

Memorandum 86-51

Subject: Study L-1045 - Estate and Trust Code (Definitions)

Attached to this memorandum is a draft of general definitions for the Estate and Trust Code. (See Exhibit 1.) This memorandum supersedes the previous memorandum on this subject (86-31), which was never considered. Also attached is a draft of comments to sections that would be repealed. (See Exhibit 2.)

Most of the definitions in this draft appear in the equivalent part of the existing Probate Code. Technical questions regarding these definitions are mentioned in a "Note" following the relevant section. There are no important policy issues in this area. Additional revisions may need to be made in this material in the future as we proceed through other divisions of the Estate and Trust Code.

We have received some comments on the definitions from the State Bar. These comments are contained in a letter from K. Bruce Friedman which was directed toward the earlier memorandum on definitions. (See Exhibit 3.) For the sake of convenience, a "State Bar Comment" is appended to each relevant section in the draft.

Respectfully submitted,

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Staff Counsel

Staff Draft

Exhibit 1

PART 2. WORDS AND PHRASES DEFINED

§ 20. Application of definitions

20. Unless the provision or context otherwise requires, the words and phrases defined in this part govern the construction of this code.

Comment. Section 20 supersedes former Probate Code Section 20.

§ 21. Account

21. "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangement.

Comment. Section 21 continues former Probate Code Section 21 without change. Section 21 also continues former Probate Code Section 261 ("account" defined for purposes of disclaimer statute) without change. This section is the same in substance as Section 6-101(1) of the Uniform Probate Code (1977).

Note. This same definition appears in § 5101(a) (multiple party accounts). For the time being, we have left the duplicate definition in Section 5101 since it is one subdivision out of 16. If or when Section 5101 revised, it would be appropriate to delete its definition of "account" or specifically cross-refer to the definition in Section 21.

§ 22. Account in an insured savings and loan association

22. (a) "Account in an insured savings and loan association" means a savings account or mutual capital certificate of either of the following:

(1) A federal association.

(2) A savings association doing business in this state which is an "insured institution" as defined in Title IV of the National Housing Act (12 U.S.C. Sec. 1724 et seq.).

(b) As used in this section, the terms "federal association," "mutual capital certificate," "savings account," and "savings association" have the meanings provided in Article 2 (commencing with Section 5100) of Chapter 1 of Division 2 of the Financial Code.

(c) Any reference in the statutes of this state to the definition of the term "account in an insured savings and loan association" in former Section 1406 or 1510 of the Probate Code shall be deemed to be a reference to the definition of that term in this section.

Comment. Subdivisions (a) of Section 22 continues subdivision (a) of former Probate Code Section 1406 without change. Subdivision (b) restates subdivision (b) of former Probate Code Section 1406 without substantive change. Subdivision (c) continues part of subdivision (c) of former Probate Code Section 1490 and adds the reference to former Probate Code Section 1406.

Note. The term "account in an insured savings and loan association" is used in Sections [541.1], 2328, 2453, 2456, 3412, 3413, 3500, 3602, 3611, 9700, and 9703, and in Section 21207 of the Government Code.

This definition is troublesome. On the one hand, it is quite detailed and technical; on the other, it is nearly devoid of meaning, even after consulting the Financial Code. It should be compared with the definition of "shares of an insured credit union," which suffers from the same defects. By way of contrast, there is no definition of a term such as "an account in an insured bank." Is it good to draft these definitions so technically that they must be revised every five years or so to take account of changes in state or federal law? Assuming that this and similar definitions are relevant only to permissible investments, isn't it the account that should be insured (or otherwise adequately secured) rather than the financial institution?

§ 23. Annulment of marriage

23. "Annulment of marriage" includes adjudication of nullity of marriage.

Comment. Section 23 continues former Probate Code Section 22 without change.

§ 24. Beneficiary

24. "Beneficiary:

(a) In the case of a decedent's estate, means an heir or devisee.

(b) In the case of a trust, means a beneficiary of the trust, and includes a person who has any present or future interest, vested or contingent, and an owner of an interest by assignment or other transfer.

(c) In the case of a charitable trust, includes any person entitled to enforce the trust.

