effective August 30, 1975; 1982 ch 1543 § 12.] *Cal Jur 3d Decedents' Estates § 110, Trusts §§ 60, 225, 226; Witkin Summary (8th ed) Trusts § 10.*

§ 1138.7. Grounds to appoint guardian ad litem: Representation of unascertained class: Applicability of Code of Civil Procedure §§ 373, 373.5. (a) At any stage of a proceeding under this article the court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. Where not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests.

(b) When it appears from the petition that the trustee seeks or is to be given instructions to exercise a power not conferred upon him, the petition shall set forth the particulars of, and the necessity for, the action sought to be taken. In addition to the notice required by Section 1138.6, when the peti-

tion relates to the exercise of a power not conferred or where the petition relates to determining to whom the property shall pass or be delivered upon final or partial termination of the trust, a copy of the petition shall be attached to, and mailed with, copies of the notice, and, at least 10 days before the time set for the hearing of the petition, the court or judge shall appoint a suitable person or persons who shall appear and act as guardian ad litem of any person or persons of a designated class who are not ascertained or in being or who may become beneficiaries or may participate in the trust.

(c) Sections 373 and 373.5 of the Code of Civil Procedure shall not apply to the appointment of a guardian ad litem under the provisions of this article. [1970 ch 849 § 2.] *Cal Jur 3d Decedents' Estates § 110, Guardianship and Conservatorship §§ 99 et seq., Trusts §§ 217, 225, 226, 323; Cal Practice Rev Ch 10 Guardian Ad Litem; Witkin Summary (8th ed) p 5374.*

§ 1138.8. Trustee: Resignation: Appointment of successor. Unless otherwise expressly provided in the trust instrument a trustee or cotrustee may resign at any time. Such resignation and the appointment of a successor trustee shall be effected as provided in the trust instrument. If the trust instrument is silent a trustee may file with a court a petition tendering his resignation as such trustee and the court shall accept such resignation making any order appointing a successor trustee and other order which may be necessary for the preservation of the estate. The liability of the resigning trustee or the sureties on his bond, if any, shall not be discharged, released, or affected in any manner by the resignation, but shall continue until the trustee has delivered all of the estate to the person whom the court shall appoint to receive it. [1970 ch 849 § 2.] *Cal Jur 3d Decedents' Estates § 110, Trusts §§ 56, 60; Witkin Summary (8th ed) p 5373.*

§ 1138.9. Same: Vacancy: Petition to appoint trustee. If a trustee of a trust subject to this article dies, resigns, fails or declines to act, cannot be identified, is incapable of acting for any reason, or is removed, or a vacancy in the trusteeship is otherwise created or exists, and the trust instrument does not provide a method for appointing a successor trustee, the court shall have the power to appoint a trustee to fill the vacancy upon the petition of the trustee or anyone interested in the trust estate. [1970 ch 849

§ 2.] *Cal Jur 3d Decedents' Estates § 110, Trusts §§ 55, 57, 58; Witkin Summary (8th ed) p 5373.*

§ 1138.10. Appealable orders. An appeal may be taken from any final order or decree made pursuant to paragraph (1), (2), (4), (6), (7), (8), (10), or (11) of subdivision (a) of Section 1138.1, or from an order dismissing the petition or denying a motion to dismiss under Section 1138.5. [1970 ch 849 § 2.] *Cal Jur 3d Trusts §§ 49, 57, 71, 221, 227, 235; Witkin Summary (8th ed) p 5375.*

§ 1138.11. Remedies as cumulative and nonexclusive. The remedies provided under this article are cumulative and nonexclusive. [1970 ch 849 § 2.] *Cal Jur 3d Decedents' Estates § 110, Trusts § 224; Witkin Summary (8th ed) p 5372.*

§ 1138.12. Legislative intent. It is the intent of the Legislature in enacting this article that the administration of trusts subject to this article proceed expeditiously and free of judicial intervention subject to the jurisdiction of the courts of this state as invoked pursuant to this article or otherwise invoked pursuant to law. [1970 ch 849 § 2.] *Cal Jur 3d Decedents' Estates § 110, Trusts § 223.*

