

Memorandum 84-10

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

Background

In 1983 the Commission began studying trust law with the intention of reorganizing the scattered provisions into one part of the Probate Code. This project is part of the study of the Probate Code, and includes consideration of Uniform Probate Code provisions, as directed by legislative resolution. See 1980 Cal. Stats. res. ch. 37.

After its initial review of the body of statutory trust law, the Commission decided at the June 1983 meeting to conduct a thorough review of trust law, rather than just reorganize it in the Probate Code. This review is to involve a careful examination of the old trust provisions, many of them originating in the Field Code, and also other areas identified by the Commission's consultants and others such as spendthrift trusts, modification and termination of trusts, and liability for breach of trust.

General Approach

The staff proposes to codify only essential elements of the law relating to written express trusts. We do not envision a comprehensive trust code. In some respects, this approach will result in new statutory coverage while in other areas, where the matter is best left to the common law, statutory coverage would end.

As a consequence of this approach, there would be no statutory treatment of the law relating to resulting trusts or constructive trusts. We also anticipate that the special rules governing charitable trusts may remain unchanged, though this is an area we have not yet considered.

The staff also anticipates that the Commission will want to make trust law consistent with related areas, such as powers of appointment and wills, to the extent practicable.

Scope of Study

In light of the decision to conduct a comprehensive review of California trust law and the recent turnover in Commission membership, the staff thinks it is best to start afresh. We hope to be able to prepare a tentative recommendation that can be distributed for comment in the summer of 1984, with a view toward introducing legislation in 1985. The following is a rough outline of topics to be considered in the process of preparing the tentative recommendation:

A. Creation and Termination of Trusts

1. Presumption of revocability of inter vivos trusts.
2. Trusts with indefinite beneficiaries or indefinite purposes.
3. Modification and termination of trusts by interested persons. (Professor Gail Bird is planning to work on this subject.)
4. Formalities upon termination, clearing record title, etc.
5. Spendthrift trusts, including the protection of the interest of remaindermen from creditors and assignability of such interests. (Professor Russell Niles is working on the spendthrift trust problems. It should also be noted that the Commission has a recommendation ready for the 1984 legislative session relating to garnishment of trusts.)

B. Trustees

1. Duties, including the standard of care, the duty to account, and the duties applicable to the exercise of discretionary powers.
2. Powers, including the possibility of providing automatic powers subject to restrictions in trust instruments, and the problems arising where powers are delegated.
3. Remedies for breach of trust.
4. Liability of trustee to beneficiaries for breach of the trust, and the measure of damages.
5. Liability of trustee to third persons dealing with the trust.
6. Compensation, indemnity, and exoneration of trustees.
7. Trustee's bond.
8. Resignation and removal of trustees.
9. Administration by foreign trustees.

C. Judicial Administration of Trusts

1. Jurisdiction, including registration.
2. Venue.
3. Procedural aspects, including the manner of giving notice.
4. Transfer of place of administration of trusts or trust assets to or from California.

D. Miscellaneous

1. Creditors' rights, especially as to revocable inter vivos trusts.
2. Rules of construction, including construction of class gifts, gifts to "children" or "family", time of vesting, antilapse. (Professor Susan French has agreed to work on this area.)
3. Applicability of the Statute of Uses in California.
4. Impossible and illegal conditions (Civil Code § 709).
5. Restraints on marriage (Civil Code § 710).
6. Restraints on alienation (Civil Code § 711).
7. No-contest clauses and clauses in restraint of court jurisdiction.
8. Revisions of Revised Uniform Principal and Income Act.
9. Transitional provisions.

Existing Law

The statutory provisions that we will be primarily concerned with are the following:

1. Civil Code §§ 730-730.17 (Revised Uniform Principal and Income Act).

2. Civil Code §§ 852-871 (archaic Field Code provisions on "uses and trusts").

3. Civil Code §§ 2215-2290.12 (substantive trust provisions largely deriving from the Field Code, and Uniform Management of Institutional Funds Act).