Comment. Subdivision (a) of Section 24 is new and is intended for drafting convenience. Subdivisions (b) and (c) restate former Probate Code Section 24 without substantive change. Subdivisions (b) and (c) are the same in substance as Section 1-201(2) of the Uniform Probate Code (1977). See also Section 262 ("beneficiary" defined for purposes of disclaimer statute).

CROSS-REFERENCES

Definitions

Devisee § 34

Heirs § 44

State Bar comment:

1. Section 24 includes "heir" in the definition of "beneficiary." In a testate estate, does this require the personal representative to give notice to a non-devisee after commencement of the proceedings? The Section makes reference to "devisee." Under a pour-over will, is the devisee the trustee, or does the term include all beneficiaries of the trust? The term "devisee" should be defined.

Staff response: As to the first concern, draft Section 8110 governs notice upon opening estate administration and provides for notice to known heirs and devisees. The definition in this section does not govern the persons to whom notice of opening probate must be given. The extent of notice to heirs depends upon the phrasing of Section 8110, which is still subject to review.

As to the question relating to "devisee," it should be noted that "devisee" is defined in Section 34 to mean the trustee or trust, in the case of a devise to a trust, and to exclude beneficiaries.

§ 26. Child

26. "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved.

Comment. Section 26 continues former Probate Code Section 26 without change. This section is the same as the first part of Section 1-201(3) of the Uniform Probate Code (1977).

State Bar comment:

2. Under Section 26, does a foster child or step-child come within the definition of "child"?

Staff response: The definitions of "child" and "parent" are rather opaque. Reference must be made to the substantive rules of intestate succession in order to flesh out their meaning. See Prob. Code §§ 6408, 6408.5. It should also be noted that the definitions of child and parent and the provisions governing intestate succession are existing law.

§ 27. Clerk

27. "Clerk" means the clerk of the court having jurisdiction of the estate in question.

Comment. Section 27 is new. It is intended for drafting convenience.

§ 28. Community property

28. "Community property" means:

(a) Community property heretofore or hereafter acquired during marriage by a married person while domiciled in this state.

(b) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired during the marriage by a married person while domiciled elsewhere, that is community property, or a substantially equivalent type of marital property, under the laws of the place where the acquiring spouse was domiciled at the time of its acquisition.

(c) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired during the marriage by a married person in exchange for real or personal property, wherever situated, that is community property, or a substantially equivalent type of marital property, under the laws of the place where the acquiring spouse was domiciled at the time the property so exchanged was acquired.

Comment. Section 28 continues former Probate Code Section 28 without change, except that the phrase "as used in this code" is omitted since it is unnecessary in light of Section 20 (application of definitions).

Subdivision (a) is consistent with Civil Code Sections 687 and 5110.

Under subdivisions (b) and (c), community property acquired while a spouse is domiciled in another community property jurisdiction is treated as community property in California even though it might not have been community property if acquired while domiciled in California. For example, property is community property under subdivision (b) if it is the income of separate property and the income of separate property is community property under the laws of the place where the spouse owning the separate property is domiciled at the time the income is earned. Thus, subdivisions (b) and (c) ensure generally comparable treatment of the property in California to that given it in the other community property jurisdiction and fills a gap in the quasi-community property law. Subdivisions (b) and (c) apply whether the property is acquired before or after the operative date of the section. The reference in subdivisions (b) and (c) to substantially

equivalent types of marital property is intended to cover possible adoption in other jurisdictions of the Uniform Marital Property Act (198) or other laws establishing a community property regime.

CROSS-REFERENCES

Definitions

Personal property § 57
Quasi-community property § 66
Real property § 68

Note. This is existing law, however its language could be improved. The use of "heretofore or hereafter" is unfortunate. It would be better to say "whenever acquired." It would also be possible to put the time of acquisition concept in a separate subdivision. The section would also be improved if it used "married person" or "spouse" consistently, rather than interchangeably.

§ 29. Court

29. "Court" means the court having jurisdiction of the estate in question.

Comment. Section 29 generalizes former Probate Code Section 1418 ("court" for purposes of guardianship-conservatorship law) and is similar to part of Section 1-201(5) of the Uniform Probate Code (1977). Related provisions pertaining to jurisdiction and venue appear in statutes governing particular types of estates. See, e.g., Sections 2200-2216 (guardianship and conservatorship estates), 7050-7072 (decedents' estates), 17000-17105 (trusts), 17304 (transfer of trusts subject to continuing jurisdiction).

