

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

Annual Report



December 1986

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

# THE CALIFORNIA LAW REVISION COMMISSION

## COMMISSION MEMBERS

ARTHUR K. MARSHALL  
*Chairperson*

ANN E. STODDEN  
*Vice Chairperson*

ROGER ARNEBERGH  
*Member*

BION M. GREGORY  
*Member*

BILL LOCKYER  
*Member of Senate*

ALISTER MCALISTER  
*Member of Assembly*

EDWIN K. MARZEC  
*Member*

TIM PAONE  
*Member*

VACANCY  
*Member*

VACANCY  
*Member*

## COMMISSION STAFF

### Legal

JOHN H. DEMOULLY  
*Executive Secretary*

NATHANIEL STERLING  
*Assistant Executive Secretary*

ROBERT J. MURPHY III  
*Staff Counsel*

STAN G. ULRICH  
*Staff Counsel*

### Administrative-Secretarial

DIANNE H. DIENSTEIN  
*Administrative Assistant*

EUGENIA AYALA  
*Word Processing Technician*

VICTORIA V. MATIAS  
*Word Processing Technician*

## NOTE

The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 18 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published late in 1987.

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## **SUMMARY OF WORK OF COMMISSION**

### **Recommendations to 1987 Legislative Session**

The California Law Revision Commission plans to submit to the 1987 legislative session a number of recommendations relating to probate law and procedure:

- Supervised Administration of Decedent's Estate
- Independent Administration of Estates
- Creditor Claims Against Decedent's Estate
- Notice in Probate Proceedings
- Notice in Guardianship and Conservatorship Proceedings
- Preliminary Provisions and Definitions of the Probate Code
- Technical Revisions in the Trust Law

Recommendations relating to additional aspects of probate law and procedure will be submitted to the 1987 legislative session if work on them is completed in time to permit their submission.

### **Recommendations Enacted by the 1986 Legislative Session**

In 1986, three of four bills recommended by the Commission were enacted. The bills enacted in 1986 amended 50 sections, added 363 sections, and repealed 206 sections. They effectuated Commission recommendations relating to:

- The Trust Law
- Disposition of Estate Without Administration
- Small Estate Set-Aside
- Proration of Estate Taxes
- Civil Code Sections 4800.1 and 4800.2

### **Commission Plans for 1987**

During 1987, the Commission plans to continue its work in preparing a new code to replace the existing Probate Code.



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(415) 494-1335

ARTHUR K. MARSHALL  
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*Vice Chairperson*

ROGER ARNEBERGH

BION M. GREGORY

SENATOR BILL LOCKYER

ASSEMBLYMAN ALISTER McALISTER

EDWIN K. MARZEC

TIM PAONE

December 4, 1986

To: The Honorable George Deukmejian  
*Governor of California*  
and  
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission herewith submits this report of its activities during 1986.

Three of the four bills introduced in 1986 to implement the Commission's recommendations were enacted. One of these bills provides California with a new comprehensive trust law. Another bill was a major probate reform bill designed to reduce the delay and expense of probate, primarily by expanding and improving the procedure for disposition of a decedent's estate without the need for a formal probate proceeding. Assembly Member Alister McAlister authored all of the Commission recommended measures enacted in 1986.

The Commission will suffer a great loss when Assembly Member McAlister retires from the Legislature at the end of his current term. His integrity, hard work, and wise counsel have contributed significantly to the overall success of the Commission's law reform activities during the 13 years he has served as a member of the Commission.

The Commission held eight two-day meetings and two one-day meetings during 1986. Meetings were held in Burbank, Eureka, Monterey, Newport Beach, Sacramento, San Diego, and San Francisco.

Respectfully submitted,  
Arthur K. Marshall  
*Chairperson*



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# ANNUAL REPORT FOR THE YEAR 1986

## INTRODUCTION

The California Law Revision Commission<sup>1</sup> was created in 1953 (as the permanent successor to the Code Commission) with the responsibility for a continuing substantive review of California statutory and decisional law.<sup>2</sup> The Commission studies the California law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission assists the Legislature in keeping the law up to date by:

- (1) Intensively studying complex and sometimes controversial subjects;
- (2) Identifying major policy questions for legislative attention;
- (3) Gathering the views of interested persons and organizations; and
- (4) Drafting recommended legislation for legislative consideration.

The efforts of the Commission permit the Legislature to determine significant policy questions rather than to concern itself with the technical problems in preparing background studies, working out intricate legal problems, and drafting needed legislation. The Commission thus enables the Legislature to accomplish needed reforms that otherwise might not be made because of the heavy demands on legislative time. In some cases, the Commission's report demonstrates that no new legislation on a particular topic is needed, thus relieving the Legislature of the need to study the topic.

The Commission consists of:

—A Member of the Senate appointed by the Committee on Rules.

—A Member of the Assembly appointed by the Speaker.

—Seven members appointed by the Governor with the advice and consent of the Senate.

—The Legislative Counsel who is an *ex officio* member.

The Commission may study only topics that the Legislature by concurrent resolution authorizes it to study. The Commission now has a calendar of 23 topics.<sup>3</sup>

Commission recommendations have resulted in the enactment of legislation affecting 9,416 sections of the California statutes:

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1. See Gov't Code §§ 8280-8297 (statute establishing Law Revision Commission).

2. See 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954, at 7 (1957).

3. See list of topics under "Calendar of Topics Authorized for Study" set out in Appendix 1 *infra*.

4,124 sections have been added, 2,134 sections amended, and 3,158 sections repealed. Of the 201 Commission recommendations submitted to the Legislature, 185 (92%) have been enacted in whole or in substantial part.<sup>4</sup>

The Commission's recommendations are published in softcover and later are collected in hardcover volumes. A list of past publications and information on where and how copies may be obtained may be found at the end of this Report.

## 1987 LEGISLATIVE PROGRAM

The Commission plans to recommend legislation on the following subjects to the 1987 Legislature:

- (1) Supervised Administration of Decedent's Estate.<sup>5</sup>
- (2) Independent Administration of Estates.<sup>6</sup>
- (3) Creditor Claims Against Decedent's Estate.<sup>7</sup>
- (4) Notice in Probate Proceedings.<sup>8</sup>
- (5) Notice in Guardianship and Conservatorship Proceedings.<sup>9</sup>
- (6) Preliminary Provisions and Definitions of the Probate Code.<sup>10</sup>
- (7) Technical Revisions in the Trust Law.<sup>11</sup>

Recommendations relating to additional aspects of probate law and procedure will be submitted to the 1987 legislative session if work on them is completed in time.

## THE PROBATE CODE STUDY

During the last few years, the Commission has been devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is drafting a new Estate and Trust Code. The new code will replace the existing Probate Code.

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4. See list of recommendations and legislative action in Appendix 2 *infra*.

5. See *Recommendation Relating to Supervised Administration of Decedent's Estate* (October 1986). This recommendation will be separately published.

6. See *Recommendation Relating to Independent Administration of Estates Act* (December 1986). This recommendation will be separately published.

7. See *Recommendation Relating to Creditor Claims Against Decedent's Estate* (January 1987). This recommendation will be separately published.

8. See *Recommendation Relating to Notice in Probate Proceedings* (January 1987). This recommendation will be separately published.

9. See *Recommendation Relating to Notice in Guardianship and Conservatorship Proceedings* (December 1986), published as Appendix 6 to this Report.

10. See *Recommendation Relating to Preliminary Provisions and Definitions of the Probate Code* (December 1986), published as Appendix 7 to this Report.

11. See *Recommendation Relating to Technical Revisions in the Trust Law* (December 1986), published as Appendix 8 to this Report.



Last year, the Commission set as its goal the completion in early 1987 of its recommendation proposing the enactment of the new code. The Commission has made substantial progress in preparing the new code. However, there are many areas of existing law that need intensive study, and the Commission finds that it will be unable to recommend the enactment of the new code in 1987.

The Commission will not delay proposing needed probate law reforms until work on the new code is completed. Instead, the Commission plans to submit recommendations covering substantial portions of the Probate Code for enactment in 1987.<sup>12</sup> During 1987, the Commission plans to devote its time and resources almost exclusively to the task of completing the work on the new code.

During 1986, the Commission sent tentative drafts of portions of the new code to interested persons and organizations for review and comment.<sup>13</sup> The Commission is considering the comments received. They will be taken into account in formulating the recommendations the Commission will submit to the Legislature.

