

Study L-3057

January 9, 1996

**First Supplement to Memorandum 96-7****1996 Legislative Program: Statute of Limitations in Trust Matters**

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Judge Arnold H. Gold, Chair of the California Judges Association Probate and Mental Health Committee, has objected to inclusion of the Commission's recommendation on *Statutes of Limitations in Trust Matters: Probate Code Section 16460* in the Senate Judiciary Committee's omnibus probate bill. This type of bill collects noncontroversial proposals; any item that is objected to is eliminated from the bill. Accordingly, we will need to find another vehicle for the recommendation.

The recommendation seeks to correct erroneous judicial interpretations of the intent of the Trust Law. (See attached copy of recommendation.) The court in *DiGrazia v. Anderlini*, 22 Cal. App. 4th 1337, 28 Cal. Rptr. 37 (1994), applied a four-year statute of limitations in a proceeding by a beneficiary against a trustee for breach of trust. The court found that the three-year limitations period in Probate Code Section 16460 applied only where a written account or report satisfying the standards of Sections 16061 and 16063 was given. However, the Trust Law intended to provide a single three-year statute of limitations on claims for breach of trust and nowhere did the Trust Law seek to impose the standards of Section 16063 on the statute of limitations. Under the Trust Law, a three-year statute of limitations always applies. If a written report or account *that adequately discloses the existence of the claim* is received, then the three-year period runs from the date of receipt. Otherwise, the three-year period runs from the date the beneficiary discovered or reasonably should have discovered the subject of the claim.

Under the Trust Law scheme, for statute of limitations purposes, the first issue is whether the report adequately discloses the existence of the claim — it doesn't matter what form the report or account takes. Under *DiGrazia*, even if the report made an adequate disclosure, it would not start the statute running if it didn't comply with Section 16063 (contents of account that will satisfy requirement of annual accounting). The rule under the Trust Law where a report or account does not make adequate disclosure of the existence of the claim is generally the same as the fraud rule and applies the same three-year limitations period. This is a complete statutory scheme and does not need or allow for use of the default four-year limitations period under Code of Civil Procedure Section 343.

Judge Gold made the following comment in his Dec. 26, 1995, letter Mikki Bako Sorensen, consultant to the Senate Judiciary Committee:

There is a persuasive argument in favor of the law as it was articulated in the *DiGrazia* case — i.e., that the *DiGrazia* case's interpretation of the law was correct and that the law should be the way the *DiGrazia* case interpreted it. Even the proponent notes (at the end of the first paragraph on page 3 of the proponent's discussion of the proposal) that the policy advanced by the *DiGrazia* court "is worth considering."

We do not view this as a contest between the scheme outlined in *DiGrazia* and the Trust Law rules as originally intended. There may be good arguments supporting part of the *DiGrazia* scheme. The issue is at heart one of statutory interpretation and we are confident that the court misinterpreted the statute on both points — that the four-year statute could apply and by adding an unnecessary gloss that a report or account had to satisfy Sections 16061 and 16063 to start the statute running. It should also be noted that the court's discussion of accounting standards is obiter dictum since the facts of the case indicate that the beneficiary never received any written communication.

In the course of preparing this recommendation, the Commission decided not to reconsider the policy decisions that went into fashioning the Trust Law scheme. (Incidentally, by way of clarification, the "worth considering" remark quoted by Judge Gold from the Commission's recommendation relates to the issue of accounting standards, not to the misapplication of the four-year limitations period.) These issues were fully considered in the course of preparing the tentative recommendation. The tentative recommendation was circulated for comment in July 1995. The proposal was supported by Edmond R. Davis, Brobeck, Phleger & Harrison, Los Angeles, who originally urged the Commission to review the *DiGrazia* case, by the State Bar Estate Planning, Trust and Probate Law Section, and by three other commentators. Luther J. Avery, Avery & Associates, San Francisco, opposed the proposals and urged consideration of an alternate approach and the imposition of strict accounting standards. The Commission approved the proposal as a final recommendation at the September meeting, ratified at the November meeting.

Does the Commission wish to reconsider its recommendation?

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

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STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

**Statute of Limitations in Trust Matters:  
Probate Code Section 16460**

**November 1995**

**California Law Revision Commission  
4000 Middlefield Road, Room D-1  
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## CALIFORNIA LAW REVISION COMMISSION

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November 2, 1995

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

This recommendation proposes technical revisions in the Trust Law to clarify the applicable statute of limitations governing trustees' duties to account to beneficiaries. A recent appellate decision misinterpreted the applicable statutes, creating doubt about whether a three-year or four-year limitations period is applicable.

The proposed amendments will restore the original intent of the Trust Law that a three-year period is always applicable, running either from the time a sufficient accounting is received by the beneficiary or from the time that the beneficiary discovered or reasonably should have discovered the basis of a claim.

This study was conducted pursuant to Resolution Chapter 37 of the Statutes of 1980, continued in Resolution Chapter 87 of the Statutes of 1995.

