

First Supplement to Memorandum 84-27

Subject: Study L-640 - Trusts (Comments on Conduct of Trust Business and Qualification by Foreign Trustees)

Several alternative schemes for dealing with the question of the extent to which foreign trustees may act in California are presented in Memorandum 84-27. (Memorandum 84-27 supersedes another memorandum on this subject that was partially considered at the April meeting, Memorandum 84-28.) We have received comments on this subject from the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association (LABA Committee) and the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar (State Bar Committee); these comments are included in the letters attached to Memorandum 84-58. As yet, we have not received any reaction from the California Bankers Association on this issue.

The LABA Committee sees some virtue in a reciprocity scheme, but generally urges a conservative approach, after "further study and some input from the banking industry." (See Memorandum 84-58, Exhibit 1, pp. 5-6.) The LABA Committee suggests that some banks' trust departments may favor "limited reciprocity" while the commercial departments may oppose "any expansion of the powers of an out-of-state bank." It is also suggested that the scheme of permitting limited actions, so long as foreign trustees are not allowed to regularly conduct business in California, may be favored by some segment of the banking industry.

The State Bar Committee appears to favor the status quo. (See Memorandum 84-58, Exhibit 6, pp. 5-6.) If there is to be a change, however, corporate trustees should not be permitted to act as trustees in California

unless there are very tight rules and regulations which require that (1) the trust documents and records be kept in California; (2) California does not acquire jurisdiction over to [sic] a foreign trust solely by reason of the foreign trustees [sic] doing business in California; and (3) there should be no change of jurisdiction in the event of trust litigation.

The State Bar Committee fears that foreign trustees will not be responsive to requests for information because the records will be located in another state and that trust litigation will be removed to the main office of the foreign corporation. As far as jurisdiction is concerned,

there is no suggestion in the staff memorandums that jurisdiction be diluted or lost; in fact, the jurisdictional provisions in the draft statute attached to Memorandum 84-29 are stronger than existing law. Once there is jurisdiction, the issue of where records are kept seems minor. In any event, the principal place of administration of the trust is defined as the "trustee's usual place of business where the day-to-day records pertaining to the trust are kept." If the principal place of business of a trust is outside California, it would be excessive to require a foreign trustee of a foreign trust to keep records in California in order to administer some property in this state. In short, the staff does not anticipate the dangers suggested by the State Bar Committee.

Respectfully submitted,

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