The Commission is working in close cooperation with the Estate Planning, Trust, and Probate Law Section of the State Bar Association, the Probate and Trust Law Section of the Los Angeles County Bar Association, and the Probate, Trust, and Estate Planning Section of the Beverly Hills Bar Association. These groups review materials prepared for consideration at Commission meetings, and their representatives regularly attend Commission meetings to advise and assist the Commission.

The Commission has sought and obtained the views of members of the public and of lawyers, judges, court commissioners, probate referees, public administrators, public

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12. See "1987 Legislative Program" *supra*.

13. During 1986, the Commission distributed tentative drafts on the following aspects of probate law and procedure for review and comment:

- (1) Opening Estate Administration (March 1986).
- (2) Independent Administration of Estates (March 1986).
- (3) Distribution and Discharge (May 1986).
- (4) Creditor Claims and Payment of Debts (July 1986).
- (5) Preliminary Provisions and Definitions (September 1986).
- (6) Nonresident Decedent (September 1986).
- (7) Determining Class Membership (September 1986).
- (8) Public Guardian and Public Administrator (September 1986).
- (9) Administration of Estates of Missing Persons Presumed Dead (September 1986).

The Commission also widely distributed a Questionnaire Concerning Probate Practice (May 1986) and made a limited distribution of a 165-page draft relating to estate management (October 1986).

guardians, realtors, newspaper publishers, and others who work in the probate law field or are concerned with particular aspects of probate law. A special effort has been made to obtain comments and suggestions from the probate and trust law committees of local bar associations, and a number of these local bar groups have submitted comments on tentative drafts even though they do not have representatives present at Commission meetings.

The Commission has retained the following expert consultants to assist the Commission in the probate law study: Professor Paul E. Basye, Hastings College of the Law, Professor Gail Borman Bird, Hastings College of the Law, Professor Jesse Dukeminier, U.C.L.A. Law School, Professor Susan F. French, U.C. Davis School of Law, Professor Edward C. Halbach, Jr., U.C. Berkeley Law School, and Professor Russell D. Niles, Hastings College of the Law.

## CALENDAR OF TOPICS FOR STUDY

The Commission's calendar of topics is set out in Appendix 1 to this Report. Each of these topics has been authorized for Commission study by the Legislature.<sup>14</sup> Because of the number and scope of the topics already on its calendar, the Commission does not at this time recommend any additional topics for Commission study.

## FUNCTION AND PROCEDURE OF COMMISSION

The principal duties of the Commission<sup>15</sup> are to:

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,<sup>16</sup> bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.

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14. Section 8293 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topics which the Legislature by concurrent resolution refers to it for study.

15. Gov't Code §§ 8280-8297 (statute governing California Law Revision Commission).

16. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform Laws. See Gov't Code § 8261. The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

(3) Recommend such changes in law as it deems necessary to bring the law of this state into harmony with modern conditions.<sup>17</sup>

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. The Commission may study only topics which the Legislature, by concurrent resolution, authorizes it to study.<sup>18</sup>

The Commission's work on a recommendation is commenced after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field of law involved who is retained as a research consultant. Using expert consultants provides the Commission with invaluable assistance and is economical because the attorneys and law professors who serve as research consultants have already acquired the considerable background necessary to understand the specific problems under consideration. Expert consultants are also retained to advise the Commission at meetings.

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what recommendation, if any, the Commission will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature (including a draft of any legislation necessary to effectuate its recommendation) is published.<sup>19</sup> The background study is generally published with the recommendation or in a law review.<sup>20</sup>

The Commission ordinarily prepares a Comment explaining each section it recommends. These Comments are included in

17. See Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the Supreme Court of the United States. Gov't Code § 8290.

18. See Gov't Code § 8293. In addition, Code of Civil Procedure Section 703.120 requires the Commission to review statutes providing for exemptions from enforcement of money judgments each 10 years and to recommend any needed revisions.

19. Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

20. For a background study recently published in a law review, see French, *Antilapse Statutes Are Blunt Instruments: A Blueprint for Reform*, 37 Hastings L.J. 335 (1985). For a list of background studies published in law reviews prior to 1986, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971), 11 Cal. L. Revision Comm'n Reports 1008 n.5 & 1108 n.5 (1973), 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976), 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982), 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984), and 18 Cal. L. Revision Comm'n Reports 212 n.17 (1986).

the Commission's report and are frequently revised by legislative committee or Commission reports to reflect amendments made after the recommended legislation has been introduced in the Legislature.<sup>21</sup> These reports, which are printed or noted in the legislative journal, state that the Comments to the various sections of the bill contained in the Commission's recommendation reflect the intent of the committee in approving the bill except to the extent that new or revised Comments are set out in the committee report itself or in a report on file with the committee.<sup>22</sup> The Comment indicates the derivation of the section and often explains its purpose, its relation to other sections, and potential problems in its meaning or application. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions.<sup>23</sup> However, while the Commission endeavors in the Comment to explain any changes in the law made by the section, the Commission does not claim that every inconsistent case is noted in the Comment, nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>24</sup> Hence, failure to note a change in prior law or to refer to an inconsistent judicial decision is not intended to, and should not, influence the construction of a clearly stated statutory provision.<sup>25</sup>

The pamphlets are distributed to the Governor, Members of the Legislature, heads of state departments, and a substantial number of judges, district attorneys, lawyers, law professors, and

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21. Many amendments are made on recommendation of the Commission to deal with matters brought to the Commission's attention after its recommendation was printed. In some cases, however, an amendment may be made that the Commission believes is not desirable and does not recommend.

22. For examples of such reports, see Appendix 3 and Appendix 4 to this Report. For a description of the legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

23. E.g., *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968). See also *Milligan v. City of Laguna Beach*, 34 Cal. 3d 829, 831, 670 P.2d 1121, 1122, 196 Cal. Rptr. 38, 39 (1983) ("To ascertain the legislative intent, courts have resorted to many rules of construction. However, when the Legislature has stated the purpose of its enactment in unmistakable terms [e.g., in official comments], we must apply the enactment in accordance with the legislative direction, and all other rules of construction must fall by the wayside. Speculation and reasoning as to legislative purpose must give way to expressed legislative purpose."). The Comments are published by the Bancroft-Whitney Company and the West Publishing Company in their editions of the annotated codes.

24. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 109 Cal. Rptr. 421 (1973).

25. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973). See also 1974 Cal. Stat. ch. 227.

law libraries throughout the state.<sup>26</sup> Thus, a large and representative number of interested persons is given an opportunity to study and comment on the Commission's work before it is considered for enactment by the Legislature.<sup>27</sup> The annual reports and the recommendations and studies of the Commission are republished in a set of hardcover volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the state. These volumes are available at most county law libraries and at some other libraries. Some hardcover volumes are out of print, but others are available for purchase.<sup>28</sup>

## PERSONNEL OF COMMISSION

As of December 1, 1986, the membership of the Law Revision Commission is:

	<i>Term Expires</i>
Arthur K. Marshall, Los Angeles, Chairperson .....	October 1, 1987
Ann E. Stodden, Los Angeles, Vice Chairperson .....	October 1, 1987
Roger Arnebergh, Van Nuys, Member .....	October 1, 1987
Bion M. Gregory, Sacramento, ex officio Member .....	†
Bill Lockyer, Hayward, Senate Member .....	*
Alister McAlister, Fremont, Assembly Member .....	*
Edwin K. Marzec, Santa Monica, Member .....	October 1, 1987
Tim Paone, Newport Beach, Member .....	October 1, 1989
Vacancy, Member .....	October 1, 1989
Vacancy, Member .....	October 1, 1989

\* The legislative members of the Commission serve at the pleasure of the appointing power.

† The Legislative Counsel is an *ex officio* member of the Commission.

In January 1986, Governor Deukmejian appointed Tim Paone, Newport Beach, to replace David Rosenberg who had resigned from the Commission.

In September 1986, Arthur K. Marshall was elected Chairperson of the Commission (succeeding Edwin K. Marzec), and Ann E. Stodden was elected Vice Chairperson (succeeding Arthur K. Marshall). Their terms end on August 31, 1987.

26. See Gov't Code § 8291.

27. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A.J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965).

28. See "Publications of the California Law Revision Commission" *infra*.

Assembly Member Alister McAlister has served as the Assembly member of the Commission for 13 years. He did not seek reelection to the Legislature. The Commission will suffer a great loss when he retires from the Legislature at the end of his current term. His integrity, hard work, and wise counsel have contributed significantly to the overall success of the Commission's law reform activities.

