

Memorandum 84-30

Subject: Study L-640 - Trusts (Transfer of Trust to or from California)

California provides relatively detailed procedures for transferring trusts to this state or from this state to another jurisdiction. Prob. Code §§ 1139-1139.19. A transfer may involve moving the place of administration of the trust or moving trust property. A trustee may want to use this procedure to be discharged from liability upon transfer out of California. See Prob. Code § 1139.5. The procedure for transferring into California is useful where the law of another state requires certain standards to be satisfied before permitting a trust or trust property to leave that state. See Prob. Code §§ 1139.16 (bond), 1139.17 (conditional order appointing trustee in California). The major factors in determining the appropriateness of transfer are whether transfer will facilitate economical and convenient administration and is in the best interests of the trust and its beneficiaries. See Prob. Code §§ 1139.4, 1139.16.

From 1953 until 1971, the statutes provided a procedure for transfers of only \$7500 worth of property in a testamentary trust created by a nonresident decedent. 1953 Cal. Stats. ch. 350. In 1971, this procedure was replaced by a broader statute governing transfers out of California; this statute was not limited to testamentary trusts and did not provide any value limitation. See Prob. Code §§ 1139-1139.7. In 1976, on Commission recommendation, a parallel procedure was enacted that governs transfers from another jurisdiction to California. See Prob. Code §§ 1139.10-1139.19; Recommendation Relating to Transfer of Out-of-State Trusts to California, 13 Cal. L. Revision Comm'n Reports 2101 (1976).

The staff is not aware of any serious substantive problems with these two procedures. Some redrafting will be necessary, however, to integrate them into the new trust law. Some drafting inconsistencies between the two procedures should also be eliminated in this process. Attached to this memorandum as Exhibit 1 is a staff draft of the transfer statutes as revised to fit into the new trust law. Exhibit 2 sets forth the text of existing law with comments showing the proposed disposition.

Draft §§ 4650, 4670. Application of transfer procedures

Existing Probate Code Section 1139(b) provides as follows:

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.

The purpose of this provision and a parallel provision in Section 1139.10(b) appears to be to preserve the former law, whatever that might have been. These provisions raise the issue of whether the statutory procedure should be exclusive. They appear to provide the exclusive means of transferring trusts where judicial approval is required, but not where judicial approval is merely desired. If there is California law requiring judicial approval for the transfer of some trusts, the staff has not discovered it. The staff does not discern any strong policy in favor of mandatory procedures and suggests that the Commission consider making clear that these procedures are not exclusive. If, however, the Commission determines that these procedures should be mandatory in some types of cases, then the statutes should clearly say so.

The purpose of the reference to "this chapter" in the first part of the sentence from Section 1139(b) quoted above is unclear. The "chapter" includes provisions commencing with Section 1120 that govern judicial administration of trusts generally. At the time of enactment, California law provided for judicial supervision of testamentary trusts. Presumably, certain testamentary trusts could not be transferred without judicial approval under the former law. The reference to "chapter" may also have been included so that Section 1132, which permits the court to order transfer of the place of administration or trust assets if jurisdiction over a testamentary trust is retained, would not be read as requiring judicial approval. However, this is unclear, and in any event, Section 1120 and related provisions have been amended recently to move away from mandatory judicial supervision.

The staff suggests the approach of making statutory transfer procedures optional. This is a complex subject that has developed largely free of statutory regulation, and there are many ways to transfer a trust. One authority lists the following:

(1) Obtaining a court order in the old jurisdiction authorizing a change of situs to the new jurisdiction.

(2) Appointment of a new trustee in the new jurisdiction and transferring the situs of the trust from the old jurisdiction to him.

(3) Changing situs without court proceedings pursuant to mechanics for making the change set forth in the trust instrument.

(4) Changing situs without court order by express consent of trustee and all beneficiaries.

(5) Changing situs by "decanting" the trust by having the old trustee convey substantially all the old trust's assets to a new trustee at the new situs; the old trust may continue as a "shell" at the old situs.

(6) Changing situs de facto and removing the trust assets from the old jurisdiction by placing them in a different form while they are still held by the trust: e.g., placing title to real estate in a corporation whose stock is held by the trust, or in a general or limited partnership with the trust as a general or limited partner, or mortgaging or pledging the property, with the trust as mortgagee or pledgee.

(7) Change of situs by terminating the old trust in the old jurisdiction and creating a new trust with the same terms in a new jurisdiction.