§ 32. Devise

32. "Devise," when used as a noun, means a disposition of real or personal property by will, and, when used as a verb, means to dispose of real or personal property by will.

Comment. Section 32 continues former Probate Code Section 32 without change. This section is the same in substance as Section 1-201(7) of the Uniform Probate Code (1977).

CROSS-REFERENCES

Definitions

Personal property § 57
Real property § 68
Will § 88

§ 34. Devisee

34. (a) "Devisee" means any person designated in a will to receive a devise.

(b) In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

Comment. Section 34 continues former Probate Code Section 34 without change. This section is the same in substance as Section 1-201(8) of the Uniform Probate Code (1977).

CROSS-REFERENCES

Definitions

Beneficiary § 24
Devise § 32
Trust § 82
Trustee § 84
Will § 88

Note. The reference in subdivision (b) to "a trustee on trust described by will" is an oddity. It would be better to say "in the case of a devise to a testamentary trust."

§ 36. Dissolution of marriage

36. "Dissolution of marriage" includes divorce.

Comment. Section 36 continues former Probate Code Section 36 without change.

§ 38. Family allowance

38. "Family allowance" means an allowance provided for in Chapter 4 (commencing with Section 6540) of Part 3 of Division 6.

Comment. Section 38 continues former Probate Code Section 38 without change.

§ 40. Financial institution

40. "Financial institution" means a state or national bank, state or federal savings and loan association or credit union, or like organization.

Comment. Section 40 continues former Probate Code Section 40 without change. This section is the same as part of Code of Civil Procedure Section 680.200. See also Section 5101 ("financial institution" defined for purposes of multiple party accounts).

§ 44. Heirs

44. "Heirs" means the persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

Comment. Section 44 continues former Probate Code Section 44 without change. This section is the same in substance as Section 1-201(17) of the Uniform Probate Code (1977).

CROSS-REFERENCES

Definitions

Surviving spouse § 78

§ 48. Interested person

48. (a) Subject to subdivision (b), "interested person" includes any of the following:

(1) An heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding.

(2) A personal representative or any person having priority for appointment as personal representative.

(3) A fiduciary representing an interested person.

(b) The meaning of "interested person," as it relates to particular persons, may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

Comment. Section 48 continues former Probate Code Section 48 without change, but adds a reference to a personal representative in subdivision (b)(2). This section is the same in substance as Section 1-201(20) of the Uniform Probate Code (1977).

CROSS-REFERENCES

Definitions

Beneficiary § 24

Child § 26

Devisee § 34

Heirs § 44

Personal representative § 58

Trust § 82

Note. When the guardianship-conservatorship statute is reviewed, it should be determined whether "interested person" should apply to that division. If so, there should be a reference to "ward, or conservatee" after "decedent" in subdivision (a)(1). Subdivision (a)(3) uses "fiduciary" as does the UPC; however, "fiduciary" is defined in the UPC to mean a personal representative, guardian, conservator, and trustee. "Guardian" is defined so as to exclude a guardian ad litem.

§ 50. Issue

50. "Issue" of a person means all his or her lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent.

Comment. Section 50 continues former Probate Code Section 50 without change. This section is the same in substance as Section 1-201(21) of the Uniform Probate Code (1977).

CROSS-REFERENCES

Definitions

Child § 26

Parent § 54

§ 52. Letters

52. "Letters" includes letters testamentary, letters of administration, letters of administration with the will annexed, and letters of special administration.

Comment. Section 52 is new and is intended to simplify drafting. This section is drawn in part from Section 1-201(23) of the Uniform Probate Code (1977).

Note. Should this section refer to "letters of guardianship" and "letters of conservatorship" as does the UPC? See Section 2310 (letters of guardianship and conservatorship). Are there any general provisions relating to "letters", or is the only point of this definition to enable the relevant statute to simply use the term "letters" without further clarification?

State Bar comment:

4. Under Section 52, in the interest of comprehensiveness, the definition of "letters" should refer to letters of guardianship and letters of conservatorship, in the style of the UPC.

§ 53. "Order" defined

53. "Order" includes decree and any amendments of an order or decree.

Comment. Section 53 is new. Cf. former Probate Code Section 1224 ("decree of distribution or any order amending the same").