As of December 1, 1986, the staff of the Commission is:

*Legal*

John H. DeMouly <i>Executive Secretary</i>	Robert J. Murphy III <i>Staff Counsel</i>
Nathaniel Sterling <i>Assistant Executive Secretary</i>	Stan G. Ulrich <i>Staff Counsel</i>

*Administrative-Secretarial*

Dianne H. Dienstein <i>Administrative Assistant</i>	
Eugenia Ayala <i>Word Processing Technician</i>	Victoria V. Matias <i>Word Processing Technician</i>

Juan C. Rogers, who served as the Commission's Administrative Assistant for almost 10 years, retired early in 1986 because of illness and died within a few months. A graduate of Stanford University and a semifinal Rhodes scholar candidate, Juan was a unique and gifted individual. His pleasant manner and skill in interpersonal relations kept the morale high among the Commission's support staff and resulted in the development of excellent relationships with other governmental agencies and the public. Extremely productive, he nevertheless worked many nights and weekends to keep Commission projects on schedule. His contribution to the Commission was formally recognized by an Outstanding Achievement Award made by the State. The Commission has lost a valued and dedicated employee. The members of the Commission's staff have lost a true friend.

Dianne H. Dienstein joined the Commission's staff in April 1986 to replace Juan Rogers as Administrative Assistant.

During 1986, Phil Jelsma (a Stanford Law School student) and Randi Teichman and Lisa Klum (students at the University of Santa Clara Law School) were employed as student legal assistants.

## LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1986 LEGISLATIVE SESSION

The Commission recommended four bills and one concurrent resolution for enactment at the 1986 legislative session. The concurrent resolution was adopted and three of the bills were enacted.

### Family Law

Two bills were introduced to effectuate the Commission's recommendation relating to Civil Code Sections 4800.1 and 4800.2. See *Recommendation Relating to Civil Code Sections 4800.1 and 4800.2*, 18 Cal. L. Revision Comm'n Reports 383 (1986).

Assembly Bill 625, which became Chapter 49 of the Statutes of 1986, was introduced by Assembly Member McAlister for another purpose, but the bill was amended after its introduction to effectuate the Commission's recommendation for an urgency bill to make clear that Civil Code Sections 4800.1 and 4800.2 apply only to proceedings commenced on or after January 1, 1984. The bill was enacted after further amendments were made. In connection with this bill, see *Report of Assembly Committee on Judiciary on Assembly Bill No. 625*, Assembly J. (Jan. 8, 1986), reprinted as Appendix 3 to this Report.

Assembly Bill 2626 was introduced by Assembly Member McAlister to effectuate the Commission's recommendation that a measure be enacted to reserve to the Legislature the power to determine the extent to which legislation governing division of property at dissolution of marriage should apply to pending proceedings. The bill was held in the Assembly Committee on Judiciary.

### Probate Law and Procedure

Assembly Bill 2625, which became Chapter 783 of the Statutes of 1986, was introduced by Assembly Member McAlister to effectuate three Commission Recommendations. See *Recommendation Relating to Disposition of Estate Without Administration*, 18 Cal. L. Revision Comm'n Reports 1005 (1986); *Recommendation Relating to Small Estate Set-Aside*, 18 Cal. L. Revision Comm'n Reports 1101 (1986); and *Recommendation Relating to Proration of Estate Taxes*, 18 Cal. L. Revision Comm'n Reports 1127 (1986). See also *Communication From California Law Revision Commission Concerning Assembly Bill*

2625, Assembly J. (August 27, 1986), reprinted as Appendix 4 to this Report. The bill was enacted after amendments were made. Among the amendments made were ones that made technical revisions to various provisions governing notice in estate proceedings.<sup>29</sup> For the recommended legislation as enacted (with official comments), see *Selected 1986 Trust and Probate Legislation*, 18 Cal. L. Revision Comm'n Reports 1201, 1501 (1986).<sup>30</sup>

### Trust Law

Assembly Bill 2652, which became Chapter 820 of the Statutes of 1986, was introduced by Assembly Member McAlister to effectuate the Commission's recommendation on trusts. See *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1986). See also *Communication From California Law Revision Commission Concerning Assembly Bill 2652*, Assembly J. (August 27, 1986), reprinted as Appendix 5 to this Report. The bill was enacted after amendments were made. For the new Trust Law as enacted (with official comments), see *Selected 1986 Trust and Probate Legislation*, 18 Cal. L. Revision Comm'n Reports 1207 (1986).<sup>31</sup>

### Resolution Approving Topics for Study

Assembly Concurrent Resolution 93, introduced by Assembly Member McAlister and adopted as Resolution Chapter 65 of the Statutes of 1986, continues the Commission's authority to study topics previously authorized.

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29. In 1980, provisions formerly in Probate Code Section 1200 for notice by mail were split out of that section and put into newly-enacted Section 1200.5. See 1980 Cal. Stat. ch. 955. Conforming revisions were made to some, but not all, of the other Probate Code sections that refer to the notice by mail provisions of Section 1200. The bill makes conforming revisions to the following Probate Code sections that were not conformed in 1980: Sections 584.2, 584.3, 584.5, 584.6, 718.6, 771.3, 851.5, 854, 1080, 1191, and 1469. These conforming revisions make no substantive change in the law. Section 1200 now provides only for notice by posting. But other sections which require notice as provided in Section 1200 cannot mean notice by posting, because subdivision (d) of Section 1200 provides that, notwithstanding any other provision of the Probate Code, posting is not required except as to those matters specifically enumerated in Section 1200. Hence, with respect to matters not specifically enumerated in Section 1200, the pre-1980 references in other Probate Code sections to notice as provided in Section 1200 can only mean notice by mail as provided in Section 1200.5.

30. The Commission does not have softcover copies of this publication available for distribution. The California Continuing Education of the Bar paid for the cost of printing the publication for use in its program dealing with the 1986 trust and probate legislation. Information concerning the availability of softcover copies of this publication should be sought from the California Continuing Education of the Bar.

This publication will be included in Volume 18 of the hardcover volumes containing the Commission's Reports, Recommendations, and Studies. For information on purchasing Volume 18, see "Publications of the California Law Revision Commission" *infra*.

31. See note 30 *supra*.



## REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 8290 of the Government Code provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has made a study of the decisions of the United States Supreme Court and the California Supreme Court handed down since the Commission's last Annual Report was prepared<sup>32</sup> and has the following to report:

(1) No decision of the United States Supreme Court or the California Supreme Court holding a statute of this state repealed by implication has been found.

(2) No decision of the United States Supreme Court holding a statute of this state unconstitutional has been found.

(3) Four decisions of the California Supreme Court holding statutes unconstitutional have been found.

In *In re Marriage of Buol*, 39 Cal. 3d 751 (1985), the court held that the retroactive application of Civil Code Section 4800.1 to cases pending before its effective date impaired vested property rights without due process of law under Section 7 of Article 1 of the California Constitution. Section 4800.1 imposes a writing requirement, upon dissolution of marriage, to evidence the parties' intent to maintain property taken in joint tenancy during marriage as the separate property of one spouse. Legislation enacted in 1986 limits the applicability of Section 4800.1 to proceedings commenced on or after January 1, 1984.

In *Conservatorship of Valerie N.*, 40 Cal. 3d 143 (1985), the court held that Probate Code Section 2356, which absolutely precludes sterilization of a ward or conservatee, is unconstitutional because withholding sterilization as a method of contraception for incompetent, developmentally disabled adults, deprives them of their privacy and liberty interests protected by Section 1 of Article 1 of the California Constitution and the Fourteenth Amendment of the United States Constitution. Legislation enacted in 1986 deals with this problem. See 1986 Cal. Stat. ch. 1012 (sterilization of developmentally disabled person).

32. This study has been carried through 42 Cal. 3d 666 (Advance Sheet No. 29, October 28, 1986) and 106 S.Ct. 3343 (Advance Sheet No. 18A, July 31, 1986).

In *In re Marriage of Fabian*, 41 Cal. 3d 440 (1986), the court held that the retroactive application of Civil Code Section 4800.2 to cases pending on January 1, 1984, impairs vested property interests without due process of law. Section 4800.2 provides for the right of reimbursement of separate property contributions to community assets in the absence of a signed, written waiver. Legislation enacted in 1986 limits the applicability of Section 4800.2 to proceedings commenced on or after January 1, 1984. See 1986 Cal. Stat. chs. 49, 539.

