

Memorandum 87-78

Subject: Study L-940 - Fiduciaries' Wartime Substitution Law (Staff
Draft)

At the September meeting, the Commission directed the staff to carry the Fiduciaries' Wartime Substitution Law forward into the new Probate Code. (It is currently located in Code of Civil Procedure Sections 1700-1706.) The Commission rejected the idea of expanding the procedures of the act to cover situations other than where a fiduciary is engaged in war service. The attached staff draft implements this decision. Several issues are raised in the notes following the relevant sections in the draft.

Respectfully submitted,

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Exhibit 1

Outline

PART 11. FIDUCIARIES' WARTIME SUBSTITUTION LAW

CHAPTER 1. GENERAL PROVISIONS

Article 1. Short Title and Definitions

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- § 351. Application of definitions
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- § 388. Immunity of consultant for acts of delegate

CONFORMING CHANGES

Probate Code § 39 (added). "Fiduciary" defined
Probate Code § 45 (added). "Instrument" defined
Probate Code § 81 (added). "Transferor" defined
Probate Code § 21100 (repealed). Definitions

COMMENTS TO REPEALED SECTIONS

Code Civ. Proc. §§ 1700-1706 (repealed). Fiduciaries' Wartime
Substitution Law

Staff Draft

Probate Code §§ 350-388 (added), Fiduciaries' Wartime Substitution Law
SEC. . Part 11 (commencing with Section 350) is added to
Division 2 of the Probate Code, to read:

PART 11. FIDUCIARIES' WARTIME SUBSTITUTION LAW

CHAPTER 1. GENERAL PROVISIONS

Article 1. Short Title and Definitions

§ 350. Short title

350. This part may be cited as the Fiduciaries' Wartime Substitution Law.

Comment. Section 350 restates former Code of Civil Procedure Section 1700 without substantive change.

§ 351. Application of definitions

351. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this part.

Comment. Section 351 restates part of former Code of Civil Procedure Section 1700.1 without substantive change.

§ 352. Consultant

352. "Consultant" means a person, other than a trustee, designated in a trust to advise or direct the trustee concerning the trust, or whose consent or approval is required for a purchase, sale, exchange, or other transaction by the trustee, and includes a settlor who reserves the power of a consultant.

Comment. Section 352 restates former Code of Civil Procedure Section 1700.6 (consultant under a trust) without substantive change.

§ 353. Estate

353. "Estate" means a trust estate, a decedent's estate, a guardianship or conservatorship estate, or other property that is the subject of a donative transfer.

Comment. Section 353 is intended for drafting convenience.

CROSS-REFERENCES

Definitions
Property § 62

§ 354. Interested person

354. "Interested person" means, in addition to the meaning given that term in Section 48, a person having a property right in or claim against a guardianship or conservatorship estate or other estate that may be affected by the proceeding.

Comment. Section 354 is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Estate § 353

Person § 56

§ 355. Original fiduciary

355. "Original fiduciary" means a fiduciary who is replaced by a substitute fiduciary or who makes a delegation of power under this part.

Comment. Section 355 is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Fiduciary § 39

§ 356. War service

356. A fiduciary or consultant is engaged in war service for the purpose of this part in the following cases:

(a) If he or she is a member of the armed forces of the United States or like forces of any nation with which the United States is allied or associated in time of war, and includes members of the Army, Navy, Marine Corps, Air Force, and Coast Guard, members of the Public Health Service detailed by proper authority for duty with the armed forces, and all other organizations or services recognized by the laws of the United States as a part of or auxiliary to the armed forces of the United States.

(b) If he or she has been accepted for and is awaiting induction into the armed forces, or is receiving training or education under government supervision preliminary to induction into any of these forces, in time of war.

(c) If he or she is engaged, outside the part of the continental limits of the United States that is south of the 49th parallel of latitude, in any work in connection with a governmental agency of the

United States or with the American Red Cross or any other body with similar objects operating with the approval and sanction of the government of the United States or of any nation with which the United States is allied or associated in time of war.