§ 1138.13. Trusts subject to article. This article shall apply to all trusts created prior to, or on, or after the operative date of this article. However, this article shall not apply to any trust the terms and provisions of which expressly or by necessary implication make this article inapplicable to such trust. [1970 ch 849 § 2; 1976 ch 860 § 4.] *Cal Jur 3d Decedents' Estates § 110, Trusts § 223; Cal Forms-42:78, 42:141; Witkin Summary (8th ed) p 5372.*

§ 1138.14. Applicability of provisions governing distributions in satisfaction of bequests. The provisions of Article 3 (commencing with Section 1030) of Chapter 16 shall apply to gifts, whether outright or in trust, made in a trust which is subject to this article and is executed or amended after or before the effective date of this section. However, this section shall not apply to any trust the terms of which expressly or by necessary implication make this section inapplicable to it. For purposes of this section, all references in Article 3 (commencing with Section 1030) of Chapter 16 to a "testator" shall refer to the trustor and all references to a "will" shall refer to a trust which is subject to this article. [1982 ch 41 § 4.]

ARTICLE 3

Transfer to Another Jurisdiction

- § 1139. Application and construction of article.
- § 1139.1. When order for transfer permitted.
- § 1139.2. Petition for transfer: Contents.
- § 1139.3. Setting hearing and giving notice thereof: Appearance in opposition.
- § 1139.4. Order for transfer: Prerequisites.
- § 1139.5. Same: Provisions: Delivery as discharge of trustee.
- § 1139.6. Place for commencing proceeding.
- § 1139.7. "Beneficiary."

§ 1139. Application and construction of article. (a) This article applies to (1) a trust over which jurisdiction continues after distribution, as provided by Section 1120; (2) a trust subject to Chapter 10 (commencing with Section 175) of Division 1; (3) a trust subject to Article 2.5 (commencing with Section 1138) of this chapter; and (4) any other trust to which the provisions of this article are made applicable by statute or trust instrument.

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

(c) This article shall not apply to any proceeding or action pending on the effective date of this article. [1971 ch 958 § 9.] *Cal Jur 3d Decedents' Estates §§ 102, 110, Trusts §§ 224, 237, 238 Witkin Summary (8th ed) pp 5373, 5374, 5752.*

§ 1139.1. When order for transfer permitted. An order may be made by the superior court for the transfer of the place of administration of a trust or the transfer of some or all of the assets of a trust to another jurisdiction outside of California: (a) where, under Section 1120 of this code, jurisdiction is retained over any trust created by the will of a nonresident decedent, which will has been probated in the state of his residence and a duly appointed, qualified and acting domiciliary trustee has entered upon and is engaged in the administration of the same trust with respect to the assets situated in that state; or (b) where the trustee or beneficiary of a trust to which this article applies desires to transfer the place of administration of a trust to another jurisdiction outside of California, unless the trust instrument precludes the transfer of the place of administration to another jurisdiction outside of

California. [1971 ch 958 § 9.] *Cal Jur 3d Decedents' Estates §§ 102, 110, Trusts §§ 224, 237, 238.*

§ 1139.2. Petition for transfer: Contents. A petition for an order authorizing a transfer may be filed by the trustee or by a beneficiary of a trust. The petition shall be verified and shall set forth:

(1) The names, ages and places of residence of the trustee administering the trust in this state, the trustee, including any domiciliary trustee, in the other jurisdiction to whom administration of the trust or such trust assets will be transferred, and all persons who are interested in the trust as beneficiaries, so far as known to petitioner.

(2) Whether the trustee in the other jurisdiction has agreed to accept the trust. If he has, the acceptance or a true copy shall be attached as an exhibit to the petition, or otherwise filed with the court.

(3) A statement of the character, condition, location and value of the property comprising the assets sought to be transferred.

(4) A general statement of the qualifications of the trustee who will administer the trust in the other jurisdiction; the amount of his bond, if any; the nature and value of the assets of any trust of the decedent or trustor under his administration in the other jurisdiction; and the name of the court, if any, having jurisdiction of such trustee or of his accounts or in which a proceeding may be had, with respect to administration of the trust or the trustee's accounts.