§ 54. Parent

54. "Parent" includes any individual entitled to take as a parent under this code by intestate succession from the child whose relationship is involved.

Comment. Section 54 continues former Probate Code Section 54 without change. Under this section, a stepparent or foster parent may be included within the definition of "parent" when the requirements of Section 6408 (relationship of parent and child) are met. See also Sections 6152 (parent-child relationship for purpose of construing will), 6408.5 (inheritance from or through child).

CROSS-REFERENCES

Definitions

Child § 26

§ 56. Person

56. "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or other entity.

Comment. Section 56 continues former Probate Code Section 56 without change. Section 56 also continues former Probate Code Section 268 ("person" defined for purposes of disclaimer statute) without change. This section is drawn from Section 1-201(27) and (29) of the Uniform Probate Code (1977).

CROSS-REFERENCES

Definitions

Trust § 82

§ 57. Personal property

57. "Personal property" does not include a leasehold interest in real property.

Comment. Section 57 continues former Probate Code Section 58 without change. This section is consistent with the last sentence of Civil Code Section 5110. See also Section 68 ("real property" defined).

§ 58. Personal representative

58. (a) "Personal representative" means executor, administrator, administrator with the will annexed, special administrator, successor personal representative, or a person who performs substantially the same function under the law governing the person's status.

(b) "General personal representative" excludes a special administrator, except a special administrator granted the powers, duties, and obligations of a general personal representative pursuant to Section 8545.

Comment. Section 58 is drawn from Section 1-201(30) of the Uniform Probate Code.

State Bar comment:

5. Under Section 58, the UPC reference to "persons who perform substantially the same function under the law governing their status," is unclear. It should be clarified, or else eliminated.

Staff response: Section 58 has been revised since the State Bar comment was made, but the language objected to remains. This language is probably contained in the UPC to deal with the variety of terms that may be used in different states. It is assumed that all relevant terms used in the probate administration statute will be specifically included in this section. The general language would then seem to be useful only to describe a personal representative of another jurisdiction.

§ 59. Predeceased spouse

59. "Predeceased spouse" means a person who died before the decedent while married to the decedent, except that the term does not include any of the following:

(a) A person who obtains or consents to a final decree or judgment of dissolution of marriage from the decedent or a final decree or judgment of annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they (1) subsequently participate in a marriage ceremony purporting to marry each to the other or (2) subsequently live together as husband and wife.

(b) A person who, following a decree or judgment of dissolution or annulment of marriage obtained by the decedent, participates in a marriage ceremony to a third person.

(c) A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

Comment. Section 59 continues former Probate Code Section 59 without change. This section is drawn from Section 78 ("surviving spouse" defined). See the Comment to Section 78. Under Section 59, it is possible that the decedent may have more than one predeceased spouse.

State Bar comment:

6. At the end of Section 59(a), the reference to persons who "subsequently live together as husband and wife," is vague. How is this test met? Whatever it is, how does it relate to the test of participation "in a marriage ceremony to a third person," under Section 59(b)? Does the latter reference require a valid marriage? The Comment to Section 59 states that it is possible that the decedent may have more than one predeceased spouse; the statute should be drafted to preclude that possibility.

Staff response: This section is existing law. "Subsequently live together as husband and wife" is not a new concept; presumably it would be met in this context in the same manner as in others such as determination of existence of a common law marriage. In subdivision (b), "participates in a marriage ceremony" is used for consistency with subdivision (a) and draws a distinction between effective and ineffective marriages. The staff believes that subdivision (b) would be improved if the language were consistent with subdivision (a); thus, "purporting to marry" should replace "to" in the last clause of (b). The staff also questions the meaning and purpose of "obtained by the decedent" in this context. Subdivision (b) should either eliminate the phrase "obtained by the decedent" or add "and not consented to by the person" for consistency with subdivision (b).

The staff is uncertain why the State Bar objects to a person having more than one predeceased spouse. It should be noted that this is not new language.

§ 60. Probate homestead

60. "Probate homestead" means a homestead provided for in Chapter 3 (commencing with Section 6520) of Part 3 of Division 6.

Comment. Section 60 continues former Probate Code Section 60 without change.

§ 62. Property

62. "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

Comment. Section 62 continues former Probate Code Section 62 without change. This section is the same as Section 1-201(33) of the Uniform Probate Code (1977).