(d) If he or she is engaged in time of war in service on any ship of United States registry.

(e) If he or she is interned or a prisoner of war in a foreign country or in the United States or any possession or dependency of the United States.

(f) If he or she is absent from the part of the United States that is south of the 49th parallel of latitude and, due to war conditions, is unable to return freely at his or her own volition.

(g) If he or she is engaged in any service in the United States or abroad arising out of or connected with a state of war that the court having jurisdiction of the trust finds prevents him or her from giving proper attention to his or her duties.

Comment. Section 356 restates former Code of Civil Procedure Section 1700.7 without substantive change. In subdivision (a), the reference to the Air Force is new and the references to certain auxiliary organizations have been omitted as unnecessary in light of the general language. In subdivision (b), the reference to time of war is new.

CROSS-REFERENCES

Definitions

Fiduciary § 39

Consultant § 352

Note. The staff has retained the reference to the 49th parallel and the continental United States, although we are not sure why Alaska, Hawaii, and Lake of the Woods, Minnesota, should be treated differently from, say, Harlingen, Texas.

The draft also refers to "armed forces" consistently, whereas existing law sometimes refers to "military and naval forces." The omitted reserve and auxiliary forces are the Enlisted Reserve Corps "under orders to report for naval service," the Women's Army Auxiliary Corps, and the Women's Reserve. Government Code Section 18540 defines "armed forces" as:

the United States Air Force, Army, Navy, Marine Corps, Coast Guard, Revenue Marine Service, and the Army and Navy Nurse Corps. Active service as a nurse in the American Red Cross during World War I shall be considered service in the "armed forces."

This provision, which relates to the veteran's preference in state civil service, has not been amended since 1949. Military and Veterans

Code Section 389(d) incorporates this definition. It appears that the provisions of the Fiduciaries' Wartime Substitution Act are broader and clearer, and thus we would retain these provisions as revised in draft Section 356.

Article 2. Scope of Part

§ 360. Application of part

360. This part applies to all fiduciaries, whether appointed or acting before, on, or after July 1, 1989.

Comment. Section 360 supersedes former Code of Civil Procedure Section 1706. This part applies to personal representatives, trustees, guardians, conservators, and other legal representatives. See Section 39 ("fiduciary" defined).

CROSS-REFERENCES

Definitions

Fiduciary § 39

§ 361. Provision in instrument controls

361. This part does not apply to the extent an otherwise valid provision in an instrument provides a different or contrary rule or is otherwise inconsistent with this part.

Comment. Section 361 supersedes former Code of Civil Procedure Section 1705.

CROSS-REFERENCES

Definitions

Instrument § 45

Article 3. Procedural Provisions

§ 365. Jurisdiction of proceedings

365. Proceedings under this part are in the court having jurisdiction over the estate or, if none, any court in which jurisdiction of the estate is proper.

Comment. Section 365 supersedes the second sentence of former Section 1701, the third sentence of former Code of Civil Procedure Section 1702, and part of the first sentence of former Code of Civil Procedure Section 1702.1. For the proper court in a decedent's estate, see Section 301. For the proper court in a guardianship or conservatorship estate, see Sections 2200-2203. For the proper court in a trust estate, see Sections 17000-17005.

CROSS-REFERENCES

Definitions

Estate § 353

§ 366. Notice of hearing

366. Notice of a hearing under this part shall be mailed at least 15 days before the hearing to each fiduciary and consultant and to the following persons:

(a) In the case of a trust, to each known beneficiary, subject to the provisions of Chapter 2 (commencing with Section 15800) of Part 3 of Division 9.

(b) In the case of a decedent's estate, as provided in Section 1220 to each known heir or devisee whose interest in the estate would be affected by the proceedings.