In *Long Beach City Employees Association v. City of Long Beach*, 41 Cal. 3d 937 (1986), the court held that Labor Code Section 432.2 intruded upon the city employees' constitutionally protected zone of individual privacy and violated their right to equal protection under the law. Section 432.2 provides that no employer may require an employee to submit to a polygraph examination as a condition for employment, but contains an exception for federal, state and local government employees.

## RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized for study (see "Calendar of Topics Authorized for Study" set out as Appendix 1 to this Report).

Pursuant to the mandate imposed by Section 8290 of the Government Code, the Commission recommends the repeal of the provisions referred to under "Report on Statutes Repealed by Implication or Held Unconstitutional," *supra*, to the extent that those provisions have been held unconstitutional and have not been amended or repealed.

# APPENDIX 1

## CALENDAR OF TOPICS AUTHORIZED FOR STUDY

The Commission has on its calendar of topics the topics listed below. Each of these topics has been authorized for Commission study by the Legislature.

**Creditors' remedies.** Whether the law relating to creditors' remedies (including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters) should be revised. (Authorized by 1983 Cal. Stats. res. ch. 40. See also 1974 Cal. Stats. res. ch. 45; 1972 Cal. Stats. res. ch. 27; 1957 Cal. Stats. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 15 (1957).)

**Probate Code.** Whether the California Probate Code should be revised, including but not limited to, whether California should adopt, in whole or in part, the Uniform Probate Code. (Authorized by 1980 Cal. Stats. res. ch. 37.)

**Real and personal property.** Whether the law relating to real and personal property (including, but not limited to, a Marketable Title Act, covenants, servitudes, conditions, and restrictions on land use or relating to land, possibilities of reverter, powers of termination, Section 1464 of the Civil Code, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant upon termination or abandonment of a lease, powers of appointment, and related matters) should be revised. (Authorized by 1983 Cal. Stats. res. ch. 40, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic.)

**Family law.** Whether the law relating to family law (including, but not limited to, community property) should be revised. (Authorized by 1983 Cal. Stats. res. ch. 40. See also 1978 Cal. Stats. res. ch. 65; 16 Cal. L. Revision Comm'n Reports 2019 (1982); 14 Cal. L. Revision Comm'n Reports 22 (1978).)

**Prejudgment interest.** Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised. (Authorized by 1971 Cal. Stats. res. ch. 75.)

**Class actions.** Whether the law relating to class actions should be revised. (Authorized by 1975 Cal. Stats. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 524 (1974).)

**Offers of compromise.** Whether the law relating to offers of compromise should be revised. (Authorized by 1975 Cal. Stats. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 525 (1974).)

**Discovery in civil cases.** Whether the law relating to discovery in civil cases should be revised. (Authorized by 1975 Cal. Stats. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 526 (1974).)

**Procedure for removal of invalid liens.** Whether a summary procedure should be provided by which property owners can remove doubtful or invalid liens from their property, including a provision for payment of attorney's fees to the prevailing party. (Authorized by 1980 Cal. Stats. res. ch. 37.)

**Special assessment liens for public improvements.** Whether acts governing special assessments for public improvements should be simplified and unified. (Authorized by 1980 Cal. Stats. res. ch. 37.)

**Injunctions.** Whether the law on injunctions and related matters should be revised. (Authorized by 1984 Cal. Stats. res. ch. 42.)

**Involuntary dismissal for lack of prosecution.** Whether the law relating to involuntary dismissal for lack of prosecution should be revised. (Authorized by 1978 Cal. Stats. res. ch. 85. See also 14 Cal. L. Revision Comm'n Reports 23 (1978).)

**Statutes of limitation for felonies.** Whether the law relating to statutes of limitations applicable to felonies should be revised. (Authorized by 1981 Cal. Stats. ch. 909, § 3.)

**Rights and disabilities of minors and incompetent persons.** Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised. (Authorized by 1979 Cal. Stats. res. ch. 19. See also 14 Cal. L. Revision Comm'n Reports 217 (1978).)

**Child custody, adoption, guardianship, and related matters.** Whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised. (Authorized by 1972 Cal. Stats. res. ch. 27. See also 10 Cal. L. Revision Comm'n Reports 1122 (1971); 1956 Cal. Stats. res. ch. 42; 1 Cal. L. Revision Comm'n Reports, "1956 Report" at 29 (1957).)

**Evidence.** Whether the Evidence Code should be revised. (Authorized by 1965 Cal. Stats. res. ch. 130.)

**Arbitration.** Whether the law relating to arbitration should be revised. (Authorized by 1968 Cal. Stats. res. ch. 110. See also 8 Cal. L. Revision Comm'n Reports 1325 (1967).)

**Modification of contracts.** Whether the law relating to modification of contracts should be revised. (Authorized by 1974 Cal. Stats. res. ch. 45. See also 1957 Cal. Stats. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 21 (1957).)

**Governmental liability.** Whether the law relating to sovereign or governmental immunity in California should be revised. (Authorized by 1977 Cal. Stats. res. ch. 17. See also 1957 Cal. Stats. res. ch. 202.)

**Inverse condemnation.** Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including, but not limited to, liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised. (Authorized by 1971 Cal. Stats. res. ch. 74. See also 1970 Cal. Stats. res. ch. 46; 1965 Cal. Stats. res. ch. 130.)

**Liquidated damages.** Whether the law relating to liquidated damages in contracts generally, and particularly in leases, should be revised. (Authorized by 1973 Cal. Stats. res. ch. 39. See also 1969 Cal. Stats. res. ch. 224.)

**Parol evidence rule.** Whether the parol evidence rule should be revised. (Authorized by 1971 Cal. Stats. res. ch. 75. See also 10 Cal. L. Revision Comm'n Reports 1031 (1971).)

**Pleadings in civil actions.** Whether the law relating to pleadings in civil actions and proceedings should be revised. (Authorized by 1980 Cal. Stats. res. ch. 37.)

**APPENDIX 2**  
**LEGISLATIVE ACTION ON COMMISSION**  
**RECOMMENDATIONS**

(Cumulative)

LEGISLATIVE ACTION

Recommendation	Action by Legislature
1. <i>Partial Revision of Education Code</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954 at 12 (1957)	Enacted. 1955 Cal. Stat. chs. 799, 877
2. <i>Summary Distribution of Small Estates Under Probate Code Sections 640 to 646</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954 at 50 (1957)	Enacted. 1955 Cal. Stat. ch. 1183
3. <i>Fish and Game Code</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1957 at 13 (1957); 1 Cal. L. Revision Comm'n Reports, Annual Report for 1956 at 13 (1957)	Enacted. 1957 Cal. Stat. ch. 456
4. <i>Maximum Period of Confinement in a County Jail</i> , 1 Cal. L. Revision Comm'n Reports at A-1 (1957)	Enacted. 1957 Cal. Stat. ch. 139
5. <i>Notice of Application for Attorney's Fees and Costs in Domestic Relations Actions</i> , 1 Cal. L. Revision Comm'n Reports at B-1 (1957)	Enacted. 1957 Cal. Stat. ch. 540
6. <i>Taking Instructions to Jury Room</i> , 1 Cal. L. Revision Comm'n Reports at C-1 (1957)	Not enacted. But see Code Civ. Proc. § 612.4, enacting substance of this recommendation.
7. <i>The Dead Man Statute</i> , 1 Cal. L. Revision Comm'n Reports at D-1 (1957)	Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to Evid. Code § 1261.
8. <i>Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere</i> , 1 Cal. L. Revision Comm'n Reports at E-1 (1957)	Enacted. 1957 Cal. Stat. ch. 490
9. <i>The Marital "For and Against" Testimonial Privilege</i> , 1 Cal. L. Revision Comm'n Reports at F-1 (1957)	Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to Evid. Code § 970.

