

Fourth Supplement to Memorandum 86-16

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

The staff has some additional suggestions for amendments to AB 2652 (copy attached to Memorandum 86-16):

Probate Code § 2574. Cross-reference in guardianship-conservatorship statute

The following is an additional technical amendment that needs to be made in AB 2652:

Amendment ____

On page 36, between lines 30 and 31, insert:

SEC. 36.5. Section 2574 of the Probate Code is amended to read:

2574. (a) Subject to subdivision (b), the guardian or conservator, without authorization of the court, may invest funds of the estate pursuant to this section in:

(1) Direct obligations of the United States, or of this state, having a maturity at the time of acquisition of not more than five years.

(2) United States Treasury bonds redeemable at par value on the death of the holder for payment of federal estate taxes, regardless of maturity date.

(3) Stocks, bonds, and other securities listed on an established stock or bond exchange in the United States which are purchased on such exchange.

(4) Eligible securities for the investment of surplus state moneys as provided for in Section 16430 of the Government Code.

(b) In making and retaining investments made under this section, the guardian or conservator shall conform to Section ~~2261~~ 16040 of the ~~Civil~~ Probate Code and shall take into consideration the circumstances of the estate, indicated cash needs, and, if reasonably ascertainable, the date of the prospective termination of the guardianship or conservatorship.

(c) Nothing in this section limits the authority of the guardian or conservator to seek court authorization for any investment, or to make other investments with court authorization, as provided in this division.

The comment to this section should read: "Section 2574 is amended to correct a cross-reference."

Proposed Probate Code § 16460(c). Transitional provision for limitations on proceedings against trustee

Subdivision (c) of Section 16460 provides that the new provision governing limitations on proceedings against a trustee for breach of trust does not apply to claims that arose before July 1, 1987. The reason for this rule is that pre-operative date claims should not be cut off by imposition of a three-year statute of limitations in place of the four-year statute. However, the staff thinks that the new rules on commencing the running of the three-year statute and the nature of the disclosure to the beneficiary that starts the statute running should apply to claims that arose before the operative date. This would have the effect of applying consistent rules to all claims, regardless of when they arose, but would not deprive any beneficiary of a fair opportunity to petition the court with regard to the claim.

To accomplish this change, Section 16460 would be amended as follows:

§ 16460. Limitations on proceedings against trustee

16460. (a) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise:

(1) If a beneficiary has received an interim or final account in writing, or other written report, that adequately discloses the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within three years after receipt of the account or report. An account or report adequately discloses existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into the existence of the claim.

(2) If an interim or final account or other report does not adequately disclose the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within three years after the beneficiary discovered, or reasonably should have discovered, the subject of the claim.

(b) For the purpose of subdivision (a), a beneficiary is deemed to have received an account or report, as follows:

(1) In the case of an adult who is reasonably capable of understanding the account or report, if it is received by the adult personally.

(2) In the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the person's legal representative, including a guardian ad litem or other person appointed for this purpose.

(3) In the case of a minor, if it is received by the minor's guardian or, if the minor does not have a guardian, if it is received by the minor's parent so long as the parent does not have a conflict of interest.

(c) The limitations period applicable to actions by a beneficiary against a trustee on a claim that arose before July 1, 1987, is governed by prior law and not by this section, except that this section, and not prior law, applies to a claim arising before July 1, 1987, that is adequately disclosed pursuant to this section after June 30, 1987.

Comment. Section 16460 is a new provision drawn in part from Section 7-307 of the Uniform Probate Code (1977). Section 16460 supersedes the provisions of former Civil Code Section 2282 relating to discharge of trustees. For a provision governing consent of beneficiaries to relieve the trustee of liability, see Section 16463. See also Sections 16461 (exculpation of trustee by provision in trust instrument), 16462 (nonliability for following instructions under revocable trust). During the time that a trust is revocable, the person holding the power to revoke is the one who must receive the account or report in order to commence the running of the limitations period provided in this section. See Sections 15800 (limits on rights of beneficiary of revocable trust), 16064(b) (exceptions to duty to account). Under prior law, the four-year limitations period provided in Code of Civil Procedure Section 343 was applied to actions for breach of express trusts. See *Cortelyou v. Imperial Land Co.*, 166 Cal. 14, 20, 134 P. 981 (1913); *Oeth v. Mason*, 247 Cal. App. 2d 805, 811-12, 56 Cal. Rptr. 69 (1967). Section 16460 is an exception to the four-year rule provided in Code of Civil Procedure Section 343.

Subdivision (b) provides special rules concerning who must receive the account or report for it to have the effect of barring claims based on the information disclosed. Under subdivision (b)(2) it may be appropriate to seek the appointment of a guardian ad litem or some other person to receive accounts and reports where no conservator has been appointed for the person and there is serious doubt that the beneficiary can understand the account or report.

Subdivision (c) makes clear that the three-year statute of limitations provided by subdivision (a) does not apply to claims arising prior to the operative date unless the claim is adequately disclosed pursuant to subdivisions (a) and (b), in which case this section applies just as if the claim had arisen after the operative date.

For provisions relating to the duty to report information and account to beneficiaries, see Sections 16060-16064.

Respectfully submitted,

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