4. Probate Code §§ 1120-1139.19 (trust administration and transfer of jurisdiction).

5. Probate Code §§ 1215-1215.4 (notice).

A copy of these provisions of existing law (except Civil Code §§ 730-730.17), including changes enacted during 1983, is attached to this

memorandum as Exhibit 1. This material should be brought to each meeting for reference purposes so we will not have to reproduce it for each memorandum.

Respectfully submitted,

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Staff Counsel

Exhibit 1

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.

§ 2224.1. (a) As used in this section:

(1) "Convicted felon" means any person convicted of a felony, or found not guilty by reason of insanity of a felony committed in California, either by a court or jury trial or by entry of a plea in court.

(2) "Felony" means a felony defined by any California or United States statute.

(3) "Representative of the felon" means any person or entity receiving proceeds by designation of that felon, or on behalf of that felon or in the stead of that felon, whether by the felon's designation or by operation of law.

(4) (A) "Beneficiary" means a person who, under applicable law, other than the provisions of this section, has or had a right to recover damages from the convicted felon for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) If a beneficiary described in subparagraph (A) has died, "beneficiary" also includes a person or estate entitled to recover damages pursuant to Section 573 of the Probate Code.

(C) If a person has died and the death was proximately caused by the convicted felon as a result of the crime for which the felon was convicted, "beneficiary" also includes a person described in Section 377 of the Code of Civil Procedure and any

beneficiary of a will of the decedent who had a right under that will to receive more than 25 percent of the value of the estate of the decedent.

(5) "Beneficiary's interest in the proceeds" means that portion of the proceeds necessary to pay the following:

(A) In the case of a beneficiary described in subparagraph (A) or (B) of paragraph (4), those damages which, under applicable law other than the provisions of this section, the beneficiary has or had a right to recover from the convicted felon for injuries proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) In the case of a beneficiary described in subparagraph (C) of paragraph (4), those damages which under all the circumstances of the case may be just.

(C) A beneficiary's interest in the proceeds shall be reduced by the following amount:

(i) Money paid to the beneficiary from the restitution fund because of the crime for which the felon was convicted.

(ii) Money paid to the beneficiary by the convicted felon because of a requirement of restitution imposed by a court in connection with the crime for which the felon was convicted.

(iii) Money paid to the beneficiary because of a judgment against the convicted felon based upon the crime for which the felon was convicted.

(D) In the case of an unsatisfied existing judgment or order of restitution against the convicted felon and in favor of a beneficiary, any money paid to the beneficiary pursuant to this section shall be applied to reduce the amount of the unsatisfied judgment or order.

(6) "Materials" means books, magazine or newspaper articles, movies, films, video tapes, sound recordings, interviews or appearances on television and radio stations, and live presentations of any kind.

(7) "Story" means a depiction, portrayal, or reenactment of a felony and shall not be taken to mean a passing mention of the felony, as in a footnote or bibliography.

(8) "Sale" includes lease, license, or any other transfer or alienation taking place in California or elsewhere.

(9) "Proceeds" means all fees, royalties, real property, or other consideration of any and every kind or nature received by or owing to a felon or his or her representatives for the preparation for the purpose of sale of materials, for the sale of the rights to materials, or the sale or distribution by the convicted felon of materials whether earned, accrued, or paid before or after the conviction. It includes any interest, earnings, or accretions upon proceeds, and any property received in exchange for proceeds.

(b) All proceeds from the preparation for the purpose of sale, the sale of the rights to, or the sale of materials that include or are based on the story of a felony for which a convicted felon was convicted, shall be subject to an involuntary trust for the benefit of the beneficiaries set forth in this section. That trust shall continue until five years after the time of payment of the proceeds to the felon or five years after the date of conviction, whichever is later. If an action is filed by a beneficiary to recover his or her interest in a trust within those time limitations, the trust character of the property shall continue until the conclusion of the action.

(c) (1) Any beneficiary may bring an action against a convicted felon or representative of the felon to recover his or her interest in the trust established by this section.

(2) That action may be brought in the superior court of the county in which the beneficiary resides, or of the county in which the convicted felon resides, or of the county in which proceeds are located.

(3) If the court determines that a beneficiary is entitled to proceeds pursuant to this section, the court shall order the payment from proceeds which have been received, and, if that is insufficient, from proceeds which may be received in the future.