Recommendation	Action by Legislature
10. <i>Suspension of the Absolute Power of Alienation</i> , 1 Cal. L. Revision Comm'n Reports at G-1 (1957); 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 14 (1959)	Enacted. 1959 Cal. Stat. ch. 470
11. <i>Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378</i> , 1 Cal. L. Revision Comm'n Reports at H-1 (1957)	Enacted. 1957 Cal. Stat. ch. 102
12. <i>Judicial Notice of the Law of Foreign Countries</i> , 1 Cal. L. Revision Comm'n Reports at I-1 (1957)	Enacted. 1957 Cal. Stat. ch. 249
13. <i>Choice of Law Governing Survival of Actions</i> , 1 Cal. L. Revision Comm'n Reports at J-1 (1957)	No legislation recommended.
14. <i>Effective Date of Order Ruling on a Motion for New Trial</i> , 1 Cal. L. Revision Comm'n Reports at K-1 (1957); 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 16 (1959)	Enacted. 1959 Cal. Stat. ch. 468
15. <i>Retention of Venue for Convenience of Witnesses</i> , 1 Cal. L. Revision Comm'n Reports at L-1 (1957)	Not enacted.
16. <i>Bringing New Parties Into Civil Actions</i> , 1 Cal. L. Revision Comm'n Reports at M-1 (1957)	Enacted. 1957 Cal. Stat. ch. 1498
17. <i>Grand Juries</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 20 (1959)	Enacted. 1959 Cal. Stat. ch. 501
18. <i>Procedure for Appointing Guardians</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 21 (1959)	Enacted. 1959 Cal. Stat. ch. 500
19. <i>Appointment of Administrator in Quiet Title Action</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 29 (1959)	No legislation recommended.
20. <i>Presentation of Claims Against Public Entities</i> , 2 Cal. L. Revision Comm'n Reports at A-1 (1959)	Enacted. 1959 Cal. Stat. chs. 1715, 1724, 1725, 1726, 1727, 1728; Cal. Const., Art. XI, § 10 (1960)

Recommendation	Action by Legislature
21. <i>Right of Nonresident Aliens to Inherit</i> , 2 Cal. L. Revision Comm'n Reports at B-1 (1959); 11 Cal. L. Revision Comm'n Reports 421 (1973)	Enacted. 1974 Cal. Stat. ch. 425
22. <i>Mortgages to Secure Future Advances</i> , 2 Cal. L. Revision Comm'n Reports at C-1 (1959)	Enacted. 1959 Cal. Stat. ch. 528
23. <i>Doctrine of Worthier Title</i> , 2 Cal. L. Revision Comm'n Reports at D-1 (1959)	Enacted. 1959 Cal. Stat. ch. 122
24. <i>Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving</i> , 2 Cal. L. Revision Comm'n Reports at E-1 (1959)	Not enacted. But see 1972 Cal. Stat. ch. 92, enacting substance of a portion of recommendation relating to drunk driving.
25. <i>Time Within Which Motion for New Trial May Be Made</i> , 2 Cal. L. Revision Comm'n Reports at F-1 (1959)	Enacted. 1959 Cal. Stat. ch. 469
26. <i>Notice to Shareholders of Sale of Corporate Assets</i> , 2 Cal. L. Revision Comm'n Reports at G-1 (1959)	Not enacted. But see Corp. Code §§ 1001, 1002, enacting substance of recommendation.
27. <i>Evidence in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports at A-1 (1961)	Not enacted. But see Evid. Code § 810 <i>et seq.</i> enacting substance of recommendation.
28. <i>Taking Possession and Passage of Title in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports at B-1 (1961)	Enacted. 1961 Cal. Stat. chs. 1612, 1613
29. <i>Reimbursement for Moving Expenses When Property Is Acquired for Public Use</i> , 3 Cal. L. Revision Comm'n Reports at C-1 (1961)	Not enacted. But see Gov't Code § 7260 <i>et seq.</i> enacting substance of recommendation.
30. <i>Rescission of Contracts</i> , 3 Cal. L. Revision Comm'n Reports at D-1 (1961)	Enacted. 1961 Cal. Stat. ch. 589
31. <i>Right to Counsel and Separation of Delinquent From Nondelinquent Minor In Juvenile Court Proceedings</i> , 3 Cal. L. Revision Comm'n Reports at E-1 (1961)	Enacted. 1961 Cal. Stat. ch. 1616

Recommendation	Action by Legislature
32. <i>Survival of Actions</i> , 3 Cal. L. Revision Comm'n Reports at F-1 (1961)	Enacted. 1961 Cal. Stat. ch. 657
33. <i>Arbitration</i> , 3 Cal. L. Revision Comm'n Reports at G-1 (1961)	Enacted. 1961 Cal. Stat. ch. 461
34. <i>Presentation of Claims Against Public Officers and Employees</i> , 3 Cal. L. Revision Comm'n Reports at H-1 (1961)	Not enacted 1961. See recommendation to 1963 session (item 39 <i>infra</i> ) which was enacted.
35. <i>Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere</i> , 3 Cal. L. Revision Comm'n Reports at I-1 (1961)	Enacted. 1961 Cal. Stat. ch. 636
36. <i>Notice of Alibi in Criminal Actions</i> , 3 Cal. L. Revision Comm'n Reports at J-1 (1961)	Not enacted.
37. <i>Discovery in Eminent Domain Proceedings</i> , 4 Cal. L. Revision Comm'n Reports 701 (1963); 8 Cal. L. Revision Comm'n Reports 19 (1967)	Enacted. 1967 Cal. Stat. ch. 1104
38. <i>Tort Liability of Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 801 (1963)	Enacted. 1963 Cal. Stat. ch. 1681
39. <i>Claims, Actions and Judgments Against Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1001 (1963)	Enacted. 1963 Cal. Stat. ch. 1715
40. <i>Insurance Coverage for Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1201 (1963)	Enacted. 1963 Cal. Stat. ch. 1682
41. <i>Defense of Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1301 (1963)	Enacted. 1963 Cal. Stat. ch. 1683
42. <i>Liability of Public Entities for Ownership and Operation of Motor Vehicles</i> , 4 Cal. L. Revision Comm'n Reports 1401 (1963); 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 1527



<b>Recommendation</b>	<b>Action by Legislature</b>
43. <i>Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officer</i> , 4 Cal. L. Revision Comm'n Reports 1501 (1963)	Enacted. 1963 Cal. Stat. ch. 1684
44. <i>Sovereign Immunity — Amendments and Repeals of Inconsistent Statutes</i> , 4 Cal. L. Revision Comm'n Reports 1601 (1963)	Enacted. 1963 Cal. Stat. chs. 1685, 1686, 2029
45. <i>Evidence Code</i> , 7 Cal. L. Revision Comm'n Reports 1 (1965)	Enacted. 1965 Cal. Stat. ch. 299
46. <i>Claims and Actions Against Public Entities and Public Employees</i> , 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 653
47. <i>Evidence Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 101 (1967)	Enacted in part. 1967 Cal. Stat. ch. 650. Balance enacted. 1970 Cal. Stat. ch. 69.
48. <i>Evidence — Agricultural Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 201 (1967)	Enacted. 1967 Cal. Stat. ch. 262
49. <i>Evidence — Commercial Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 301 (1967)	Enacted. 1967 Cal. Stat. ch. 703
50. <i>Whether Damage for Personal Injury to a Married Person Should be Separate or Community Property</i> , 8 Cal. L. Revision Comm'n Reports 401 (1967); 8 Cal. L. Revision Comm'n Reports 1385 (1967)	Enacted. 1968 Cal. Stat. chs. 457, 458
51. <i>Vehicle Code Section 17150 and Related Sections</i> , 8 Cal. L. Revision Comm'n Reports 501 (1967)	Enacted. 1967 Cal. Stat. ch. 702
52. <i>Additur</i> , 8 Cal. L. Revision Comm'n Reports 601 (1967)	Enacted. 1967 Cal. Stat. ch. 72
53. <i>Abandonment or Termination of a Lease</i> , 8 Cal. L. Revision Comm'n Reports 701 (1967); 9 Cal. L. Revision Comm'n Reports 401 (1969); 9 Cal. L. Revision Comm'n Reports 153 (1969)	Enacted. 1970 Cal. Stat. ch. 89

