

Memorandum 95-16

Statute of Limitations in Trust Matters: Probate Code § 16460

Edmond R. Davis, a Los Angeles attorney, has written the Commission concerning a statute of limitations problem in proceedings relating to breach of trust. The problem is created by the decision in *DiGrazia v. Anderlini*, 22 Cal. App. 4th 1337, 28 Cal. Rptr. 37 (1994). (A copy of the opinion is attached as Exhibit pp. 5-14.) *DiGrazia* holds that the general four-year statute of limitations in Code of Civil Procedure Section 343 applies in breach of trust proceedings where a written account or report was not given the beneficiary, rather than the three-year statute provided by Probate Code Section 16460. The case also holds that an “account or other report” sufficient to trigger the statute of limitations must meet the standards provided in sections governing the trustee’s duty to account to beneficiaries. While the equities involved in the case may support the court’s ultimate disposition, the court’s statutory interpretations will create problems and are inconsistent with the intent of the Trust Law. The governing statute thus needs to be amended to clarify the law and restore the Commission’s original intent in recommending Probate Code Section 16460.

Background

The Trust Law, which was enacted on recommendation of the Commission, sets out a complete scheme governing claims by beneficiaries against trustees for breach of trust. Section 16460 provides the statute of limitations on claims against the trustee by beneficiaries. This section, with language relevant to the *DiGrazia* decision in bold, reads as follows:

Prob. Code § 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.

Comment. Section 16460 continues Section 16460 of the repealed Probate Code with the omission of subdivision (c). The omitted subdivision (which provided that a claim arising before July 1, 1987, was not barred by Section 16460 until July 1, 1988) has been omitted as obsolete.

Section 16460 is drawn in part from Section 7-307 of the Uniform Probate Code (1987). As to the construction of provisions drawn from uniform acts, see Section 2. For provisions governing consent, release, and affirmance by beneficiaries to relieve the trustee of liability, see Sections 16463-16465. The reference in the introductory clause to claims "otherwise" barred also includes principles such as estoppel and laches that apply under the common law. See Section 15002 (common law as law of state). 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) (exception 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. See Section 1003 (guardian ad litem).

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

Applicable Statute of Limitations

The *DiGrazia* court finds that the language of Section 16460 is unambiguous. While this is comforting, we must reluctantly conclude that the language of the section is not unambiguous, since it has led to the wrong conclusion. The court reads subdivision (a), paragraphs (1) and (2), to apply *only where* an “interim or final account in writing, or other written report” is given. If such a report meeting standards determined by the court (as discussed below) is not given, then the three-year statute does not apply. This leads inexorably to the conclusion that the general four-year statute of limitations in Code of Civil Procedure Section 343 applies.

The court cites the Commission’s Comment in support of its conclusion, but revises the context in such a manner as to change its meaning:

The Law Revision Commission’s comments indicate it was well aware that its proposal would create a significant exception to the then-existing statute of limitations applicable to actions for breach of express trust. In the Comment which accompanied section 16460 as originally enacted, the Commission referred specifically to the rule of “prior law” announced in *Cortelyou v. Imperial Land Co.*, supra, 166 Cal. at page 20, 134 P. 981, and *Oeth v. Mason*, supra, 247 Cal.App.2d at pages 811-812, 56 Cal.Rptr. 69, and stated that “[s]ection 16460 is a new provision [which] is an exception to” that prior law.

[28 Cal. Rptr. at 43; Exhibit p. 11.]

Compare this discussion to the text of the Comment set out above. (The original 1986 Comment was revised in 1990, but not in any way relevant to this discussion; the “new provision” language was dropped from what is now the first part of the second paragraph.) The Comment states: “Section 16460 is an exception to the four-year rule provided in Code of Civil Procedure Section 343.” This is an independent statement. It does not refer back to the case law, as the court indicates by using the phrase “that prior law.” The ellipsis in the final clause of the court’s language set out above represents 211 words!

Section 16460 is an exception to the general rule of Section 343, as the Comment states. This is a change in former law under which Section 343 was applied, since there was then no special rule applicable to trusts. The alternatives recognized in the Comment are the prior rule having a four-year limitations period and the new rule having a three-year limitations period. There is no room in this dichotomy for a new, sometimes four-year rule. Cross-references

concerning statutes of limitations in other Comments refer only to Section 16460, not to Section 343. See, e.g., Comments to Prob. Code §§ 16060, 16463, 16464.

In the initial 1983 memorandum considering this issue (Memorandum 83-17, p. 17, March 10, 1983), the staff noted:

Several reported California cases have involved a dispute over whether a three-year or four-year period applies; but of course such cases wouldn't have arisen if the applicable limitation was clear.