(d) If there are two or more beneficiaries and if the available proceeds are insufficient to pay all beneficiaries, the proceeds shall be equitably apportioned among the beneficiaries taking into account the impact of the crime upon them.

Prior to any distribution of any proceeds to a beneficiary, the court shall determine whether the convicted felon has failed to pay any portion of a restitution fine or penalty fine imposed by a court, or any restitution imposed as a condition of probation. The court shall also determine whether the felon is obligated to reimburse a governmental entity for the costs of his or her defense and whether a portion of the proceeds is needed to cover his or her reasonable attorney's fees incurred in the criminal proceeding related to the felony, or any appeal or other related proceeding, or in the defense of the action brought under this section. The court shall order payment of these obligations prior to any payment to a beneficiary, except that 10 percent of the proceeds shall be reserved for payment to the beneficiaries.

(e) (1) The Attorney General may bring an action to require proceeds received by a convicted felon to be held in an express trust in a bank authorized to act as a trustee.

(2) An action may be brought under this subdivision within six months after the receipt of proceeds by a convicted felon or six months after the date of conviction, whichever is later.

That action may be brought in the superior court of any county in which the Attorney General has an office.

(3) If the Attorney General proves that the proceeds are proceeds from the sale of a story which are subject to an involuntary trust pursuant to this section, and that it is more probable than not that there are beneficiaries within the meaning of this section, the court shall order that all proceeds be deposited in a bank and held by the bank as trustee of the trust until an order of disposition is made by a court pursuant to subdivision (d), or until the expiration of the period specified in subdivision (b).

(4) If the Attorney General prevails in an action under this subdivision, the court shall order the payment from the proceeds to the Attorney General of reasonable costs and attorney's fees.

(f) In any action brought pursuant to subdivision (d) or (e), upon motion of a party the court shall grant a preliminary injunction to prevent any waste of proceeds if it appears that the proceeds are subject to the provisions of this section, and that they may be subject to waste.

(g) Any violation of an order of a court made pursuant to this section shall be punishable as contempt.

(h) The remedies provided by this section are in addition to other remedies provided by law.

No period of limitations, except those provided by this section, shall limit the right of recovery under this section.

§ 2225. A voluntary trust shall not be deemed invalid, merged, or terminated if the trustor is also the sole trustee and sole beneficiary during the trustor's lifetime, or if there are two or more trustors, one or more of whom is a trustee, and the beneficial interest in the trust is in the trustors during the lifetimes of the trustors, so long as the trust provides for one or more successor beneficiaries or remaindermen following the death of the trustor. This section shall apply, subject to the provisions of Section 852, to any voluntary trust created prior to, on, or after January 1, 1984.

ARTICLE 2

Civil Code

Obligations of Trustees

§ 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. (a) 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 or her error.

(b) A trustee who uses or disposes of the trust property in any manner not authorized by the trust but in compliance with subdivision (b) of Section 2258 shall not be liable to the beneficiary.

§ 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 co-fiduciary or co-fiduciaries, 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.

§ 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. (a) 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.

(b) With respect to a revocable trust, the trustee shall follow all written directions acceptable to the trustee given from time to time to the trustee by the person or persons then having the power to revoke the trust or that portion thereof with respect to which the direction is given or by the person or persons other than the trustee to whom the trustor delegates the right to direct the trustee. In acceding to and carrying out such direction, the trustee shall incur no liability to any person having a vested or contingent interest in the trust and may follow such instructions regardless of any fiduciary obligations to which the directing party may also be subject.

§ 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-

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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. 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. (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) Subject to the additional requirements of 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 a beneficiary of a trust and who, either individually or as trustee or cotrustee, 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.

§ 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 (1) 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 (1) 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 (1) 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 (1) 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 (1) 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 (1) 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.

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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. A trustee can be discharged from his or her trust only as follows:

- (a) By the extinction of the trust.
- (b) By the completion of his or her duties under the trust.
- (c) By such means as may be prescribed by the declaration of trust.
- (d) By the consent of the beneficiary, if the beneficiary has capacity to contract.
- (e) By the superior court.

