

## Memorandum 92-9

Subject: Study L-3052 - Nonprobate Transfer to Trustee Named in Will  
(Letter From California Bankers Association)

Exhibit 1 is a letter from Melvin Wilson of Security Pacific Bank, writing for the State Trust Governmental Affairs Committee of the California Bankers Association (CBA) concerning the Commission's Recommendation: *Nonprobate Transfer to Trustee Named in Will*. The recommendation expands existing law that permits payment of insurance and employee death benefits directly to a trustee named or to be named in a will without going through probate. The recommended legislation would apply this rule to all kinds of nonprobate transfers, including multiple-party bank accounts. The Commission has approved this recommendation for submission to the 1992 Legislature.

CBA suggests the following clarifying revisions to Probate Code Section 6320. Commission-approved amendments are shown in single underscore. The amendments proposed by CBA are shown in double underscore.

Prob. Code § 6320 (amended). Definitions

6320. As used in this chapter, unless the context otherwise requires:

(a) ~~"Contract or plan" means any~~ "Designation" means a designation made pursuant to Section 6321.

(b) "Instrument" includes all of the following:

(1) An insurance, annuity, or endowment contract (including any agreement issued or entered into by the insurer in connection therewith, supplemental thereto, or in settlement thereof).

(2) A pension, retirement benefit, death benefit, stock bonus, profit-sharing or employees' saving plan, or contract created or entered into by an employer for the benefit of some or all of his or her employees.

(3) Self-employed retirement plans, employee welfare ~~benefit plans,~~ and individual retirement annuities or accounts, established or held pursuant to the Internal Revenue Code as now or hereafter amended.

~~(b) "Designation" means a designation made pursuant to Section 6321.~~

(4) A multiple-party account as defined in Section 5132.

(5) Any other written instrument described in Section 5000.

The staff has no objection to making these technical revisions as suggested by CBA, and we would so amend the legislation.

CBA also suggests adding definitions of "employee benefit plan," "employee pension benefit plan," and "employee welfare benefit plan" at the beginning of the Probate Code, Civil Code, and Code of Civil Procedure, and putting these defined terms in various sections, presumably numerous, of these three codes to replace less precise descriptors. This would be a big job. We will include this in the list of possible future topics when the Commission considers this matter at the March meeting.

Respectfully submitted,

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Nonprobate Transfer to Trustee Named in Will  
(21 CLRC Repts. 201)

Gentlemen:

The California Bankers Association's State Trust Governmental Affairs Committee reviewed a number of the CLRC recommendations. I was requested to communicate a couple of suggested changes to the referenced recommendation.

- 1 In the first line (as printed) of proposed Probate Code Section 6320(a)(3), the word "retirement" should be inserted between the words "individual" and "annuities". The phrase "individual retirement annuities or accounts", the intended meaning, conveys a much different meaning than "individual annuities or accounts".
- 2 As some employee welfare benefit plans [see 29 USC §1002(1) = ERISA §3(1)], such as vacation plans, provide cash benefits which are subject to disposition under a beneficiary designation, I suggest that proposed §6320(a)(3) specifically include a reference to employee welfare benefit plans.

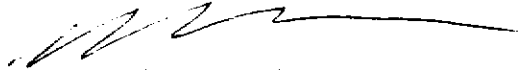
That raises an unrelated issue which seems to be appropriate for review by the Commission. Various provisions of various codes employ several approaches to describe employee pension or welfare benefit plans in a generic sense. The most commonly used approach is to generically define what we understand to mean employee pension benefit plans by listing several of the common

names for such plans, such as money purchase, profit sharing, retirement, etc. Most practitioners accept such smorgasbord descriptor to mean all employee retirement benefit plans, but one is never quite sure whether employee welfare benefit plans are intended to be included.

Another approach used in the codes is to incorporate by reference the definitions in ERISA. However, some references incorporate "plans governed by ERISA" (see CC §5106). As not all employee benefit plans are subject to ERISA [e.g., 29 USC §1003(b)], that approach may result in an unintentional omission of some forms of plans which should be subject to the statute.

I recommend that there be added to the definitions at the beginning of at least the Probate Code, Code of Civil Procedure and Civil Code a definition of "employee benefit plan", "employee pension benefit plan", and "employee welfare benefit plan" and that the defined terms replace the mishmash of generic descriptors we now have in the text of the statutes.

Very truly yours,



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Vice President & Associate Trust Counsel

cc D. Lauer  
M. Padden