

Study L-3059

October 12, 1999

## First Supplement to Memorandum 99-63

### **Revocable Trust Accounting: Letter from Luther Avery**

---

Attached to this supplement is a letter from Luther J. Avery describing the proposal to clarify the accounting duty under revocable trusts as “absurd.” He finds the arguments in support of the proposal “interesting but irrelevant.” Reading between the lines, it would appear that Mr. Avery favors extending the duty of a trustee to account under the Trust Law to apply to a time when a person is not serving as trustee. The staff is troubled, however, by the implication that, without the *Evangelho* extension of the Trust Law accounting duties, there would be no remedy to punish thieving or fraudulent banks or charlatans who exert undue influence on the elderly. The proposal does not shield evildoers; it makes clear that the remedy is not available under the Trust Law, since there simply is no duty to account *as trustee* in these circumstances.

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

**AVERY &  
ASSOCIATES**

ATTORNEYS AT LAW  
49 GEARY STREET SUITE 202  
SAN FRANCISCO, CA 94108-5727  
(415) 954-4800  
FAX (415) 954-4810

October 7, 1999

Our File No. 9911.81-35

**Telephone: (650) 494-1335****Fax: (650) 494-1827**

Mr. Stan Ulrich

Assistant Executive Secretary

California Law Revision Commission

4000 Middlefield Road, Suite D-1

Palo Alto, California 94303-4739

Law Revision Commission  
RECEIVED**OCT - 8 1999**

File: \_\_\_\_\_

**Re: Memorandum 99-63, Revocable Trust Accounting**

Dear Mr. Ulrich:

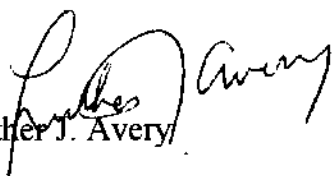
Let's see. My mother creates a revocable inter vivos trust naming a bank as trustee. One or more bank trust officers steal trust funds or grossly mismanage the funds. My mother becomes incompetent, eventually she dies. What you propose is that the bank is exonerated and need not account for its fiduciary breaches. What you propose is absurd!

The fact is that the trustee should be accountable to someone; and the fact the trust is revocable should not prevent the trustor or any successor in interest from seeking an accounting as long as the trustee's records are available or discoverable.

The arguments in support of the change you propose are interesting but irrelevant. The issue is: what if a trustor creates a revocable living trust at the behest of a charlatan, a typical situation where abuse of the elderly can occur? Should the mere fact the elderly victim used a revocable living trust provide protection to whomever takes advantage of the elderly?

Incidentally, no prudent trustee will take over a revocable living trust after the trust becomes irrevocable without first demanding and receiving an accounting that will protect the successors.

Yours sincerely,

  
Luther J. Avery

LJA cet