(c) In the case of a guardianship or conservatorship estate, as provided in Section 1460.

(d) In other cases, to any additional interested persons required by the court to receive notice.

Comment. Section 366 supersedes former Code of Civil Procedure Section 1701.1, part of the second sentence of former Code of Civil Procedure Section 1701.2, the second sentence of former Code of Civil Procedure Section 1702.1, the introductory part of former Code of Civil Procedure Section 1703.1, part of the first sentence of former Code of Civil Procedure Section 1703.2, and former Code of Civil Procedure Section 1704. Notice under this part is subject to general provisions governing notice under this code. See, e.g., Sections 1201 (notice not required to be given to oneself or persons joining in petition), 1202 (additional notice on court order), 1206 (notice to known heirs or devisees), 1215-1217 (mailing in general), 1260-1265 (proof of giving notice).

CROSS-REFERENCES

Clerk to set matter for hearing § 1041

Definitions

Beneficiary § 24

Consultant § 352

Devisee § 34

Estate § 353

Fiduciary § 39

Heirs § 44

Interested person § 354

Trust § 82

CHAPTER 2. APPOINTMENT OF SUBSTITUTE FIDUCIARY

§ 370. Petition for appointment of substitute, suspension of powers, or account

370. If a fiduciary is engaged in war service, on petition of the fiduciary, a cofiduciary, or an interested person, the court may do any of the following:

(a) Appoint a substitute fiduciary. If there is a qualified and acting cofiduciary, the court is not required to appoint a substitute fiduciary but may vest in the cofiduciary the powers of the original fiduciary engaged in war service.

(b) Order a suspension of the powers and duties of the original fiduciary for the period the original fiduciary is engaged in war service and until further order of the court.

(c) Order an account by the original fiduciary.

Comment. Subdivision (a) of Section 370 restates the first sentence of former Code of Civil Procedure Section 1701 and former Code of Civil Procedure Section 1701.3 without substantive change. Subdivisions (b) and (c) supersede the first sentence of former Code of Civil Procedure 1701.2. Where there is a cofiduciary, appointment of a substitute fiduciary may be unnecessary, since the cofiduciary may be authorized to act. See, e.g., Sections 2105 (authority of joint guardian or conservator to act), 9630 (authority of joint personal representative to act), 15622 (temporary incapacity of cotrustee). This section does not apply to the extent the will, trust, or other instrument provides a different rule. Section 361 (provision in instrument controls).

CROSS-REFERENCES

Clerk to set matter for hearing § 1041

Definitions

Fiduciary § 39

Interested person § 354

Original fiduciary § 355

War service § 356

Jurisdiction of proceedings § 365

Notice of hearing § 366

§ 371. Powers and duties of substitute fiduciary

371. A substitute fiduciary has all the powers, including discretionary powers, that the original fiduciary might have exercised, except powers that the court determines are purely personal to the original fiduciary, and is subject to the same duties as the original fiduciary.

Comment. Section 371 restates former Code of Civil Procedure Section 1701.4 without substantive change. The reference to duties is new.

CROSS-REFERENCES

Definitions

Fiduciary § 39

Original fiduciary § 355

§ 372. Bond of substitute fiduciary

372. Except as otherwise ordered by the court, a substitute fiduciary shall give a bond in the manner and to the extent provided by law for the original fiduciary.

Comment. Section 372 restates former Code of Civil Procedure Section 1701.6 without substantive change, except for the addition of court authority to vary the bond requirement. This would be appropriate, for example, where the instrument has waived the bond for the original fiduciary and it would be inappropriate to waive bond for the substitute fiduciary.

CROSS-REFERENCES

Definitions

Fiduciary § 39

Original fiduciary § 355

§ 373. Reinstatement of original fiduciary

373. After the expiration of an original fiduciary's war service, if the estate has not been closed, the original fiduciary, on petition, is entitled to reinstatement as fiduciary. On reinstatement, the substitute fiduciary shall be removed and may be discharged on conditions prescribed by the court.