CROSS-REFERENCES

Definitions

Personal property § 57

Real property § 68

Note. This definition would read better as follows: "'Property' includes both real and personal property ~~or~~ and interest therein, and means anything that may be the subject of ownership.

§ 66. Quasi-community property

66. "Quasi-community property" means the following property, other than community property as defined in Section 28:

(a) All personal property wherever situated, and all real property

situated in this state, heretofore or hereafter acquired by a decedent while domiciled elsewhere that would have been the community property of the decedent and the surviving spouse if the decedent had been domiciled in this state at the time of its acquisition.

(b) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired in exchange for real or personal property, wherever situated, that would have been the community property of the decedent and the surviving spouse if the decedent had been domiciled in this state at the time the property so exchanged was acquired.

Comment. Section 66 continues former Probate Code Section 66 without change, except that the phrase "as used in this code" is omitted since it is unnecessary in light of Section 20 (application of definitions). This section continues the substance of former Probate Code Section 201.5, except that community property under the laws of another jurisdiction is classified as community rather than quasi-community property.

CROSS-REFERENCES

Definitions

Community property § 28
Personal property § 57
Property § 62
Real property § 68
Surviving spouse § 78

§ 68. Real property

68. "Real property" includes a leasehold interest in real property.

Comment. Section 68 continues former Probate Code Section 68 without change. This section is consistent with the last sentence of Civil Code Section 5110.

State Bar comment:

Section 68 (also Section 57) includes a leasehold interest in real property in the definition of real property. What is the effect of this provision on Section 630? And should not the reference in Section 68 to "real property" be expanded to include a security interest in real property?

Staff response: The effect of this provision on the affidavit procedure should be considered in connection with the revision of Section 630.

This section should be revised to provide in substance that real property includes any right or interest in real property, including a

leasehold interest. Presumably, when read with the definition of "property" in Section 62, this section picks up "any interest therein," but it would be better to make the definition clearer.

§ 70. Security

70. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

Comment. Section 70 continues former Probate Code Section 70 without change. This section is the same as Section 1-201(37) of the Uniform Probate Code (1977).

State Bar comment:

8. Under Section 70, the definition of "security" picks up some real property interests. This is confusing because "security" is commonly considered to refer to personal property.

Staff response: *In the abstract, it is difficult to decide what to do with this definition. At some point, we will have to search the code to see how the term is used. For now, it should be noted that this is existing law.*

§ 72. Shares of an insured credit union

72. (a) "Shares of an insured credit union" means shares issued by a credit union, either federally chartered or state licensed, which satisfies one or more of the following requirements:

(1) Is insured under Title II of the Federal Credit Union Act.

(2) Has such other form of insurance or guaranty as approved pursuant to Section 14858 of the Financial Code.

(b) Any reference in the statutes of this state to the definition of the term "shares of an insured credit union" in former Section 1443 or 1510 of the Probate Code shall be deemed to be a reference to the definition of that term in this section.

Comment. Subdivision (a) of Section 72 restates former Probate

Code Section 1443 without substantive change, except that the former reference to the California Credit Union Share Guaranty Corporation is omitted. Subdivision (b) continues part of subdivision (c) of former Probate Code Section 1490 and adds the reference to former Probate Code Section 1443.

Note. The term "shares of an insured credit union" is used in Sections 2453, 2456, 3412, 3413, 3500, 3602, 3611, 7570, 9700, and 9703. See also the note following Section 22.

§ 74. State

74. "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

Comment. Section 74 continues former Probate Code Section 74 without change. This section is the same as Section 1-201(40) of the Uniform Probate Code (1977).

Note. A question has been raised concerning whether this definition is used or is needed.

§ 78. Surviving spouse

78. "Surviving spouse" does not include any of the following:

(a) A person whose marriage to the decedent has been dissolved or annulled, unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death.

(b) A person who obtains or consents to a final decree or judgment of dissolution of marriage from the decedent or a final decree or judgment of annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they (1) subsequently participate in a marriage ceremony purporting to marry each to the other or (2) subsequently live together as husband and wife.

(c) A person who, following a decree or judgment of dissolution or annulment of marriage obtained by the decedent, participates in a marriage ceremony with a third person.