Hendrickson, Change of Situs of a Trust, Part II, Tr. & Est., Feb. 1979, at 109. Since it is not necessarily clear when a change of situs occurs, it seems futile to attempt to control the process by statute. However, if there were some policy that precludes removal of a trust or its assets in a well-defined set of cases, the statute could be made exclusive. It does not appear to the staff that there is such a policy.

There may also be serious objections to using the statutory procedure of this or some other state. In a discussion of the Pennsylvania transfer statute, Hendrickson characterizes it as "an in place network of red tape and a concomitant opportunity for the trustee to run up legal, accounting, court and guardian costs, payable out of the trust property, before effectively carrying out a change of trust situs." Hendrickson, Change of Situs of a trust, Part III, Tr. & Est., March 1979, at 26. This commentator also views the trust registration and change of place of registration procedures in the Uniform Probate Code as a "similar web of procedures, potentially costly to the trust and beneficiaries" and suggests, somewhat unrealistically, that the UPC will become the standard even in states that have not adopted it. Id., at 26, 28. This seems unrealistic because the registration provisions of UPC Sections 7-103 and 7-305 have not been adopted very widely even in UPC states. See the dismissal of the registration scheme in Memorandum 84-29.

Draft § 4652 etc. Definition of "beneficiary"

Existing statutes define "beneficiary" to mean "all persons in being who shall or may participate in the corpus or income of the trust." Prob. Code §§ 1139.7, 1139.19. Beneficiary is defined in Probate Code Section 24 (operative Jan. 1, 1985) as follows:

"Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

In the attached staff draft, we have not continued the repetitious definition of "beneficiary" in the two transfer procedures. The element in existing law that would not be continued in the definition in Section 24 is the reference to "persons in being". This is a general problem, however, and is dealt with in the notice provisions attached to Memorandum 84-29 relating to judicial administration. We see no reason to have special rules applicable to transfers.

Draft §§ 4653, 4674. Contents of petition

These provisions are largely the same as existing law, except that they have been redrafted to eliminate the necessity of stating the age of the existing trustees. The draft sections also limit the statement of age to trustees who are natural persons.

Draft Section 4653(h) continues the existing requirement that the petition state whether there is a civil action pending against the trustee in this state. Although we do not propose to change this provision, it might be asked why it is limited to civil actions. We also assume that this refers both to the existing and proposed trustee, although it might be read to mean the existing trustee. Perhaps this should be clarified. It is also not known whether this provision refers to actions against the trustee in the capacity as trustee.

Draft § 4655. Order granting transfer

One condition that must be satisfied before an order permitting transfer of a trust out of California is that "substantial" rights of California residents will not be materially affected. This sounds like it may be a term of art, but the staff is not clear as to its meaning. We have continued this provision in the draft statute on the assumption that it may be important.

Draft § 4676. Order accepting transfer, appointing trustee, requiring bond

We have attempted to straighten out the drafting in this section. Existing Section 1139.16 seems to give the court discretion, upon certain conditions, to require the trustee to post appropriate bond, if necessary. The grant of discretion and the "if necessary" appear to conflict. In the staff's view, bond should be required in this instance only if some other statute requires it, including a case where the trust itself requires bond. Hence, if the law of the other state requires bond as a condition of transfer, it should be required and not be a matter of discretion. If the Commission decides to continue the existing scheme relating to trustees' bonds, then a statute like Probate Section 1127 will generally require bond of a trustee appointed by the court. The general question of trustees' bonds is considered in Memorandum 84-26.

Draft § 4678. Administration of transferred trust

This section provides a simple rule in place of the more complicated provisions in Probate Code Section 1139.18. Under existing law, written voluntary express trusts are administered as other such trusts, except that special venue rules are provided. Other trusts are treated as if they had been subject to supervision in California from the time of creation.

Respectfully submitted,

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EXHIBIT 1

Staff Draft of Probate Code §§ 4650-4679

27644

CHAPTER 2. TRANSFER OF TRUST TO ANOTHER JURISDICTION

§ 4650. Application of chapter

4650. (a) This chapter applies to all of the following:

(1) A written trust.

(2) A trust subject to Chapter 8 (commencing with Section 6320) of Part 1 of Division 6.

(3) Any other trust to which the provisions of this chapter are made applicable by statute or trust instrument.

(b) This chapter does not prevent the transfer of the place of administration of a trust or of trust property to another jurisdiction by any other available means.

Comment. Subdivision (a) of Section 4650 continues the substance of former Section 1139(a). Subdivision (b) supersedes former Section 1139(b). Under the definition of "trust" in Section 82, this chapter also applies to charitable trusts. See also Sections 4602 (venue), 4630(b)(14) (proceedings for transfer of trust).