Comment. Section 373 restates the second and third sentences of former Code of Civil Procedure Section 1701.2 without substantive change.

CROSS-REFERENCES

Clerk to set matter for hearing § 1041

Definitions

Estate § 353

Fiduciary § 39

Original fiduciary § 355

Jurisdiction of proceedings § 365

Notice of hearing § 366

§ 374. Immunity of fiduciary for acts of predecessor

374. A substitute fiduciary or an original fiduciary reinstated under Section 373 does not have any responsibility for nor, unless expressly directed by the court, any duty to inquire into, the acts or omissions of the predecessor fiduciary.

Comment. Section 374 restates former Code of Civil Procedure Section 1701.7 without substantive change.

CROSS-REFERENCES

Definitions

Fiduciary § 39

Original fiduciary § 355

CHAPTER 3. DELEGATION OF POWERS

Article 1. Delegation by Fiduciary

§ 380. Delegation of fiduciary's powers

380. (a) A fiduciary who is or will be engaged in war service may delegate the fiduciary's powers, including discretionary powers, to a fiduciary who is not engaged in war service. Delegation may be made for the period during which the original fiduciary is engaged in war service and not to exceed six months following the expiration of that period.

(b) Approval of the court, on petition of the original fiduciary, the delegate, or an interested person, is required for delegation.

Comment. Subdivision (a) of Section 380 restates the first and second sentences of former Code of Civil Procedure Section 1702 without substantive change. Where there is a cofiduciary, delegation of power may be unnecessary, since the cofiduciary may be authorized to act. See, e.g., Sections 15622 (temporary incapacity of cotrustee), 9630 (authority of joint personal representative to act), 2105 (authority of joint guardian or conservator to act). The authority to delegate powers to a cofiduciary under this chapter is an exception to the usual duty not to delegate. See Section 16012 (duty not to delegate to cotrustee). This section does not apply to the extent the will, trust, or other instrument provides a different rule. See Section 361 (provision in instrument controls).

Subdivision (b) supersedes the first sentence of former Code of Civil Procedure Section 1702.1.

CROSS-REFERENCES

Clerk to set matter for hearing § 1041

Definitions

Fiduciary § 39

Interested person § 354

Original fiduciary § 355
War service § 356
Jurisdiction of proceedings § 365
Notice of hearing § 366

Note. Existing Code of Civil Procedure Section 1702 provides for delegation to a cofiduciary or fiduciary. The draft omits the reference to cofiduciary since that is included in fiduciary. However, a technical question remains. By "fiduciary" does Section 1702 mean to indicate that a delegation can only be made to a person who is already a fiduciary (but not a cofiduciary under the instrument in question) or does it mean to refer to any other person who then becomes a fiduciary by the act of delegation. The staff assumes that the original fiduciary may delegate to anyone.

Section 1702 also requires court approval of a delegation in the case of a "court trust." (Section 1700.5 incorporates the definition of "court trust" in "the Banking Law.") Financial Code Section 1581 defines "court trust" as

one in which a trust company acts under appointment, order, or decree of any court, as executor, administrator, guardian, conservator, assignee, receiver, depository, or trustee, or in which it receives on deposit money or property from a public administrator, under any provision of this code, or from any executor, administrator, guardian, assignee, receiver, depository, or trustee, under any order or decree of any court.

Whether a particular arrangement is a "court trust" may be unclear or subject to dispute. The staff assumes that traditionally all decedent's estates, guardianships, conservatorships, and testamentary trusts, as well as living trusts where a successor trustee had been appointed by the court, were "court trusts." However, the definition of "court trust" has not been revised since 1959 and thus does not reflect the changes in trust law. It may be that only trusts subject to the continuing jurisdiction of the court are now included in the concept of "court trusts." The staff does not find the concept of "court trust" to be very helpful in this regard.