(d) A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

Comment. Section 78 continues former Probate Code Section 78 without change. This section is drawn from Section 2-802 of the Uniform Probate Code (1977). Subdivisions (b) and (c) deal with the problem of a divorce or annulment which is not recognized in California, and apply an estoppel principle against the surviving

spouse. These provisions are consistent with prior California law. See, e.g., *Spellens v. Spellens*, 49 Cal. 2d 210, 317 P.2d 613 (1957) (estoppel to deny validity of marriage); *Estate of Atherley*, 44 Cal. App. 3d 758, 764, 119 Cal. Rptr. 41 (1975) (recognizing principle but declining to apply it).

CROSS-REFERENCES

Definitions

Annulment of marriage § 23

Dissolution of marriage § 36

State Bar comment:

9. In Section 78, the reference to "surviving spouse" suggests the same problems as noted under Section 59. Would the "subsequently-live-together-as-husband-and-wife" language at the end of Section 78(b) be construed to reactivate a marital deduction will revoked by operation of law as a result of the marital dissolution?

§ 80. Totten trust account

80. "Totten trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account. In a Totten trust account, it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A Totten trust account does not include (1) a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account or (2) a fiduciary account arising from a fiduciary relation such as attorney-client.

Comment. Section 80 continues former Probate Code Section 80 without change. Section 80 also continues former Probate Code Section 270 ("Totten trust account" defined for purposes of disclaimer statute) without change. This section is the same in substance as Section 6-101(14) of the Uniform Probate Code (1977).

CROSS-REFERENCES

Definitions

Account § 21

Note. The term "trust account" is defined in these same words in § 5101(o) (multiple party accounts).

State Bar comment:

10. Section 80 states, "In a Totten trust account it is not essential that payment to the beneficiary be mentioned in

the deposit agreement." If so, where is payment to the beneficiary provided for? The deposit agreement presumably encompasses all papers relating to the account.

Staff response: Payment to the beneficiary is provided by law where the account satisfies the requirements of this section.

§ 82. Trust

82. (a) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created, but does not include a charitable trust that is not subject to the jurisdiction of the Attorney General.

(b) "Trust" includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.

(c) "Trust" excludes other constructive trusts, and it excludes resulting trusts, guardianships, conservatorships, personal representatives, Totten trust accounts, custodial arrangements pursuant to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state, business trusts that are taxed as partnerships or corporations, investment trusts subject to regulation under the laws of this state or any other jurisdiction, common trust funds, voting trusts, security arrangements, transfers in trust for purpose of suit or enforcement of a claim or right, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

Comment. Section 82 continues former Probate Code Section 82 without change. This section is drawn in part from Section 1-201(45) of the Uniform Probate Code (1977). Section 82 is drafted to eliminate charitable trusts that are not under the jurisdiction of the Attorney General from the general definition of trusts. See Section 15004 (application of Trust Law to charitable trusts). The definition of trust in Section 82 also includes various arrangements that were listed in former Probate Code Section 1138.

CROSS-REFERENCES

Definitions

Totten trust account § 80

Note. This section is drafted to reflect the revision of Section 82 proposed in AB 2652 (trusts).

§ 83. Trust company

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

Comment. Section 83 continues former Probate Code Section 83 without change. This provision 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.

Note. This section is drafted to reflect proposed Section 83 in AB 2652 (trusts).

§ 84. Trustee

84. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

Comment. Section 84 continues former Probate Code Section 84 without change. This section is the same as Section 1-201(46) of the Uniform Probate Code (1977).

§ 88. Will

88. "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

Comment. Section 88 continues former Probate Code Section 88 without change. This section is the same as Section 1-201(48) of the Uniform Probate Code (1977).

Staff Draft
Exhibit 2

COMMENTS TO REPEALED DEFINITIONS IN PROBATE CODE

PART 2. WORDS AND PHRASES DEFINED

§ 20 (repealed). Application of definitions

Comment. Former Section 20 is superseded by Estate and Trust Code Section 20.

§ 21 (repealed). Account

Comment. Former Section 21 is continued in Estate and Trust Code Section 21 without change.

§ 22 (repealed). Annulment of marriage

Comment. Former Section 22 is continued in Estate and Trust Code Section 23 without change.

§ 24 (repealed). Beneficiary

Comment. Former Section 24 is restated in subdivisions (b) and (c) of Estate and Trust Code Section 24 without substantive change.