Note. This section reflects the enactment of the wills and intestate succession bill, AB 25. See 1983 Cal. Stats. ch. 842 (operative Jan. 1, 1985). Draft Sections 4602 and 4630 are attached to Memorandum 84-29. The reference to Section 6320 et seq. involves trusts for insurance or employee benefits.

27807

§ 4651. Transfer of place of administration or property from California

4651. The superior court may make an order for the transfer of the place of administration of a trust or the transfer of some or all of the trust property to a jurisdiction outside this state as provided in this chapter.

Comment. Section 4651 continues the substance of the first part of former Section 1139.1 and supersedes former Section 1132. See also Section 62 ("property" defined).

27808

§ 4652. Petition for transfer

4652. A petition for an order authorizing a transfer may be filed by the trustee or by a beneficiary.

Comment. Section 4652 continues the first sentence of former Section 1139.2 and the substance of part of former Section 1139.1. See also Sections 24 ("beneficiary" defined), 84 ("trustee" defined).

27810

§ 4653. Contents of petition

4653. The petition shall be verified and shall set forth all of the following:

(a) The names and places of residence of:

(1) The trustee administering the trust in this state.

(2) The trustee, including any domiciliary trustee, who will administer the trust or trust property in the other jurisdiction.

(b) The names, ages, and places of residence of the beneficiaries, as far as known to the petitioner.

(c) Whether the trustee who will administer the trust in the other jurisdiction has agreed to accept the trust. If so, the acceptance or a [true] copy 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 who will administer the trust in the other jurisdiction and the amount of fiduciary bond, if any. If the trustee is a natural person, the statement shall include the trustee's age.

(e) A general statement of the nature and value of the property of any trust of the same trustor under administration in the other jurisdiction by the trustee who will administer the trust in the other jurisdiction.

(f) The name of the court, if any, having jurisdiction of the trustee in the other jurisdiction or of its accounts or in which a proceeding may be had with respect to administration of the trust or the trustee's accounts.

(g) A statement of the character, condition, location, and value of the trust property sought to be transferred.

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

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

Comment. Section 4653 continues the substance of the part of former Section 1139.2 providing for the contents of the petition for transfer. See also Section 24 ("beneficiary" defined).

§ 4654. Notice and hearing

4654. (a) At least [30] days before the time set for the hearing, the petitioner shall cause a copy of the notice of the hearing to be mailed to each of the persons named in the petition at their places of residence stated in the petition.

(b) If the trust involves or may involve a charitable disposition of a type described in Section 328, a copy of the notice shall be mailed to or served on the Attorney General at least [20] days before the hearing.

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

Comment. Section 4654 continues the substance of the last three sentences of former Section 1139.3. See also Section 4001 (clerk to set petition for hearing). If a beneficiary is named in the petition and so is required to be given notice, Section 4618 may apply.

Note. Draft Sections 4001 and 4618 are attached to Memorandum 84-29.

§ 4655. Order granting transfer

4655. The court may, in its discretion, grant the petition and order the trustee to transfer the trust property or to transfer the place of administration of the trust to the other jurisdiction if, after hearing, all of the following appear to the court:

(a) The transfer of the trust property to a trustee in another jurisdiction, or the transfer of the place of administration of the trust to another jurisdiction, will facilitate the economical and convenient administration of the trust and promote the best interests of the trust and those interested in it.

(b) The substantial rights of residents of this state will not be materially affected by the transfer.

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

(d) Any new trustee to whom the trust property is to be transferred is qualified, willing, and able to administer the trust or trust property under the terms of the trust.

Comment. Section 4655 continues the substance of former Section 1139.4 and part of former Section 1139.1.

Note. The phrase "qualified, willing, and able" is redundant, but is continued here because it appears in existing law.

27813

§ 4656. Manner of transfer; discharge of trustee

4656. If a transfer is ordered under this chapter, the court may direct the manner of transfer and impose such terms and conditions as may be just, including, but not limited to, a requirement for the substitution of a successor trustee in any pending litigation in this state. The delivery of property in accordance with the order of the court is a full discharge of the trustee in relation to all property embraced in the order.

Comment. Section 4656 continues former Section 1139.5.

24829

CHAPTER 3. TRANSFER OF TRUST FROM ANOTHER JURISDICTION

§ 4670. Application of chapter

4670. (a) This chapter applies to a written trust, or portion thereof, administered in a jurisdiction outside this state.

(b) This chapter does not prevent the transfer of the place of administration of a trust or of trust property to this state by any other available means.