The policy question is whether a fiduciary who is about to engage in war service under the terms of this statute should be able to delegate powers to a cofiduciary or some other person without any court approval. Perhaps it would be best to provide that the delegation cannot be made if proceedings are pending or if the particular estate is subject to court jurisdiction. This would mean that court approval would be required in all decedents' estates, guardianships, and conservatorships, and where a trust is subject to continuing jurisdiction or the subject of a pending proceeding.

Alternatively, the Commission should consider deleting the power to delegate. If court proceedings are required, there is no reason to have two procedures that are identical except for the terminology -- one using the concept of delegation and the other using the concept of substitution. The argument against eliminating the option of delegating without court approval is that it saves the burden and expense of going to court. The staff is doubtful that this is a

sufficient argument. The trust law has provisions permitting cotrustees to act when another cotrustee is unable to act. If the delegation procedure permits the trustee to delegate powers, including discretionary powers, to persons other than cotrustees (as we assume it does) there may be some question about its propriety. In that case, it might be best to require court approval anyway.

§ 381. Limitations on delegation

381. The right of delegation does not exist to the extent the court determines that powers to be delegated are purely personal to the original fiduciary.

Comment. Section 381 restates the introductory clause and subdivision (a) of former Code of Civil Procedure Section 1702.2 without substantive change. Where there is a cofiduciary, delegation of power may be unnecessary, since the cofiduciary may be authorized to act. See, e.g., Sections 2105 (authority of joint guardian or conservator to act), 9630 (authority of joint personal representative to act), 15622 (temporary incapacity of cotrustee).

CROSS-REFERENCES

Definitions

Original fiduciary § 355

§ 382. Resumption of fiduciary's powers

382. After the expiration of the original fiduciary's war service, the court may, on petition of the original fiduciary, authorize the original fiduciary to resume the exercise of the fiduciary functions, and the delegated powers cease.

Comment. Section 382 restates the third sentence of former Code of Civil Procedure Section 1702.1 without substantive change.

CROSS-REFERENCES

Clerk to set matter for hearing § 1041

Definitions

Fiduciary § 39

Original fiduciary § 355

War service § 356

Jurisdiction of proceedings § 365

Notice of hearing § 366

§ 383. Immunity of fiduciary for acts of delegate

383. The original fiduciary is not liable for the acts or omissions of the delegate.

Comment. Section 383 restates former Code of Civil Procedure Section 1702.4 without substantive change. Unlike former law, this section is phrased in terms of liability rather than responsibility.

CROSS-REFERENCES

Definitions

Original fiduciary § 355

Article 2. Delegation by Consultant

§ 385. Delegation of consultant's powers

385. (a) A consultant who is or will be engaged in war service may delegate the powers of the consultant, including discretionary powers, to a coconsultant who is not engaged in war service, or to the trustee administering the trust. The procedure for delegation by a fiduciary governs delegation by a consultant.

(b) The right of delegation does not exist to the extent the court determines that powers to be delegated are purely personal to the consultant. Such powers are suspended until their exercise is resumed pursuant to this article.

Comment. Section 385 restates former Code of Civil Procedure Section 1703 without substantive change. This section does not apply to the extent the will, trust, or other instrument provides a different rule. Section 361 (provision in instrument controls).

CROSS-REFERENCES

Clerk to set matter for hearing § 1041

Definitions

Consultant § 352

Fiduciary § 39

War service § 356

Jurisdiction of proceedings § 365

Notice of hearing § 366

Note. It should be noted that this procedure relating to delegation (and also suspension and replacement) of the powers of a consultant deals only with a consultant under a trust. This is existing law and there does not seem to be much need to expand this procedure to cover any other type of consultant, since it is assumed that to the extent such consultants exist, they are under trusts.