<b>Recommendation</b>	<b>Action by Legislature</b>
54. <i>Good Faith Improver of Land Owned by Another</i> , 8 Cal. L. Revision Comm'n Reports 801 (1967); 8 Cal. L. Revision Comm'n Reports 1373 (1967)	Enacted. 1968 Cal. Stat. ch. 150
55. <i>Suit By or Against an Unincorporated Association</i> , 8 Cal. L. Revision Comm'n Reports 901 (1967)	Enacted. 1967 Cal. Stat. ch. 1324
56. <i>Escheat</i> , 8 Cal. L. Revision Comm'n Reports 1001 (1967)	Enacted. 1968 Cal. Stat. chs. 247, 356
57. <i>Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding</i> , 8 Cal. L. Revision Comm'n Reports 1361 (1967)	Enacted. 1968 Cal. Stat. ch. 133
58. <i>Service of Process on Unincorporated Associations</i> , 8 Cal. L. Revision Comm'n Reports 1403 (1967)	Enacted. 1968 Cal. Stat. ch. 132
59. <i>Sovereign Immunity — Statute of Limitations</i> , 9 Cal. L. Revision Comm'n Reports 49 (1969); 9 Cal. L. Revision Comm'n Reports 175 (1969)	Enacted. 1970 Cal. Stat. ch. 104
60. <i>Additur and Remittitur</i> , 9 Cal. L. Revision Comm'n Reports 63 (1969)	Enacted. 1969 Cal. Stat. ch. 115
61. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 71 (1969)	Enacted. 1969 Cal. Stat. ch. 114
62. <i>Quasi-Community Property</i> , 9 Cal. L. Revision Comm'n Reports 113 (1969)	Enacted. 1970 Cal. Stat. ch. 312
63. <i>Arbitration of Just Compensation</i> , 9 Cal. L. Revision Comm'n Reports 123 (1969)	Enacted. 1970 Cal. Stat. ch. 417
64. <i>Revisions of Evidence Code</i> , 9 Cal. L. Revision Comm'n Reports 137 (1969)	Enacted in part. 1970 Cal. Stat. ch. 69. See also 1970 Cal. Stat. chs. 1396, 1397
65. <i>Mutuality of Remedies in Suits for Specific Performance</i> , 9 Cal. L. Revision Comm'n Reports 201 (1969)	Enacted. 1969 Cal. Stat. ch. 156

Recommendation	Action by Legislature
66. <i>Powers of Appointment</i> , 9 Cal. L. Revision Comm'n Reports 301 (1969)	Enacted. 1969 Cal. Stat. chs. 113, 155
67. <i>Evidence Code — Revisions of Privileges Article</i> , 9 Cal. L. Revision Comm'n Reports 501 (1969)	Vetoed. But see 1970 Cal. Stat. chs. 1396, 1397
68. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 601 (1969)	Enacted. 1970 Cal. Stat. ch. 618
69. <i>Representation as to the Credit of Third Persons and the Statute of Frauds</i> , 9 Cal. L. Revision Comm'n Reports 701 (1969)	Enacted. 1970 Cal. Stat. ch. 720
70. <i>Revisions of Governmental Liability Act</i> , 9 Cal. L. Revision Comm'n Reports 801 (1969)	Enacted in part. 1970 Cal. Stat. chs. 662, 1099
71. "Vesting" of Interests Under Rule Against Perpetuities, 9 Cal. L. Revision Comm'n Reports 901 (1969)	Enacted. 1970 Cal. Stat. ch. 45
72. <i>Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions</i> , 10 Cal. L. Revision Comm'n Reports 501 (1971)	Enacted. 1971 Cal. Stat. chs. 244, 950. See also 1973 Cal. Stat. ch. 828
73. <i>Wage Garnishment and Related Matters</i> , 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973); 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601 (1976); 13 Cal. L. Revision Comm'n Reports 1703 (1976); 14 Cal. L. Revision Comm'n Reports 261 (1978)	Enacted in part. 1978 Cal. Stat. ch. 1133. See also 1979 Cal. Stat. ch. 66
74. <i>Proof of Foreign Official Records</i> , 10 Cal. L. Revision Comm'n Reports 1022 (1971)	Enacted. 1970 Cal. Stat. ch. 41
75. <i>Inverse Condemnation — Insurance Coverage</i> , 10 Cal. L. Revision Comm'n Reports 1051 (1971)	Enacted. 1971 Cal. Stat. ch. 140

<b>Recommendation</b>	<b>Action by Legislature</b>
76. <i>Discharge From Employment Because of Wage Garnishment</i> , 10 Cal. L. Revision Comm'n Reports 1147 (1971)	Enacted. 1971 Cal. Stat. ch. 1607
77. <i>Civil Arrest</i> , 11 Cal. L. Revision Comm'n Reports 1 (1973)	Enacted. 1973 Cal. Stat. ch. 20
78. <i>Claim and Delivery Statute</i> , 11 Cal. L. Revision Comm'n Reports 301 (1973)	Enacted. 1973 Cal. Stat. ch. 526
79. <i>Unclaimed Property</i> , 11 Cal. L. Revision Comm'n Reports 401 (1973); 12 Cal. L. Revision Comm'n Reports 609 (1974)	Proposed resolution enacted. 1973 Cal. Stat. res. ch. 76. Legislation enacted. 1975 Cal. Stat. ch. 25.
80. <i>Enforcement of Sister State Money Judgments</i> , 11 Cal. L. Revision Comm'n Reports 451 (1973)	Enacted. 1974 Cal. Stat. ch. 211
81. <i>Prejudgment Attachment</i> , 11 Cal. L. Revision Comm'n Reports 701 (1973)	Enacted. 1974 Cal. Stat. ch. 1516. See also 1975 Cal. Stat. ch. 200.
82. <i>Landlord-Tenant Relations</i> , 11 Cal. L. Revision Comm'n Reports 951 (1973)	Enacted. 1974 Cal. Stat. chs. 331, 332
83. <i>Pleading</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1024 (1973)	Enacted. 1972 Cal. Stat. ch. 73
84. <i>Evidence — Judicial Notice</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1025 (1973)	Enacted. 1972 Cal. Stat. ch. 764
85. <i>Evidence — "Criminal Conduct" Exception</i> , 11 Cal. L. Revision Comm'n Reports 1147 (1973)	Not enacted 1974. See recommendation to 1975 session (item 90 <i>infra</i> ) which was enacted.
86. <i>Erroneously Compelled Disclosure of Privileged Information</i> , 11 Cal. L. Revision Comm'n Reports 1163 (1973)	Enacted. 1974 Cal. Stat. ch. 227
87. <i>Liquidated Damages</i> , 11 Cal. L. Revision Comm'n Reports 1201 (1973); 13 Cal. L. Revision Comm'n Reports 2139 (1976); 13 Cal. L. Revision Comm'n Reports 1735 (1976)	Enacted. 1977 Cal. Stat. ch. 198

<b>Recommendation</b>	<b>Action by Legislature</b>
88. <i>Payment of Judgments Against Local Public Entities</i> , 12 Cal. L. Revision Comm'n Reports 575 (1974)	Enacted. 1975 Cal. Stat. ch. 285
89. <i>View by Trier of Fact in a Civil Case</i> , 12 Cal. L. Revision Comm'n Reports 587 (1974)	Enacted. 1975 Cal. Stat. ch. 301
90. <i>Good Cause Exception to the Physician-Patient Privilege</i> , 12 Cal. L. Revision Comm'n Reports 601 (1974)	Enacted. 1975 Cal. Stat. ch. 318
91. <i>Improvement Acts</i> , 12 Cal. L. Revision Comm'n Reports 1001 (1974)	Enacted. 1974 Cal. Stat. ch. 426
92. <i>The Eminent Domain Law</i> , 12 Cal. L. Revision Comm'n Reports 1601 (1974)	Enacted. 1975 Cal. Stat. chs. 1239, 1240, 1275
93. <i>Eminent Domain — Conforming Changes in Special District Statutes</i> , 12 Cal. L. Revision Comm'n Reports 1101 (1974); 12 Cal. L. Revision Comm'n Reports 2004 (1974)	Enacted. 1975 Cal. Stat. chs. 581, 582, 584, 585, 586, 587, 1176, 1276
94. <i>Oral Modification of Written Contracts</i> , 13 Cal. L. Revision Comm'n Reports 301 (1976); 13 Cal. L. Revision Comm'n Reports 2129 (1976)	Enacted. 1975 Cal. Stat. ch. 7; 1976 Cal. Stat. ch. 109
95. <i>Partition of Real and Personal Property</i> , 13 Cal. L. Revision Comm'n Reports 401 (1976)	Enacted. 1976 Cal. Stat. ch. 73
96. <i>Revision of the Attachment Law</i> , 13 Cal. L. Revision Comm'n Reports 801 (1976)	Enacted. 1976 Cal. Stat. ch. 437
97. <i>Undertakings for Costs</i> , 13 Cal. L. Revision Comm'n Reports 901 (1976)	Not enacted 1976. But see recommendation to 1979 session (item 118 <i>infra</i> ) which was enacted.
98. <i>Admissibility of Copies of Business Records in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2051 (1976)	Not enacted.