Comment. Subdivision (a) of Section 4670 continues the substance of former Section 1139.10(a). See Section 82 ("trust" defined). This section makes this chapter applicable to the transfer to California of the place of administration of trusts or trust property administered in a jurisdiction outside California. This chapter applies to trusts administered in foreign countries as well as those administered in other states. Subdivision (b) supersedes former Section 1139.10(b). See also Section 4630(b)(14) (proceedings for transfer of trust).

26255

§ 4671. Transfer of place of administration or property to California

4671. The superior court may make an order 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 trust property in another jurisdiction to a trustee in this state as provided in this chapter.

Comment. Section 4671 continues former Section 1139.11 and is comparable to part of Section 4651. See also Section 62 ("property" defined).

§ 4672. Petition for transfer

4672. A petition for an order accepting a transfer may be filed by the trustee or by a beneficiary.

Comment. Section 4672 continues former Section 1139.12 and is comparable to Section 4652. See also Sections 24 ("beneficiary" defined), 84 ("trustee" defined).

§ 4673. Venue

4673. (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 pursuant to Section 4600 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 resides or (2) a substantial portion of the trust property to be transferred is located or will be located.

Comment. Section 4673 continues the substance of former Section 1139.13.

Note. Draft Section 4600 is attached to Memorandum 84-29. The staff would like to eliminate special venue rules. The subject of venue where there is a nonresident trustee may be important in situations that do not involve a transferred trust. Accordingly, it appears that the venue rule stated in draft Section 4673(b) should be generalized.

§ 4674. Contents of petition

4674. The petition shall be verified and shall set forth all of the following:

(a) The names 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 trust property will be transferred.

(b) The names, ages, and places of residence of all beneficiaries, as far as known to the petitioner.

(c) Whether the trust has been subject to supervision over administration in a jurisdiction outside this state. If so, the petition shall state whether a petition or appropriate request for transfer of place of

administration of the trust or trust property to this state has been filed, if necessary, with the court in the other jurisdiction, and the status of the petition or request.

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

(e) 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. If the trustee is a natural person, the statement shall include the trustee's age.

(f) 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.

(g) A statement of the character, condition, location, and value of the trust property sought to be transferred.

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

Comment. Section 4674 generally continues former Section 1139.14, and is comparable to Section 4653. See also Section 24 ("beneficiary" defined).

26817

§ 4675. Notice and hearing

4675. (a) At least [30] days before the time set for the hearing, the petitioner shall cause a copy of the notice of the hearing to be mailed to each of the persons named in the petition at their places of residence stated in the petition.

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

Comment. Section 4675 continues the second sentence of subdivision (a) and subdivision (b) of former Section 1139.15 and is comparable to subdivisions (a) and (c) of Section 4654. If a beneficiary is named in the petition and so is required to be given notice, Section 4618 may apply.

26950

§ 4676. Order accepting transfer and appointing trustee

4676. (a) The court may, in its discretion, grant the petition and issue an order accepting transfer of trust property or the place of

administration of the trust to this state and appoint a trustee to administer the trust in this state, if, after hearing, all of the following appear to the court:

(1) The transfer of the trust property to a trustee in this state, or the transfer of the 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 in it.

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

(3) The trustee appointed by the court to administer the trust in this state, and to whom the trust assets are to be transferred, is qualified, willing, and able to administer the trust or trust property under the terms of the trust.

(4) The proper court in the other jurisdiction has approved the transfer if such approval is necessary under the law of the other jurisdiction.

(b) If the court grants the petition under subdivision (a), the court shall require the trustee to post appropriate bond if necessary under the law of the other jurisdiction or of this state.

Comment. Section 4676 continues the substance of former Section 1139.16, but makes clear that a bond is required only if the law of the other jurisdiction or California so provides. [See, e.g., Section ____ (bond required of trustee appointed by court).]

Note. The phrase "qualified, willing, and able" is redundant but is continued here because it is in existing law.

26952

§ 4677. Conditional order accepting transfer

4677. If appropriate to facilitate transfer of the trust property 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.

Comment. Section 4677 continues former Section 1139.17. This section provides a method whereby the California court can indicate its willingness to accept jurisdiction over a trust administered in another jurisdiction where the law of the other jurisdiction requires appointment of a trustee in the proposed new place of administration before approving transfer. See, e.g., Mass. Gen. Laws Ann. ch. 206, § 29 (West 1969); N.C. Gen. Stat. §§ 36-6 to 36-8 (1966).