§ 386. Suspension of consultant's powers

386. If a consultant who is engaged in war service does not delegate the consultant's powers, the court, on petition of the trustee or an interested person, may do either of the following:

(a) Suspend the consultant's powers for the period of the consultant's war service and not to exceed six months following the

expiration of that period.

(b) Confer the powers, except discretionary powers that the court determines are purely personal to the consultant, on a coconsultant designated in the trust, the trustee, or any other qualified person.

Comment. Section 386 restates former Code of Civil Procedure Section 1703.1 without substantive change.

CROSS-REFERENCES

Clerk to set matter for hearing § 1041

Definitions

Consultant § 352

Fiduciary § 39

Interested person § 354

Person § 56

War service § 356

Jurisdiction of proceedings § 365

Notice of hearing § 366

§ 387. Resumption of consultant's powers

387. If a consultant has delegated or the court has suspended the powers of the consultant, the court may, on petition by the consultant within six months following the expiration of the period of the consultant's war service, authorize the consultant to resume the exercise of the consultant's functions. All powers delegated to or conferred on other persons thereupon cease.

Comment. Section 387 restates former Code of Civil Procedure Section 1703.2 without substantive change.

CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Consultant § 352

Person § 56

War service § 356

Jurisdiction of proceedings § 365

Notice of hearing § 366

§ 388. Immunity of consultant for acts of delegate

388. A consultant delegating under this article has no liability for the acts or omissions of the delegate.

Comment. Section 388 restates former Code of Civil Procedure Section 1703.3 without substantive change. Unlike former law, this section is phrased in terms of liability rather than responsibility.

CROSS-REFERENCES

Definitions

Consultant § 352

CONFORMING CHANGES

Probate Code § 39 (added). "Fiduciary" defined

SEC. . Section 39 is added to the Probate Code, to read:

39. "Fiduciary" means personal representative, trustee, guardian, conservator, or other legal representative.

Comment. Section 39 continues former Section 21100(a) [AB 708] without change and restates former Code of Civil Procedure Section 1700.3 without substantive change. The defined term is used in Sections 360-388 (substitution and delegation of powers of fiduciaries) as well as in Division 11 (commencing with Section 21101) (construction of wills, trusts, and other instruments).

CROSS-REFERENCES

Definitions

Personal representative § 58

Trustee § 84

Probate Code § 45 (added). "Instrument" defined

SEC. . Section 45 is added to the Probate Code, to read:

45. "Instrument" means a will, trust, deed, or other writing that designates a beneficiary or makes a donative transfer of property.

Comment. Section 45 continues former Section 21100(b) [AB 708] without change. The defined term is used in Sections 360-388 (substitution and delegation of powers of fiduciaries) as well as in Division 11 (commencing with Section 21101) (construction of wills, trusts, and other instruments).

CROSS-REFERENCES

Definitions

Beneficiary § 24

Property § 62

Trust § 82

Will § 88

Probate Code § 81 (added). "Transferor" defined

SEC. . Section 81 is added to the Probate Code, to read:

81. "Transferor" means the testator, settlor, grantor, owner, or other person who executes an instrument.

Comment. Section 81 continues former Section 21100(c) [AB 708] without change.

CROSS-REFERENCES

Definitions

Instrument § 45

Probate Code § 21100 (repealed). Definitions

SEC. . Section 21100 [AB 708] of the Probate Code is repealed.

~~21100.---Unless--the--provision--or--context--otherwise--requires,--as
used--in--this--division,~~

~~(a)---"Fiduciary"---personal---representative,---trustee,---guardian,
conservator,--or--other--legal--representative,~~

~~(b)---"Instrument"---means--a--will,--trust,--deed,--or--other--writing--that
designates--a--beneficiary--or--makes--a--donative--transfer--of--property,~~

~~(c)---"Transferor"---means--the--testator,--settlor,--grantor,--owner,--or
other--person--who--executes--an--instrument,~~

Comment. Subdivision (a) of former Section 21100 is continued in Section 39 without change. Subdivision (b) is continued in Section 45 without change. Subdivision (c) is continued in Section 81 without change.