(5) Whether there is any pending civil action in this state against the trustee.

(6) A statement of the reasons for the transfer. [1971 ch 958 § 9.] *Cal Jur 3d Decedents' Estates §§ 102, 110, Trusts §§ 224, 237, 238, 239.*

§ 1139.3. Setting hearing and giving notice thereof: Appearance in opposition. Upon the filing of such petition the clerk shall set

the same for hearing and shall give notice of such hearing as provided in Section 1200 of this code at least 30 days before the time set for the hearing of the petition. Petitioner, at least 30 days prior to the time so set for hearing, 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. If the trust involves or may involve a charitable trust, bequest or devise of the character specified in Section 328, a copy of the notice shall be mailed to or served upon the attorney general at least 20 days before the hearing. Any person interested in the trust, either as trustee, beneficiary or otherwise, may appear and file written grounds in opposition thereto. [1971 ch 958 § 9.] *Cal Jur 3d Decedents' Estates §§ 102, 110, Trusts §§ 224, 237, 238, 239.*

§ 1139.4. Order for transfer: Prerequisites. The court may, in its discretion, grant the petition and order the trustee to transfer the trust assets or to change the place of administration to the other jurisdiction, if, after hearing, it appears to the court:

(1) That the transfer of the trust assets to a trustee in another jurisdiction, or that the transfer of the place of administration of the trust to another jurisdiction, would facilitate the economical and convenient administration of the trust and promote the best interests of the trust and those interested therein.

(2) That the substantial rights of residents of this state will not be materially affected thereby.

(3) That transfer will not violate the terms of the trust.

(4) That any new trustee, to whom the trust assets are to be transferred, is qualified

and able to administer the trust or such assets upon the same trusts. [1971 ch 958 § 9.] *Cal Jur 3d Decedents' Estates §§ 102, 110, Trusts §§ 224, 237, 238, 239.*

§ 1139.5. Same: Provisions: Delivery as discharge of trustee. If a transfer is ordered, the court may direct the manner of transfer and impose such terms and conditions as may be just, including but not by limitation, a requirement for the substitution of a successor trustee in any pending litigation in this state. The delivery in accordance with the order of the court is a full discharge of the trustee in relation to all property embraced in the order. [1971 ch 958 § 9.] *Cal Jur 3d Trusts §§ 224, 237, 238, 239.*

§ 1139.6. Place for commencing proceeding. In the case of trusts not subject to Chapter 10 (commencing with Section 175) of Division 1, or Article 1 (commencing with Section 1120) or Article 2.5 (commencing with Section 1138) of this chapter, a proceeding pursuant to this article shall be commenced in the superior court of the county in which is located the principal place of administration of the trust, as defined in Section 1138.3, unless the statute providing for the proceeding otherwise provides. [1971 ch 958 § 9.] *Cal Jur 3d Decedents' Estates §§ 102, 110, Trusts §§ 224, 237, 238, 239.*

§ 1139.7. "Beneficiary." For the purposes of this article, beneficiary means all persons in being who shall or may participate in the corpus or income of the trust. [1971 ch 958 § 9.] *Cal Jur 3d Decedents' Estates §§ 102, 110, Trusts §§ 224, 237, 238, 239.*

ARTICLE 4

Transfer from Another Jurisdiction

[Added by Stats 1976 ch 144 § 2.]

- § 1139.10. Application of article.
- § 1139.11. Transfer of place of administration or assets to California.
- § 1139.12. Petition for transfer.
- § 1139.13. Venue.
- § 1139.14. Contents of petition.
- § 1139.15. Notice of hearing.
- § 1139.16. Order accepting transfer and appointing trustee.
- § 1139.17. Conditional order accepting transfer.
- § 1139.18. Administration of transferred trust.
- § 1139.19. "Beneficiary" defined.

§ 1139.10. Application of article. (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.