Respectfully submitted,

Colin W. Wied  
*Chairperson*

STATUTE OF LIMITATIONS IN TRUST MATTERS:  
PROBATE CODE SECTION 16460

In *DiGrazia v. Anderlini*,<sup>1</sup> the court held that the general four-year statute of limitations in Code of Civil Procedure Section 343 applies to claims for breach of trust where a "written account or report" was not given to the beneficiary, despite the three-year limitations period provided by Probate Code Section 16460. *DiGrazia* 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 in *DiGrazia* may support the court's disposition of the case, the court's statutory interpretations will create problems and are inconsistent with the intent of the Trust Law. The governing statute needs to be amended to clarify the law and restore the original intent of Probate Code Section 16460.

**Applicable Statute of Limitations**

The Trust Law, which was enacted on recommendation of the Law Revision Commission,<sup>2</sup> sets out a complete scheme governing claims by beneficiaries against trustees for breach of trust. Section 16460 provides a three-year statute of limitations, running from the time an account or report adequately discloses the existence of a claim or from when the beneficiary discovered or reasonably should have discovered the subject of the claim.<sup>3</sup>

The *DiGrazia* court concluded that the three-year limitations period provided in Section 16460(a) applies *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 is not given, then the three-year statute does not apply. This led the court to the conclusion that the general, default four-year statute of limitations in Code of Civil Procedure Section 343 applies.<sup>4</sup>

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1. 22 Cal. App. 4th 1337, 28 Cal. Rptr. 37 (1994).

2. See 1986 Cal. Stat. ch. 820; *Selected 1986 Trust and Probate Legislation*, 18 Cal. L. Revision Comm'n Reports 1201, 1207 (1986).

3. For the language of this section, see the "Proposed Legislation" *infra*.

4. *DiGrazia*, 22 Cal. App. 4th at 1346, 28 Cal. Rptr. 2d at 43. The court cites the Commission's Comment to Section 16460 as enacted in support of its conclusion, but the Comment has been edited 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.

(22 Cal. App. 4th at 1347, 28 Cal. Rptr. 2d at 43.)

Section 16460 is intended as an exception to the general rule of Section 343. In 1986, the Trust Law changed the former rule under which the default four-year statute of limitations in Section 343 was applied, since there was formerly no special rule applicable to trusts. The statute was meant to provide a complete statutory rule, to avoid the need to look outside the statute, and to provide a single measure of the period of limitation. The three-year period is the same as the limitations applicable in cases of fraud.<sup>5</sup>

In applying this rule, 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) of Section 16460 ("If a beneficiary has received an interim or final account in writing, or other written report, that adequately discloses the existence of a claim...."). And factual issues are also inherent in the second prong of the rule ("If an interim or final account or other report does not adequately disclose the existence of a claim...."), 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 for arguing the facts to apply a different limitations period — a prospect that is now encouraged under the *DiGrazia* rule.

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The Comment actually states: "Section 16460 is an exception to the four-year rule provided in Code of Civil Procedure Section 343." This is an independent statement, making unambiguous reference to the default statute of limitations in Section 343 — it does not refer to the case law, as the opinion states by using the phrase "that prior law." In this fashion, the legislative history of Section 16460 was turned on its head.

Compare the court's presentation with the full text of the relevant part of the Comment to Section 16460 as enacted:

**Section 16460 is a new provision** 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. Section 16460 supersedes the provisions of former Civil Code Section 2282 relating to discharge of trustees. For a provision 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.**

(See *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501, 714-15 (1986); emphasis added.)

The ellipsis in the last line of the language quoted in the *DiGrazia* opinion represents more than 200 words, in all or part of 13 sentences.

5. See Code Civ. Proc. § 338(d) (three-year period running from time of "discovery, by the aggrieved party, of the facts constituting the fraud").

### **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."<sup>6</sup> This holding is not consistent with the legislative intent, although the policy advanced by the court is worth considering.

An examination of these sections does not support the court's holding on the required contents of an account or report under Section 16460. The standard that needs to be met under Section 16460(a) is whether the account or report "adequately discloses the existence of a claim." On first blush, it may appear useful to clothe this language in Section 16460 with more detail by imposing standards drawn from Sections 16061 and 16063. However, the gain is illusory, since an accounting under Section 16061 or 16063 may or may not satisfy the adequate disclosure standard — the substantive analysis under Section 16460 still has to be made. Nothing is gained by refusing to trigger the statute when a less formal report (or letter) "adequately discloses the existence of a claim."

### **Recommendations**

The Commission recommends amendment of Section 16460 to make clear, consistent with the original intent of the statute, that a three-year limitations period on claims for breach of trust applies whether or not an account or report is given to the beneficiary. If an adequate report is given, then the three-year period runs from the date the report is given; otherwise the three-year period runs from the time the beneficiary discovered or reasonably should have discovered the basis of the claim.

The statute should also be amended to state explicitly that, for the purpose of the limitations period, an account or report need not satisfy the standards of Sections 16061 and 16063. An account or report starts the running of the three-year limitations period if it adequately discloses the basis of the claim.

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6. *DiGrazia*, 22 Cal. App. 4th at 1349, 28 Cal. Rptr. 2d at 44-45.





## PROPOSED LEGISLATION

### **Prob. Code § 16460. Limitations on proceedings against trustee**

SECTION 1. 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. 2d 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 (2) 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. 2d 37, 44-45 (1994), that an account or report under this section must satisfy the minimum standards set out in Section 16061 or 16063.

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