Note. *Headings for Chapters 1 and 2 should also be repealed.*

COMMENTS TO REPEALED SECTIONS

Code of Civil Procedure § 1700 (repealed). Short title

Comment. Former Section 1700 is restated in Probate Code Section 350 without substantive change.

Code of Civil Procedure § 1700.1 (repealed). Construction of title

Comment. The part of former Section 1700.1 relating to definitions is restated in Probate Code Section 351 without substantive change. The parts of former Section 1700.1 relating to rules of construction and general provisions are omitted as unnecessary. See Prob. Code § 361 (provision in instrument controls).

Code of Civil Procedure § 1700.2 (repealed). Gender

Comment. Former Section 1700.2 is omitted as unnecessary.

Code of Civil Procedure § 1700.3 (repealed). Fiduciary

Comment. Former Section 1700.3 is restated in Probate Code Section 39 and generalized to apply to the entire Probate Code. See also Prob. Code § 82 ("trust" defined).

Code of Civil Procedure § 1700.4 (repealed). Trusts

Comment. Former Section 1700.4 is omitted as unnecessary in view of the definition in Probate Code Section 82.

Code of Civil Procedure § 1700.5 (repealed). Court trusts; private trusts

Comment. Former Section 1700.5 is omitted as unnecessary. As revised, the Fiduciaries' Wartime Substitution Law does not make any distinction between court trusts and private trusts.

Code of Civil Procedure § 1700.6 (repealed). Consultant

Comment. Former Section 1700.6 is restated in Probate Code Section 352 without substantive change.

Code of Civil Procedure § 1700.7 (repealed). War service

Comment. Former Section 1700.7 is restated in Probate Code Section 356 without substantive change. Some obsolete references have been omitted in favor of general language in the new statute. Subdivision (e) of former Section 1700.7 is divided into subdivisions (e) and (f) in Probate Code Section 356 and subdivision (f) is designated as subdivision (g) in Probate Code Section 356.

Code of Civil Procedure § 1700.8 (repealed). Residence of corporate fiduciary

Comment. Former Section 1700.8 is omitted. The residence of corporate fiduciaries for purposes of determining venue is governed by other law. See Prob. Code §§ 2202 (guardianship and conservatorship), ____ (decendent's estate administration), 17005 (trusts). See also Prob. Code § 365 (jurisdiction of proceedings).

Code of Civil Procedure § 1701 (repealed). Petition

Comment. The first sentence of former Section 1701 is restated in Probate Code Section 370(a) without substantive change. The second sentence is superseded by Probate Code Section 365. See the Comment to Prob. Code § 365.

Code of Civil Procedure § 1701.1 (repealed). Notice

Comment. Former Section 1701.1 is superseded by Probate Code Section 366.

Code of Civil Procedure § 1701.2 (repealed). Accounting; suspension of powers

Comment. The first sentence of former Section 1701.2 is superseded by Probate Code Section 370(b)-(c). See the Comment to Prob. Code § 370. The second and third sentences are restated in Probate Code Section 373 without substantive change, except that the part of the second sentence relating to notice is superseded by Probate Code Section 366.

Code of Civil Procedure § 1701.3 (repealed). Cofiduciary

Comment. Former Section 1701.3 is restated in Probate Code Section 370(a) without substantive change.

Code of Civil Procedure § 1701.4 (repealed). Powers of substitute

Comment. Former Section 1701.4 is restated in Probate Code Section 371 without substantive change. The reference to cofiduciaries is omitted as unnecessary. See Prob. Code §§ 370, 380, and the Comments thereto.

Code of Civil Procedure § 1701.5 (repealed). Multiple trustees

Comment. Former Section 1701.5 is omitted as unnecessary. This section appears to be intended to avoid the application of the doctrine of merger. However, since the enactment of the Fiduciaries' Wartime Substitution Law in 1943, the doctrine has been severely restricted. See Prob. Code § 15209 (exception to doctrine of merger).