§ 4678. Administration of transferred trust

4678. A trust transferred to this state pursuant to this chapter shall be administered in the same manner as a trust of that type created in this state.

Comment. Section 4678 supersedes former Section 1139.18. Under Section 4678 a transferred trust is treated the same as a trust that was created in California. See Prob. Code §§ 4600-_____ (trust administration in general); Gov't Code §§ 12580-12597 (supervision of charitable trusts).

EXHIBIT 2

STAFF DRAFT

Disposition of Existing Law
on Transfer of Trusts

Article 3. Transfer to Another Jurisdiction

§ 1139 (repealed). Application of article

(a) This article applies to all of the following:

(1) A trust over which jurisdiction continues after distribution, as provided by Section 1120 * * *.

(2) A trust subject to Chapter 8 (commencing with Section 6320) of Part 1 of Division 6.

(3) A trust subject to Article 2.5 (commencing with Section 1138) * * *.

(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.

Comment. The substance of subdivision (a) of former Section 1139 is continued in Section 4650(a). Subdivision (b) is superseded by Section 4650(b). Subdivision (c) is not continued because it is no longer needed.

§ 1139.1 (repealed). Transfer of place of administration or assets

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.

Comment. The substance of the introductory clause of Section 1139.1 is continued in Section 4652. Clause (a) pertaining to supervised trusts is not continued. See the Comment to former Section 1120. The substance of clause (b) is continued in Sections 4652 (who may petition) and 4655(c) (order granting transfer if not violative of terms of trust).

§ 1139.2 (repealed). Contents of petition for transfer

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.

Comment. The first sentence of former Section 1139.2 is continued in Section 4652. The remainder of former Section 1139.2 is continued in Section 4653, except that a statement of the age of a trustee is required only for a proposed trustee who is a natural person.

1139.3 (repealed). Notice and hearing

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.

Comment. The provision of former Section 1139.3 requiring the clerk to set the petition for hearing is continued in Section 4001. The remainder of the first sentence is not continued. The substance of the last three sentences is continued in Section 4654.

§ 1139.4 (repealed). Court order

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.

Comment. The substance of former Section 1139.4 is continued in Section 4655.

§ 1139.5 (repealed). Manner of transfer; 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.

Comment. Former Section 1139.5 is continued in Section 4656.

§ 1139.6 (repealed). Other trusts

In the case of trusts not subject to * * * Article 1 (commencing with Section 1120) or Article 2.5 (commencing with Section 1138) of this chapter, or Chapter 8 (commencing with Section 6320) of Part 1 of Division 6, 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.

Comment. Former Section 1139.6 is not continued. See Sections 4600 (principal place of administration), 4601 (jurisdiction), 4602 (venue), 4650 (application of transfer procedure).

§ 1139.7 (repealed). "Beneficiary" defined

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.

Comment. Former Section 1139.7 is superseded by Section 24.

Article 4. Transfer From Another Jurisdiction

§ 1139.10 (repealed). 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.

Comment. Subdivision (a) of former Section 1139.10 is continued in Section 4670(a). Subdivision (b) is superseded by Section 4670(b).

§ 1139.11 (repealed). 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.

Comment. Former Section 1139.11 is continued in Section 4671.

§ 1139.12 (repealed). Petition for transfer

A petition for an order accepting a transfer may be filed by the trustee or by a beneficiary of the trust.

Comment. Former Section 1139.12 is continued in Section 4672.

§ 1139.13 (repealed). 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.

Comment. The substance of former Section 1139.13 is continued in Section 4673.

§ 1139.14 (repealed). Contents of petition for transfer

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.

Comment. Former Section 1139.14 is continued in Section 4674, except that a statement of the age of a trustee is required only for a proposed trustee who is a natural person.

§ 1139.15 (repealed). 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.

Comment. The part of subdivision (a) of former Section 1139.15 requiring the clerk to set the petition for hearing is continued in Section 4001. The remainder of the first sentence of subdivision (a) is not continued. The substance of the second sentence of subdivision (a) and subdivision (b) is continued in Section 4675.

§ 1139.16 (repealed). 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.

Comment. The substance of former Section 1139.16 is continued in Section 4676, except that Section 4676(b) makes clear that bond is required only if the law of the other jurisdiction or California so provides.

§ 1139.17 (repealed). 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.

Comment. Former Section 1139.17 is continued in Section 4677.

§ 1139.18 (repealed). 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.

Comment. Former Section 1139.18 is superseded by Section 4678.

§ 1139.19 (repealed). "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.

Comment. Section 1139.19 is superseded by Section 24.