In a 1984 memorandum, the situation was summarized as follows (Memorandum 84-23, p. 22, April 6, 1984):

When the UPC provision was considered by the Commission in 1983, the decision was made to bar claims for breach one year after an interim or final accounting that fully discloses the subject of a claim. If not fully disclosed in an accounting, claims for breach of trust would be barred one year after the beneficiary discovers the facts or reasonably should have discovered them. This provision would not displace the general statute of limitations applicable to actions for relief on the ground of fraud, but the four-year general statute of limitations would no longer apply.

Finally, consider this excerpt from another 1983 memorandum (First Supplement to Memorandum 84-23, pp. 10-11, July 25, 1984), summarizing the proposed rule in response to inquiries from the Los Angeles County Bar Association:

The draft section covers all cases, with the exception of fraud, where the traditional three-year period would apply. If the trustee makes a full disclosure of the subject of a claim in a written accounting, the statute of limitations runs one year from the date of the accounting. In any other situation (other than fraud), the same period of limitations applies, but it runs from the date the beneficiary discovered, or should have discovered, the facts. This scheme covers all bases; there is no room for applying the general four-year statute.

The draft statute then being considered closely resembles the statute later enacted, except that the period was one year instead of three years, and the reference to "other report" had not yet been added.

Additionally, as noted in the Comment, this section was drawn in part from Uniform Probate Code Section 7-307 which, in relevant part, provides: "*In any event and notwithstanding lack of full disclosure a trustee who has issued a final account or statement received by the beneficiary and has informed the*

beneficiary of the location and availability of records for his examination is protected after three years.” (Emphasis added.)

The intent of the Commission throughout the years that the limitations provision was under review is clear: the statute was meant to provide a complete statutory rule, to avoid the need to look outside the statute, and to provided one measure of the period of limitation. There will still be a question of fact as to whether a sufficient disclosure has taken place that triggers the statute under subdivision (a)(1). And factual issues are also inherent in the second prong of the rule, since the court will have to decide when a beneficiary knew or should have known of the basis of the claim. But the statute was intended to at least eliminate the incentive of arguing the facts to apply a different limitations period — a prospect that is now encouraged under the *DiGrazia* rule.

Nature of Account or Report Required To Trigger Statute of Limitations

Essential to the *DiGrazia* court’s conclusion is the implicit finding that the trustee’s letter and other communications to the beneficiary were not written accounts or reports within the terms of the statute. The court specifically holds that “to trigger the operation of section 16460, a trustee’s report or account must conform to the minimum standards set out by sections 16061 or 16063 respectively.” This holding is not consistent with the Commission’s intent, although the policy advanced by the court is worth considering.

These sections provide as follows:

Prob. Code § 16061. Duty to report information about trust on request

16061. Except as provided in Section 16064, on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary’s interest, including the terms of the trust that describe or affect the beneficiary’s interest.

Comment. Section 16061 continues Section 16061 of the repealed Probate Code without change. The section is drawn from Section 7-303(b) of the Uniform Probate Code (1987). As to the construction of provisions drawn from uniform acts, see Section 2. The reference to the acts of the trustee is drawn from former Probate Code Section 1138.1(a)(5) (repealed by 1986 Cal. Stat. ch. 820, § 31). If the trustee does not comply with the reasonable request of the beneficiary, information may be sought on petition pursuant to Section 17200(b)(7). Note that the right to petition for a report or account under Section 17200(b)(7) is limited to one report or account every six months and after a trustee has failed to furnish the report or account within 60 days after a written request. A beneficiary who is not entitled to an annual account under Section 16062 may be entitled to information or a particular account under this section. The availability of information on request under this section does not negate the affirmative duty of the trustee to provide

information under Section 16060. During the time that a revocable trust can be revoked, the right to request information pursuant to this section does not belong to the beneficiaries but only to the settlor or other person having the power to revoke. See Section 15800. See also Sections 24 (“beneficiary” defined), 16064 (exceptions to duty to report and account). In an appropriate case, more or different information may be required under this section than through the duty to account annually. See Section 16063 (contents of annual account).

Prob. Code § 16062. Duty to account to beneficiaries

16062. (a) Except as otherwise provided in this section and in Section 16064, the trustee shall account at least annually, at the termination of the trust, and upon a change of trustees, to each beneficiary to whom income or principal is required or authorized in the trustee’s discretion to be currently distributed.

(b) A trustee of a living trust created by an instrument executed before July 1, 1987, is not subject to the duty to account provided by subdivision (a).

(c) A trustee of a trust created by a will executed before July 1, 1987, is not subject to the duty to account provided by subdivision (a), except that if the trust is removed from continuing court jurisdiction pursuant to Article 2 (commencing with Section 17350) of Chapter 4 of Part 5, the duty to account provided by subdivision (a) applies to the trustee.