<b>Recommendation</b>	<b>Action by Legislature</b>
99. <i>Turnover Orders Under the Claim and Delivery Law</i> , 13 Cal. L. Revision Comm'n Reports 2079 (1976)	Enacted. 1976 Cal. Stat. ch. 145
100. <i>Relocation Assistance by Private Condemnors</i> , 13 Cal. L. Revision Comm'n Reports 2085 (1976)	Enacted. 1976 Cal. Stat. ch. 143
101. <i>Condemnation for Byroads and Utility Easements</i> , 13 Cal. L. Revision Comm'n Reports 2091 (1976)	Enacted in part (utility easements). 1976 Cal. Stat. ch. 994
102. <i>Transfer of Out-of-State Trusts to California</i> , 13 Cal. L. Revision Comm'n Reports 2101 (1976)	Enacted. 1976 Cal. Stat. ch. 144
103. <i>Admissibility of Duplicates in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2115 (1976)	Enacted. 1985 Cal. Stat. ch. 100
104. <i>Service of Process on Unincorporated Associations</i> , 13 Cal. L. Revision Comm'n Reports 1657 (1976)	Enacted. 1976 Cal. Stat. ch. 888
105. <i>Sister State Money Judgments</i> , 13 Cal. L. Revision Comm'n Reports 1669 (1976)	Enacted. 1977 Cal. Stat. ch. 232
106. <i>Damages in Action for Breach of Lease</i> , 13 Cal. L. Revision Comm'n Reports 1679 (1976)	Enacted. 1977 Cal. Stat. ch. 49
107. <i>Nonprofit Corporation Law</i> , 13 Cal. L. Revision Comm'n Reports 2201 (1976)	Not enacted. Legislation on this subject, not recommended by the Commission, was enacted in 1978.
108. <i>Use of Keepers Pursuant to Writs of Execution</i> , 14 Cal. L. Revision Comm'n Reports 49 (1978)	Enacted. 1977 Cal. Stat. ch. 155
109. <i>Attachment Law — Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors</i> , 14 Cal. L. Revision Comm'n Reports 61 (1978)	Enacted. 1977 Cal. Stat. ch. 499
110. <i>Review of Resolution of Necessity by Writ of Mandate</i> , 14 Cal. L. Revision Comm'n Reports 83 (1978)	Enacted. 1978 Cal. Stat. ch. 286

<b>Recommendation</b>	<b>Action by Legislature</b>
111. <i>Use of Court Commissioners Under the Attachment Law</i> , 14 Cal. L. Revision Comm'n Reports 93 (1978)	Enacted. 1978 Cal. Stat. ch. 151
112. <i>Evidence of Market Value of Property</i> , 14 Cal. L. Revision Comm'n Reports 105 (1978)	Enacted in part. 1978 Cal. Stat. ch. 294. Substance of remainder enacted in 1980. See item 127 <i>infra</i> .
113. <i>Psychotherapist-Patient Privilege</i> , 14 Cal. L. Revision Comm'n Reports 127 (1978); 15 Cal. L. Revision Comm'n Reports 1307 (1980)	Enacted in part. 1985 Cal. Stat. chs. 545 (licensed educational psychologist), 1077 (repeal of Evidence Code § 1028).
114. <i>Parole Evidence Rule</i> , 14 Cal. L. Revision Comm'n Reports 143 (1978)	Enacted. 1978 Cal. Stat. ch. 150
115. <i>Attachment Law — Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of "Chose in Action,"</i> 14 Cal. L. Revision Comm'n Reports 241 (1978)	Enacted. 1978 Cal. Stat. ch. 273
116. <i>Powers of Appointment</i> (technical changes), 14 Cal. L. Revision Comm'n Reports 257 (1978)	Enacted. 1978 Cal. Stat. ch. 266
117. <i>Ad Valorem Property Taxes in Eminent Domain Proceedings</i> , 14 Cal. L. Revision Comm'n Reports 291 (1978)	Enacted. 1979 Cal. Stat. ch. 31
118. <i>Security for Costs</i> , 14 Cal. L. Revision Comm'n Reports 319 (1978)	Enacted. 1980 Cal. Stat. ch. 114
119. <i>Guardianship-Conservatorship Law</i> , 14 Cal. L. Revision Comm'n Reports 501 (1978); 15 Cal. L. Revision Comm'n Reports 451 (1980)	Enacted. 1979 Cal. Stat. chs. 165, 726, 730
120. <i>Effect of New Bankruptcy Law on The Attachment Law</i> , 15 Cal. L. Revision Comm'n Reports 1043 (1980)	Enacted. 1979 Cal. Stat. ch. 77
121. <i>Confessions of Judgment</i> , 15 Cal. L. Revision Comm'n Reports 1053 (1980)	Enacted. 1979 Cal. Stat. ch. 568

<b>Recommendation</b>	<b>Action by Legislature</b>
122. <i>Special Assessment Liens on Property Taken for Public Use</i> , 15 Cal. L. Revision Comm'n Reports 1101 (1980)	Enacted. 1980 Cal. Stat. ch. 122
123. <i>Assignments for the Benefit of Creditors</i> , 15 Cal. L. Revision Comm'n Reports 1117 (1980)	Enacted. 1980 Cal. Stat. ch. 135
124. <i>Vacation of Public Streets, Highways, and Service Easements</i> , 15 Cal. L. Revision Comm'n Reports 1137 (1980)	Enacted. 1980 Cal. Stat. ch. 1050
125. <i>Quiet Title Actions</i> , 15 Cal. L. Revision Comm'n Reports 1187 (1980)	Enacted. 1980 Cal. Stat. ch. 44
126. <i>Agreements for Entry of Paternity and Support Judgments</i> , 15 Cal. L. Revision Comm'n Reports 1237 (1980)	Enacted. 1980 Cal. Stat. ch. 682
127. <i>Application of Evidence Code Property Valuation Rules in Noncondemnation Cases</i> , 15 Cal. L. Revision Comm'n Reports 301 (1980)	Enacted. 1980 Cal. Stat. ch. 381
128. <i>Probate Homestead</i> , 15 Cal. L. Revision Comm'n Reports 401 (1980)	Enacted. 1980 Cal. Stat. ch. 119
129. <i>Enforcement of Claims and Judgments Against Public Entities</i> , 15 Cal. L. Revision Comm'n Reports 1257 (1980)	Enacted. 1980 Cal. Stat. ch. 215
130. <i>Uniform Veterans Guardianship Act</i> , 15 Cal. L. Revision Comm'n Reports 1289 (1980)	Enacted. 1980 Cal. Stat. ch. 89
131. <i>Enforcement of Obligations After Death</i> , 15 Cal. L. Revision Comm'n Reports 1327 (1980)	Enacted. 1980 Cal. Stat. ch. 124
132. <i>Interest Rate on Judgments</i> , 15 Cal. L. Revision Comm'n Reports 7 (1980)	Enacted. 1982 Cal. Stat. ch. 150
133. <i>Married Women as Sole Traders</i> , 15 Cal. L. Revision Comm'n Reports 21 (1980)	Enacted. 1980 Cal. Stat. ch. 123



