

First Supplement to Memorandum 86-16

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

The staff proposes that Probate Code Section 15003 in the trust bill be amended to read as follows:

§ 15003. Constructive and resulting trusts and other confidential relationships unaffected

15003. (a) Nothing in this division affects the law relating to constructive or resulting trusts.

(b) The repeal of Title 8 (commencing with Section 2215) of Part 4 of Division 3 of the Civil Code is not intended to alter the general rules applied by the courts to fiduciary and confidential relationships, except as to express trusts governed by this division.

Comment. Subdivision (a) of Section 15003 makes clear that the provisions in this division, relating as they do to express trusts, have no effect on the law relating to constructive and resulting trusts. See Section 82 ("trust" defined). Thus Section 15003 supersedes various provisions of former law relating to "involuntary" trusts. See former Civil Code §§ 856, 2215, 2217, 2275. For provisions relating to "involuntary trusts," see Civil Code Sections 2223-2225.

Subdivision (b) makes clear that the repeal of the Civil Code provisions relating to trusts, particularly former Civil Code Sections 2215-2244, is not intended to affect the general fiduciary principles applicable to confidential relationships. Over the years, courts have cited these provisions in cases involving different types of confidential and fiduciary relationships. See, e.g., *Baker v. Baker*, 260 Cal. App. 2d 583, 586, 67 Cal. Rptr. 523 (1968) (husband and wife); *Bone v. Hayes*, 154 Cal. 759, 763, 99 P. 172 (1908) (agent and principal); *Wickersham v. Crittenden*, 93 Cal. 17, 29-30, 28 P. 788 (1892) (corporate officers); *City of Fort Bragg v. Brandon*, 41 Cal. App. 227, 229, 82 P. 454 (1919) (municipalities); *Cooley v. Miller & Lux*, 168 Cal. 120, 131, 142 P. 83 (1914) (attorney and client). On the other hand, courts have also decided cases in this area on the basis of general equitable principles without citing to the former Civil Code provisions. See, e.g., *Estate of Kromey*, 98 Cal.

sent to a creditor at least a month before the end of the 4-month period, the creditor's claim would not be cut off until one month after actual notice was sent. In any event, under the Uniform Probate Code, all creditors claims would be cut off if not made within 3 years after the decedent's death, or earlier if barred by the applicable statute of limitations, regardless whether notice of any kind, by publication or otherwise, was given.

The State Bar Executive Committee has also considered this matter, and favors the approach of giving notice only to creditors actually known to the personal representative, although there was some sentiment on the committee for requiring notice to reasonably ascertainable creditors as well as for not requiring additional notice at all. The Executive Committee was of the overall opinion that notice to known creditors would safeguard the finality of probate court proceedings and still provide procedural due process to creditors. The committee also felt there should be some differentiation between routine creditors who have liquidated amounts due, such as charge cards, hospitals, doctors, dentists, etc., and those creditors who have causes of action. The committee hopes to have a further report in the very near future to indicate how such a differentiation would be made.

It is the staff's hope that the Commission, after reading the attached report and discussing the problems, will be able to make some initial policy decisions, after which the staff will begin the process of drafting implementing legislation. We would like to be able to have a draft included in the opening administration tentative recommendation when that is distributed for comment.

Respectfully submitted,

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