(d) Except as provided in Section 16064, the duty of a trustee to account pursuant to former Section 1120.1a of the Probate Code (as repealed by Chapter 820 of the Statutes of 1986), under a trust created by a will executed before July 1, 1977, which has been removed from continuing court jurisdiction pursuant to former Section 1120.1a, continues to apply after July 1, 1987. The duty to account under former Section 1120.1a may be satisfied by furnishing an account that satisfies the requirements of Section 16063.

(e) Any limitation or waiver in a trust instrument of the obligation to account is against public policy and shall be void as to any sole trustee who is a disqualified person as defined in paragraph (1) of subdivision (b) of Section 21350.

Comment. Section 16062 continues Section 16062 of the repealed Probate Code without change.

Subdivision (a) imposes the general duty to account at least annually and at the termination of the trust and upon a change of trustees. This duty is subject to the exceptions provided in this section and in Section 16064. The duty to provide information under Section 16060 is not necessarily satisfied by compliance with Section 16062.

Subdivision (b) makes clear that the requirement of furnishing an account under subdivision (a) does not apply to a living trust created by an instrument executed before July 1, 1987. As to the application of any amendments made after that date, see Section 3.

Subdivision (c) provides as a general rule that testamentary trusts that were not subject to continuing court jurisdiction under former law--i.e., trusts created by wills executed between July 1, 1977, and June 30, 1987, and trusts created by earlier wills that were republished during that time--are not subject to the accounting requirements of

subdivision (a). However, subdivision (c) makes the accounting requirement of subdivision (a) applicable to testamentary trusts that are removed from continuing jurisdiction under Sections 17350-17354 after July 1, 1987.

Subdivision (d) makes clear that, where a trust was removed from continuing jurisdiction under former law, the annual accounting required by former Probate Code Section 1120.1a(b) (repealed by 1986 Cal. Stat. ch. 820, § 31) is still required, notwithstanding the repeal of Section 1120.1a. For the sake of administrative simplicity, however, this requirement may be satisfied by compliance with Section 16063 (contents of accounting). The introductory clause of subdivision (d) also makes clear that the accounting requirement is subject to relevant exceptions in Section 16064, such as where the beneficiary waives the right to account.

Notwithstanding being excused from the duty to report information or account, the trustee may want to provide information or account to the beneficiaries in order to start the running of the statute of limitations pursuant to Section 16460.

Prob. Code § 16063. Contents of account

16063. An account furnished pursuant to Section 16062 shall contain the following information:

(a) A statement of receipts and disbursements of principal and income that have occurred during the last complete fiscal year of the trust or since the last account.

(b) A statement of the assets and liabilities of the trust as of the end of the last complete fiscal year of the trust or as of the end of the period covered by the account.

(c) The trustee's compensation for the last complete fiscal year of the trust or since the last account.

(d) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the last complete fiscal year of the trust or since the last account.

(e) A statement that the recipient of the account may petition the court pursuant to Section 17200 to obtain a court review of the account and of the acts of the trustee.

(f) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives an account or report disclosing facts giving rise to the claim.

Comment. Section 16063 continues Section 16063 of the repealed Probate Code without change. Subdivision (f) requires that beneficiaries be given notice of the three-year statute of limitations applicable to claims for breach of trust. See Section 16460. A beneficiary who has received an account that satisfies this section may also request additional information under Section 16061 and may petition for another account under Section 17200(a) and (b)(7) in appropriate circumstances. See also Section 16247 (power to hire agents) and the Comment thereto.

We do not in these sections find support for the court's holding in *DiGrazia* on the required contents of an account or report under Section 16460. If the Commission had intended that rule, then Section 16460 would have referred to these sections. On first blush, it may appear useful to clothe the reference in

Section 16460 with more detail by imposing Sections 16061 and 16063 upon it. However, the gain is illusory, since the standard that needs to be met under Section 16460(a) is whether the account or report “adequately discloses the existence of a claim.” An accounting under either of these sections may or may not make that disclosure — the analysis under Section 16460 still has to be made. Conversely, what is the purpose of refusing to trigger the statute when a less formal report (or letter) “adequately discloses the existence of a claim”? Of course, the issue is not as important once the principle is established that the three-year period of Section 16460 applies in all breach of trust claims. The consequence of not being a “real” account or report under the *DiGrazia* standard is not to switch to the four-year general statute of limitations. But it would, under the proposed revision of subdivision (a), have the effect of switching between paragraph (1) (actual notice) and paragraph (2) (knew or should have known). On balance, the staff does not believe it is necessary or beneficial to impose formal requirements on the account or report described in Section 16460.