§ 26 (repealed). Child

Comment. Former Section 26 is continued in Estate and Trust Code Section 26 without change.

§ 28 (repealed). Community property

Comment. Former Section 28 is continued in Estate and Trust Code Section 28 without change, except that the introductory clause has been omitted as unnecessary.

§ 32 (repealed). Devise

Comment. Former Section 32 is continued in Estate and Trust Code Section 32 without change.

§ 34 (repealed). Devisee

Comment. Former Section 34 is continued in Estate and Trust Code Section 34 without change.

§ 36 (repealed). Dissolution of marriage

Comment. Former Section 36 is continued in Estate and Trust Code Section 36 without change.

§ 38 (repealed). Family allowance

Comment. Former Section 38 is continued in Estate and Trust Code Section 38 without change.

§ 40 (repealed). Financial institution

Comment. Former Section 40 is continued in Estate and Trust Code Section 40 without change.

§ 44 (repealed). Heirs

Comment. Former Section 44 is continued in Estate and Trust Code Section 44 without change.

§ 48 (repealed). Interested person

Comment. Former Section 48 is continued in Estate and Trust Code Section 48 without change, except that a reference to a personal representative is included in Estate and Trust Code Section 48.

§ 50 (repealed). Issue

Comment. Former Section 50 is continued in Estate and Trust Code Section 50 without change.

§ 54 (repealed). Parent

Comment. Former Section 54 is continued in Estate and Trust Code Section 54 without change.

§ 56 (repealed). Person

Comment. Former Section 56 is continued in Estate and Trust Code Section 56 without change.

§ 58 (repealed). Personal property

Comment. Former Section 58 is continued in Estate and Trust Code Section 57 without change.

§ 59 (repealed). Predeceased spouse

Comment. Former Section 59 is continued in Estate and Trust Code Section 59 without change.

§ 60 (repealed). Probate homestead

Comment. Former Section 60 is continued in Estate and Trust Code Section 60 without change.

§ 62 (repealed). Property

Comment. Former Section 62 is continued in Estate and Trust Code Section 62 without change.

§ 66 (repealed). Quasi-community property

Comment. Former Section 66 is continued in Estate and Trust Code Section 66 without change, except that the introductory clause is omitted as unnecessary.

§ 68 (repealed). Real property

Comment. Former Section 68 is continued in Estate and Trust Code Section 68 without change.

§ 70 (repealed). Security

Comment. Former Section 70 is continued in Estate and Trust Code Section 70 without change.

§ 74 (repealed). State

Comment. Former Section 74 is continued in Estate and Trust Code Section 74 without change.

§ 78 (repealed). Surviving spouse

Comment. Former Section 78 is continued in Estate and Trust Code Section 78 without change.

§ 80 (repealed). Totten trust account

Comment. Former Section 80 is continued in Estate and Trust Code Section 80 without change.

§ 82 (repealed). Trust

Comment. Former Section 82 is continued in Estate and Trust Code Section 82 without change.

§ 83 (repealed). Trust company

Comment. Former Section 83 is continued in Estate and Trust Code Section 83 without change.

§ 84 (repealed). Trustee

Comment. Former Section 84 is continued in Estate and Trust Code Section 84 without change.

§ 88 (repealed). Will

Comment. Former Section 88 is continued in Estate and Trust Code Section 88 without change.

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[From provisions on disclaimers.]

§ 261 (repealed). Account

Comment. Former Section 261 is continued in Estate and Trust Code Section 21 without change.

§ 268 (repealed). Person

Comment. Former Section 268 is continued in Estate and Trust Code Section 56 without change.

§ 270 (repealed). Totten trust account

Comment. Former Section 270 is continued in Estate and Trust Code Section 80 without change.

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[From guardianship-conservatorship statute.]

§ 1406 (repealed). Account in an insured savings and loan association

Comment. Subdivision (a) of former Section 1406 is continued in Estate and Trust Code Section 22(a) without change. Subdivision (b) is restated in Estate and Trust Code Section 22(b) without substantive change.

§ 1418 (repealed). Court

Comment. Former Section 1418 is restated and generalized in Estate and Trust Code Section 29 without substantive change.

§ 1443 (repealed). Shares of an insured credit union

Comment. Former Section 1443 is restated in Estate and Trust Code Section 72(a) without substantive change.