(b) This article 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. [1976 ch 144 § 2.] *Cal Jur 3d Decedents' Estates §§ 102, 110, Trusts §§ 238 et seq.; Witkin Summary (8th ed) Trusts § 10.*

§ 1139.11. Transfer of place of administration or assets to California. Subject to the limitations and requirements of this article, an order may be made by the superior court accepting the transfer of the place of administration of a trust from another jurisdiction to this state or the transfer of some or all of the assets of a trust in another jurisdiction to a trustee in this state. [1976 ch 144 § 2.] *Cal Jur 3d Trusts § 240.*

§ 1139.12. Petition for transfer. A petition for an order accepting a transfer may be filed by the trustee or by a beneficiary of the trust. [1976 ch 144 § 2.] *Cal Jur 3d Trusts §§ 240, 241.*

§ 1139.13. Venue. (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 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 in the superior court of the county where either (1) any beneficiary of the trust resides or (2) a substantial portion of the trust assets to be transferred are located or will be located. [1976 ch 144 § 2.] *Cal Jur 3d Trusts §§ 240, 241.*

§ 1139.14. Contents of petition. The petition shall be verified and shall set forth:

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

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

(2) The proposed trustee to whom administration of the trust or such trust assets 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 or such trust assets to this state has been filed, if necessary, with the court in the other jurisdiction and the status of such petition or request.

(c) Whether the trustee proposed to administer the trust in this state has agreed to accept the trust in this state. If he has, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(d) A general statement of the qualifications of the trustee proposed to 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 sought to be transferred.

(g) A statement of the reasons for the transfer. [1976 ch 144 § 2.] *Cal Jur 3d Trusts §§ 240, 241.*

§ 1139.15. Notice and hearing. (a) Upon the filing of the petition, the clerk shall set the petition for hearing and shall give notice of the hearing as provided in Section 1200 at least 30 days before the time set for the hearing. Petitioner, at least 30 days prior to the time set for the hearing, 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 the notice of the hearing.

(b) Any person interested in the trust, either as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition. [1976 ch 144 § 2.] *Cal Jur 3d Trusts §§ 240, 241; Witkin Summary (8th ed) Wills and Probate § 249B.*

§ 1139.16. Order accepting transfer and appointing trustee. The court may, in its discretion, grant the petition and issue an order accepting transfer of place of administration of the trust or trust assets 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 the trust assets to a

trustee in this state, or the transfer of place of administration of the trust to this state, 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, to whom the trust assets are to be transferred, is qualified, willing, and able to administer the trust or trust assets upon the same trusts.

(d) The proper court in the other jurisdiction has approved the transfer if such approval is necessary under the law of the other jurisdiction. [1976 ch 144 § 2.] *Cal Jur 3d Trusts §§ 240, 241.*

§ 1139.17. **Conditional order accepting transfer.** When appropriate to facilitate transfer of the trust assets or the place of administration of a trust to this state, the court may issue a conditional order appointing a trustee to administer the trust in this state and indicating that transfer to this state will be accepted if transfer is approved by the proper court of the other jurisdiction. [1976 ch 144 § 2.] *Cal Jur 3d Trusts §§ 240, 241.*

§ 1139.18. **Administration of transferred trust.** (a) If the trust transferred to this state pursuant to this article is a written voluntary express trust, including additions thereto, whether created by will or other than by will, and is not one excluded by subdivision (b) of Section 1138, the trust shall be administered in this state in accordance with Article 2.5 (commencing with Section 1138) of Chapter 19 of Division 3. Notwithstanding Section 1138.3, any proceedings under that article with respect to the trust transferred to this state shall be commenced in the superior court of the proper county as described in Section 1139.13.

(b) If the trust transferred to this state pursuant to this article is not one covered by subdivision (a), it shall be administered in the same manner as if the trust had been subject to supervision in this state from the time of its creation. [1976 ch 144 § 2.] *Cal Jur 3d Trusts § 240.*

§ 1139.19. **"Beneficiary" defined.** For purposes of this article, "beneficiary" means all persons in being who shall or may participate in the corpus or income of the trust. [1976 ch 144 § 2.] *Cal Jur 3d Trusts §§ 30, 240, 241; Witkin Summary (8th ed) Trusts § 35.*