Staff Recommendations

The staff recommends that Section 16460 be amended to make clear, consistent with the Commission’s original intent, that a three-year rule applies whether or not an account or report is given to the beneficiary. The staff also recommends that the statute be amended to make clear that any account or report, not necessarily one strictly in accord with Sections 16061 and 16063, is sufficient to start the three-year period running if it constitutes an adequate disclosure. The following revisions would implement these suggestions:

Prob. Code § 16460. Limitations on proceedings against trustee

SEC. _____. Section 16460 of the Probate Code is amended to read:

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 in writing or other written report does not adequately disclose the existence of a claim against the trustee for

breach of trust or if a beneficiary does not receive any written account or report, 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) A written account or report under this section may, but need not, satisfy the standards provided in Section 16061 or 16063 or any other provision.

Comment. Subdivision (a)(2) of Section 16460 is amended to make clear that it applies both where an insufficient account or report is given the beneficiary as well as where the beneficiary has not received any written account or report. This revision is consistent with the original intent of this section, and rejects the contrary conclusion reached by the court in *DiGrazia v. Anderlini*, 22 Cal. App. 4th 1337, 1346-48, 28 Cal. Rptr. 37, 42-44 (1994). The three-year statute of limitations under subdivision (a) is applicable to all claims for breach of trust and the four-year statute of Code of Civil Procedure Section 343 is inapplicable. See Comment to Section 16460 as enacted by 1986 Cal. Stat. ch. 820, *Selected 1986 Trust and Probate Legislation*, 18 Cal. L. Revision Comm'n Reports 1201, 1424-25 (1986), and as re-enacted by 1990 Cal. Stat. ch. 79, *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001, 1940-41 (1990).

Subdivision (c) is added to make clear that the requirements for a written account or report under this section are independent of other statutes. The governing rule determining whether paragraph (1) or paragraph (c) of subdivision (a) applies is whether the account or report "adequately discloses the existence of a claim." Subdivision (c) rejects the holding in *DiGrazia v. Anderlini*, 22 Cal. App. 4th 1337, 1348-49, 28 Cal. Rptr. 37, 44-45 (1994), that an account or report under this section must satisfy the minimum standards set out in Section 16061 or 16063.

Respectfully submitted,

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December 6, 1994

California Law Revision Commission
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Attn: Stan Ulrich
Assistant Executive Secretary

Re: Probate Code Section 16460
DiGrazia v. Anderlini
22 Cal.App.4th 1337, Decided
February, 1994

Gentlemen:

This letter is written at the suggestion of Stan Ulrich.

We have brought to the attention of Judge Marshall the recent decision by the Court of Appeal in DiGrazia v. Anderlini. In DiGrazia, the Court of Appeal determined that in order to trigger the operation of the three-year statute in Probate Code Section 16460, a trustee's report or account must conform to the minimum standards set out by Probate Code Sections 16061 or 16063. Apparently, if the report or account does not conform to those minimum standards, then the former four-year statute under C.C.P. Section 343, which is triggered only by actual knowledge of a breach, applies.

As I understand it from my discussions with Judge Marshall and Stan Ulrich, the intention of Probate Code Section 16460

promulgated by the California Law Revision Commission, was that the three-year statute of limitations set forth in Section 16460 superseded the four-year statute of limitations existing prior to the adoption of Section 16460. Also, I understand that the California Law Revision Commission intended that the concept of reasonable inquiry, as set forth in Section 16460, was intended to supersede the concept requiring "actual knowledge" under prior law that was associated with C.C.P. Section 343. DiGrazia holds that in certain circumstances, the three-year statute of limitations under Probate Code Section 16460 will apply, and in other circumstances, the four-year statute (C.C.P. Section 343) will apply.

In addition to being contrary to the intention of the California Law Revision Commission in promulgating the statute, the DiGrazia decision creates significant practical problems for trustees, if an "accounting" or "other report" does not meet the minimum standards of Probate Code Sections 16061 or 16063. This could mean that, if a trustee wrote a letter to a beneficiary disclosing the existence of a claim for breach of trust, such written notice would not be adequate to trigger the three-year statute under Probate Code Section 16460, because the letter was not an "account" or "other report".

We urgently request that the California Law Revision Commission consider correcting this matter. We request that the

California Law Revision
Commission

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California Law Revision Commission put this matter on its agenda
and treat the matter as urgency legislation.

We will be pleased to provide any assistance that we can in
that regard. Thank you for your consideration of this matter.

Very truly yours,

BROBECK, PHLEGER & HARRISON

By


Edmond R. Davis

cc: Hon. Arthur K. Marshall