§ 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.
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- § 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*

§ 1120.1a. This section shall apply only to trusts which were created by a will executed before July 1, 1977, and not republished thereafter.

(a) Except as provided in subdivision (d), 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, 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. Notice shall be given by registered or certified mail or, in the alternative, by first-class mail on the condition that an acknowledgment of receipt of notice is signed by the beneficiary and returned to the trustee. The notice shall contain 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, is entitled to a statement of the income and principal receipts and disbursements of the trust at least annually and that any other beneficiary or remainderman, upon written request to the trustee, is entitled to such information 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, the name and location of the superior court which had jurisdiction over the administration of the estate pursuant to Section 301, and a statement that it is appropriate to file a petition pursuant to Section 1138.1 with either court.

The trustee shall file with the court which previously had jurisdiction over the administration of the estate, pursuant to Section 301, 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. The trustee shall also furnish such information to any other beneficiary or remainderman who has made a written request therefor.

(c) Within 90 days after the end of each fiscal year of the trust, the trustee shall furnish the summary of information described in this subdivision to each income beneficiary, as defined in subdivision (1) of Section 730.01 of the Civil Code, and, upon written request, to any other beneficiary or remainderman. The summary shall set forth the following:

(1) The cost of each trust asset.

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

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

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

(5) Trustee compensation for the current fiscal year and the 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 or courts 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 remove the trust from the continuing jurisdiction of the superior court only with the approval of the court which has jurisdiction over the administration of the trust pursuant to Section 1120. Unless the trust is so removed, the trustee is not required to comply with the requirements of subdivisions (a), (b), and (c). To obtain such approval the trustee may file at any time and from time to time, in his or her discretion, a verified petition with the clerk setting forth the trust accounts in detail, reporting his or her acts as trustee, and showing the condition of the trust estate. Unless the petition is filed with the court which has jurisdiction over the administration of the trust pursuant to Section 1120, the trustees shall attach to the petition a certified copy of the decree setting forth all of the trust provisions. Thereupon the clerk shall set the petition for hearing by the court. Notice of the hearing shall be given, along with a copy of the petition, 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 grant the petition upon such conditions as the court in its discretion deems proper. In the event the petition is granted, the trustee shall send the notice and file the proof of service required by subdivision (a) within six months and seven months, respectively, from the date the petition is granted. Such notice shall have attached to it a copy of the order of the court granting the petition. If no such petition is granted, the trust shall continue to be administered under subdivisions (b) and (c) of Section 1120 as if the testator had provided in the will that the superior court shall not lose jurisdiction of the estate by final distribution and subdivisions (b) and (c) of this section shall not apply to the trust. Nothing provided in this subdivision shall be interpreted to require any trustee to file a petition authorized by this subdivision.

(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.

(g) If a trust company, as defined in Section 107 of the Financial Code, is appointed as a successor trustee of a trust which, at the time of the appointment, is subject to the continuing jurisdiction of the superior court because it was not removed pursuant to the provisions of subdivision (d), the successor trustee shall send the notice and proof of service required by subdivision (a) within six months and seven months from the date of appointment, respectively. After a trust is no longer subject to the continuing jurisdiction of the superior court, whether by operation of law or by removal pursuant to subdivision (d), neither a change in trustees nor any other event shall cause the trust to be subject to the provisions of Sections 1120 to 1133, inclusive.

§ 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. (a) Proceedings under this article shall be commenced in the superior court of the county in which is located the principal place of administration of the trust. 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 cotrustees, the principal place of administration is the usual place of business where such records are kept, or, if none, the usual place of business or residence of any of the cotrustees as agreed upon by them, or, if none, the county in which any trustee resides or maintains a place of business.

(b) Proceedings under this article with respect to a trust created by a will subject to Section 1120.1a, which is not subject to the continuing jurisdiction of the superior court, shall be commenced either in the superior court described in subdivision (a) or in the superior court which has jurisdiction over the administration of the estate pursuant to Section 301.

§ 1138.4. 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. No filing fee shall be required of any petitioner in a proceeding commenced pursuant to this article with respect to a trust created by a will subject to Section 1120.1a which is not subject to the continuing jurisdiction of the superior court.

§ 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.