

Memorandum 86-16

Subject: Study L-640 - Probate Code (Trust Law--Amendments to AB 2652)

Assembly Bill 2652 has been introduced to effectuate the Commission's Recommendation Proposing the Trust Law (December 1985). A copy of the bill is attached to this memorandum. Set out in Exhibit 1 is a set of proposed amendments to AB 2652. These amendments are technical and non-substantive. Most of these amendments correct spelling and other errors that occurred during the preparation of the bill. Some additional wording changes are proposed for the sake of consistency.

The staff notes the following:

Probate Code § 83. Trust company

Amendment 9 in Exhibit 1 would revise the definition of "trust company" so that it is broad enough to include savings and loan associations which are permitted by Financial Code Section 6515 to engage in a trust business. Section 83, as amended, and with its Comment would read as follows:

83. "Trust company" means an entity that is authorized to engage in and conduct a trust business in this state.

Comment. Section 83 is drawn from parts of former Probate Code Sections 480 and 1120.1a. See also Section 300 (appointment of trust company as executor or administrator), 15643 (vacancy in office of trustee), 17351-17353 (removal of trust from continuing court jurisdiction). Entities that are authorized to conduct a trust business in this state include state chartered commercial banks (see Fin. Code §§ 107, 1500.1) and national banking associations (see Fin. Code §§ 1502, 1503), corporations authorized to conduct a trust business (see Fin. Code § 107), trust departments of title insurance companies (see Fin. Code §§ 107, 1501; Ins. Code §§ 12392, 12395), and state and federal savings and loan associations (see Fin. Code §§ 5102, 6515). See also Fin. Code § 106 ("trust business" defined). In order to fall within the definition of "trust company" in Section 83, a corporation, association, or other entity must satisfy the requirements of state or federal law that apply to the particular type of entity.

"Assets" and "Property"

Amendments 13, 32-33, 37-43, and 51 have the effect of substituting "property" for "assets" in several places in the bill, including the Revised Uniform Principal and Income Act. "Property" is defined in Probate Code Section 62 to include "both real and personal property or any interest therein and means anything that may be the subject of ownership." "Assets" is not defined. Accordingly, it makes sense to use the defined term consistently.

References to Spendthrift Trusts

Some parts of the bill that were drafted before preparation of Sections 15300-15309 governing trusts restraining transfer of beneficiaries' interests refer to "spendthrift or similar protective trusts." However, the governing statutes do not use this terminology, but rather refer to the restraint on transfer that results. For the sake of consistency, Amendments 22-26 would conform the language in Sections 15408 and 15409 relating to modification and termination of trusts to the language of Sections 15300-15309 governing restraints on transfer. Code of Civil Procedure Section 709.010 was revised in a manner that eliminates use of the term "spendthrift trust."

Expenses of Guardian ad Litem

Amendment 48 would add a provision for assessing the expenses of a guardian ad litem, drawn from Code of Civil Procedure Section 373.5.

If we receive any additional proposed amendments before the February meeting, we will forward them to the Commission in one or more supplements to this memorandum.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

Staff Draft

EXHIBIT 1

AMENDMENTS TO ASSEMBLY BILL 2652

Amendment 1

In line 12 of the title, after "59" insert:
of Division 10 of Title 3

Amendment 2

On page 19, line 4, strike out "16500" and insert:
17000

Amendment 3

On page 19, line 11, strike out "assets" and insert:
property

Amendment 4

On page 20, line 39, strike out "1" and insert:
2

Amendment 5

On page 22, line 25, after "10" insert:
of Title 3

Amendment 6

On page 27, line 18, after "with" insert:
the

Amendment 7

On page 27, line 20, strike out "purdent" and insert:
prudent

Amendment 8

On page 29, line 38, strike out "under" and insert:
subject to

Amendment 9

On page 30, strike out lines 20 and 21, and insert:

83. "Trust company" means an entity that is authorized to engage in and conduct a trust business in this state.

Amendment 10

On page 31, line 19, strike out "the"

Amendment 11

On page 33, line 12, after "administrator" insert:

~~of trustee~~

Amendment 12

On page 35, line 31, strike out "execution" and insert:
enforcement of a money judgment

Amendment 13

On page 37, lines 21 and 22, strike out "assets of the trust" and insert:
trust property

Amendment 14

On page 39, strike out lines 25 and 26 and, in large and small capital letters, insert:

Chapter 1. Creation and Validity of Trusts

Amendment 15

On page 41, line 33, after "court" insert:

may

Amendment 16

On page 41, line 36, strike out "satisfy" and insert:
satisfy

Amendment 17

On page 44, line 10, after the comma, insert:
the court may

Amendment 18

On page 44, line 15, after the comma, insert:
the court may

Amendment 19

On page 44, line 27, after the comma, insert:
the court may

Amendment 20

On page 45, line 6, strike out "satisfy" and insert:
satisfy

Amendment 21

On page 46, line 40, after "beneficiaries" insert:
who

Amendment 22

On page 47, line 40, strike out "spendthrift or similar
protective"

Amendment 23

On page 48, line 1, strike out "provision in the trust" and
insert:
trust provision restraining transfer of the beneficiary's interest

Amendment 24

On page 48, lines 13 and 14, strike out "spendthrift or
similar protective provision in the"

Amendment 25

On page 48, line 14, after "trust" insert:
provision restraining transfer of the beneficiary's interest

Amendment 26

On page 48, strike out line 18 and insert:
restraint on transfer.

Amendment 27

On page 49, line 25, after "within" insert:

a

Amendment 28

On page 57, line 23, strike out "comtemplation" and insert:
contemplation

Amendment 29

On page 59, line 28, strike out "to," and insert:
to

Amendment 30

On page 61, line 29, after "account" insert:
or report

Amendment 31

On page 62, line 35, strike out "aritle" and insert:
article

Amendment 32

On page 63, line 9, strike out "assets" and insert:
property

Amendment 33

On page 63, line 20, strike out "assets" and insert:
property

Amendment 34

On page 65, line 7, after "1120.2" insert:
of the Probate Code

Amendment 35

On page 67, line 15, strike out "following powers" and
insert:
power to do any of the following

Amendment 36

On page 68, line 8, strike out "following powers" and insert:
power to do any of the following

Amendment 37

On page 72, line 36, strike out "asset" and insert:
item of property

Amendment 38

On page 72, line 37, strike out "asset" and insert:
item of property

Amendment 39

On page 73, line 2, strike out "an asset" and insert:
property

Amendment 40

On page 73, line 12, strike out "an"

Amendment 41

On page 73, line 13, strike out "asset" and insert:
property

Amendment 42

On page 73, line 15, strike out "asset" and insert:
property

Amendment 43

On page 73, line 33, strike out "assets" and insert:
property

Amendment 44

On page 79, strike out line 14 and insert:
trustee.

Amendment 45

On page 79, line 31, strike out "indebtedness, including" and insert:
indebtedness (including

Amendment 46

On page 79, line 32, strike out "principal," and insert:
principal),

Amendment 47

On page 92, strike out line 11 and insert:
inadequate:

Amendment 48

On page 92, line 22, strike out line 22, and insert:
(c) The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of trust property or by the petitioner.

(d) Sections 372 to 373.5, inclusive, of the Code of Civil

Amendment 49

On page 97, line 38, strike out "at their respective" and insert a period

Amendment 50

On page 97, strike out line 39

Amendment 51

On page 98, line 3, strike out "jurisdiction" and insert:
jurisdiction

Amendment 52

On page 100, line 24, strike out "assets are" and insert:
property is