Code of Civil Procedure § 1701.6 (repealed). Bond of substitute

Comment. Former Section 1701.6 is restated in Probate Code Section 372, except that the new provision adds court authority to vary the bond requirement.

Code of Civil Procedure § 1701.7 (repealed). Responsibility for acts of predecessor

Comment. Former Section 1701.7 is restated in Probate Code Section 374 without substantive change.

Code of Civil Procedure § 1702 (repealed). Delegation of powers

Comment. The first and second sentences of former Section 1702 are restated in Probate Code Section 380(a) without substantive change. The third sentence is superseded by Probate Code Section 365. See the Comment to Prob. Code § 365.

Code of Civil Procedure § 1702.1 (repealed). Petitions for delegation and resumption

Comment. The first sentence of former Section 1702.1 is superseded by Probate Code Sections 365 (jurisdiction of proceedings) and 380(b) (delegation authorized). The second sentence is superseded by Probate Code Section 366. See the Comment to Prob. Code § 366. The third sentence is restated in Probate Code Section 382 without substantive change.

Code of Civil Procedure § 1702.2 (repealed). Exceptions to right of delegation

Comment. The introductory clause and subdivision (a) of former Section 1702.2 are restated in Probate Code Section 381 without substantive change.

Subdivision (b) is omitted as unnecessary. See the Comment to former Section 1701.5.

Code of Civil Procedure § 1702.3 (repealed). Personal powers

Comment. Former Section 1702.3 is omitted as unnecessary. By definition, personal powers may not be exercised by a person other than the one to whom they were given. The provisions relating to the absence of a power to delegate are unnecessary, since the procedure for substitution of fiduciaries is applicable by its terms. The availability of the substitution procedure does not depend upon a finding that the original fiduciary is not precluded by the governing instrument from voluntarily delegating powers.

Code of Civil Procedure § 1702.4 (repealed). Liability for acts or omissions of delegate

Comment. Former Section 1702.4 is restated in Probate Code Section 383 without substantive change.

Code of Civil Procedure § 1703 (repealed). Delegation by consultant

Comment. Former Section 1703 is restated in Probate Code Section 385 without substantive change.

Code of Civil Procedure § 1703.1 (repealed). Substitution of consultant

Comment. The introductory part of former Section 1703.1 is superseded by Probate Code Sections 365 (jurisdiction) and 366 (notice). See the Comments to Prob. Code §§ 365, 366.

Subdivisions (a) and (b) are restated in Probate Code Section 386 without substantive change.

Code of Civil Procedure § 1703.2 (repealed). Reinstatement of consultant

Comment. Part of the first sentence of former Section 1703.2 is superseded by Probate Code Section 366 (notice). The remainder of Section 1703.2 is restated in Probate Code Section 387 without substantive change.

Code of Civil Procedure § 1703.3 (repealed). Responsibility of consultant

Comment. Former Section 1703.3 is restated in Probate Code Section 388 without substantive change.

Code of Civil Procedure § 1704 (repealed). Notice

Comment. Former Section 1704 is superseded by Probate Code Section 366. See the Comment to Prob. Code § 366.

Code of Civil Procedure § 1704.1 (repealed). Finding

Comment. Former Section 1704.1 is omitted as unnecessary. The general provisions governing proof of notice and conclusiveness of orders in Probate Code Sections 1260-1265 are applicable to the Fiduciaries' Wartime Substitution Law as located in Probate Code Sections 350-388.

Code of Civil Procedure § 1705 (repealed). Provision of instrument controls

Comment. Former Section 1705 is superseded by Probate Code Section 361.

Code of Civil Procedure § 1706 (repealed). Application of title

Comment. Former Section 1706 is superseded by Probate Code 360. See the Comment to Prob. Code § 360.