Recommendation	Action by Legislature
134. <i>State Tax Liens</i> , 15 Cal. L. Revision Comm'n Reports 29 (1980)	Enacted. 1980 Cal. Stat. ch. 600
135. <i>Guardianship-Conservatorship</i> (technical change), 15 Cal. L. Revision Comm'n Reports 1247 (1980)	Enacted. 1980 Cal. Stat. ch. 246
136. <i>Revision of Guardianship-Conservatorship Law</i> , 15 Cal. L. Revision Comm'n Reports 1463 (1980)	Enacted. 1981 Cal. Stat. ch. 9
137. <i>Enforcement of Judgments Law</i> , 15 Cal. L. Revision Comm'n Reports 2001 (1980)	Enacted. 1982 Cal. Stat. chs. 497, 1364
138. <i>Uniform Durable Power of Attorney Act</i> , 15 Cal. L. Revision Comm'n Reports 351 (1980)	Enacted. 1981 Cal. Stat. ch. 511
139. <i>Non-Probate Transfers</i> , 15 Cal. L. Revision Comm'n Reports 1605 (1980); 16 Cal. L. Revision Comm'n Reports 129 (1982)	Enacted in part (pay-on-death accounts) 1982 Cal. Stat. ch. 269; (credit unions and industrial loan companies) 1983 Cal. Stat. ch. 92.
140. <i>Revision of the Powers of Appointment Statute</i> , 15 Cal. L. Revision Comm'n Reports 1667 (1980)	Enacted. 1981 Cal. Stat. ch. 63
141. <i>State Tax Liens</i> (technical change), 16 Cal. L. Revision Comm'n Reports 24 (1982)	Enacted. 1981 Cal. Stat. ch. 217
142. <i>Assessment Liens on Property Taken for Public Use</i> (technical change), 16 Cal. L. Revision Comm'n Reports 25 (1982)	Enacted. 1981 Cal. Stat. ch. 139
143. <i>Federal Pensions as Community Property</i> , 16 Cal. L. Revision Comm'n Reports 47 (1982)	Proposed resolution adopted. 1982 Cal. Stat. res. ch. 44
144. <i>Holographic and Nuncupative Wills</i> , 16 Cal. L. Revision Comm'n Reports 301 (1982)	Enacted. 1982 Cal. Stat. ch. 187
145. <i>Marketable Title of Real Property</i> , 16 Cal. L. Revision Comm'n Reports 401 (1982)	Enacted. 1982 Cal. Stat. ch. 1268
146. <i>Statutory Bonds and Undertakings</i> , 16 Cal. L. Revision Comm'n Reports 501 (1982)	Enacted. 1982 Cal. Stat. chs. 517, 998

Recommendation	Action by Legislature
147. <i>Attachment</i> , 16 Cal. L. Revision Comm'n Reports 701 (1982)	Enacted. 1982 Cal. Stat. ch. 1198
148. <i>Escheat</i> (technical change), 16 Cal. L. Revision Comm'n Reports 124 (1982)	Enacted. 1982 Cal. Stat. ch. 182
149. <i>Missing Persons</i> , 16 Cal. L. Revision Comm'n Reports 105 (1982)	Enacted. 1983 Cal. Stat. ch. 201
150. <i>Emancipated Minors</i> , 16 Cal. L. Revision Comm'n Reports 183 (1982)	Enacted. 1983 Cal. Stat. ch. 6
151. <i>Notice in Limited Conservatorship Proceedings</i> , 16 Cal. L. Revision Comm'n Reports 199 (1982)	Enacted. 1983 Cal. Stat. ch. 72
152. <i>Disclaimer of Testamentary and Other Interests</i> , 16 Cal. L. Revision Comm'n Reports 207 (1982)	Enacted. 1983 Cal. Stat. ch. 17
153. <i>Wills and Intestate Succession</i> , 16 Cal. L. Revision Comm'n Reports 2301 (1982)	Enacted. 1983 Cal. Stat. ch. 842
154. <i>Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage</i> , 16 Cal. L. Revision Comm'n Reports 2165 (1982)	Enacted. 1983 Cal. Stat. ch. 342
155. <i>Creditors' Remedies</i> , 16 Cal. L. Revision Comm'n Reports 2175 (1982)	Enacted. 1983 Cal. Stat. ch. 155
156. <i>Conforming Changes to the Bond and Undertaking Law</i> , 16 Cal. L. Revision Comm'n Reports 2239 (1982)	Enacted. 1983 Cal. Stat. ch. 18
157. <i>Notice of Rejection of Late Claim Against Public Entity</i> , 16 Cal. L. Revision Comm'n Reports 2251 (1982)	Enacted. 1983 Cal. Stat. ch. 107
158. <i>Liability of Marital Property for Debts</i> , 17 Cal. L. Revision Comm'n Reports 1 (1984)	Enacted. 1984 Cal. Stat. ch. 1671
159. <i>Durable Power of Attorney for Health Care Decisions</i> , 16 Cal. L. Revision Comm'n Reports 101 (1984)	Enacted. 1983 Cal. Stat. ch. 1204

Recommendation	Action by Legislature
160. <i>Effect of Death of Support Obligor</i> , 17 Cal. L. Revision Comm'n Reports 897 (1984)	Enacted in part. 1984 Cal. Stat. ch. 19. Balance enacted. 1985 Cal. Stat. ch. 362 (item 186 <i>infra</i> ).
161. <i>Vacation of Streets</i> (technical change), 17 Cal. L. Revision Comm'n Reports 825 (1984)	Enacted. 1983 Cal. Stat. ch. 52
162. <i>Marital Property Presumptions and Transmutations</i> , 17 Cal. L. Revision Comm'n Reports 205 (1984)	Enacted in part (transmutations). 1984 Cal. Stat. ch. 1733
163. <i>Reimbursement of Educational Expenses</i> , 17 Cal. L. Revision Comm'n Reports 229 (1984)	Enacted. 1984 Cal. Stat. ch. 1661
164. <i>Special Appearance in Family Law Proceedings</i> , 17 Cal. L. Revision Comm'n Reports 243 (1984)	Enacted. 1984 Cal. Stat. ch. 156
165. <i>Liability of Stepparent for Child Support</i> , 17 Cal. L. Revision Comm'n Reports 251 (1984)	Enacted. 1984 Cal. Stat. ch. 249
166. <i>Awarding Temporary Use of Family Home</i> , 17 Cal. L. Revision Comm'n Reports 261 (1984)	Enacted. 1984 Cal. Stat. ch. 463
167. <i>Disposition of Community Property</i> , 17 Cal. L. Revision Comm'n Reports 269 (1984)	Not enacted.
168. <i>Statutes of Limitation for Felonies</i> , 17 Cal. L. Revision Comm'n Reports 301 (1984)	Enacted. 1984 Cal. Stat. ch. 1270
169. <i>Independent Administration of Decedent's Estate</i> , 17 Cal. L. Revision Comm'n Reports 405 (1984)	Enacted. 1984 Cal. Stat. ch. 451
170. <i>Distribution of Estates Without Administration</i> , 17 Cal. L. Revision Comm'n Reports 421 (1984)	Enacted. 1984 Cal. Stat. ch. 451
171. <i>Simultaneous Deaths</i> , 17 Cal. L. Revision Comm'n Reports 443 (1984)	Not enacted.
172. <i>Notice of Will</i> , 17 Cal. L. Revision Comm'n Reports 461 (1984)	Not enacted.

Recommendation	Action by Legislature
173. <i>Garnishment of Amounts Payable to Trust Beneficiary</i> , 17 Cal. L. Revision Comm'n Reports 471 (1984)	Enacted. 1984 Cal. Stat. ch. 493
174. <i>Bonds for Personal Representatives</i> , 17 Cal. L. Revision Comm'n Reports 483 (1984)	Enacted. 1984 Cal. Stat. ch. 451
175. <i>Recording Affidavits of Death</i> , 17 Cal. L. Revision Comm'n Reports 493 (1984)	Enacted. 1984 Cal. Stat. ch. 527
176. <i>Execution of Witnessed Will</i> , 17 Cal. L. Revision Comm'n Reports 509 (1984)	Not enacted.
177. <i>Revision of Wills and Intestate Succession Law</i> , 17 Cal. L. Revision Comm'n Reports 537 (1984)	Enacted. 1984 Cal. Stat. ch. 892
178. <i>Uniform Transfers to Minors Act</i> , 17 Cal. L. Revision Comm'n Reports 601 (1984)	Enacted. 1984 Cal. Stat. ch. 243
179. <i>Statutory Forms for Durable Powers of Attorney</i> , 17 Cal. L. Revision Comm'n Reports 701 (1984)	Enacted. 1984 Cal. Stat. chs. 312 (health care) and 602 (general power of attorney).
180. <i>Dismissal for Lack of Prosecution</i> , 17 Cal. L. Revision Comm'n Reports 905 (1984)	Enacted. 1984 Cal. Stat. ch. 1705
181. <i>Severance of Joint Tenancy</i> , 17 Cal. L. Revision Comm'n Reports 941 (1984)	Enacted. 1984 Cal. Stat. ch. 519
182. <i>Quiet Title and Partition Judgments</i> , 17 Cal. L. Revision Comm'n Reports 947 (1984)	Enacted. 1984 Cal. Stat. ch. 20
183. <i>Dormant Mineral Rights</i> , 17 Cal. L. Revision Comm'n Reports 957 (1984)	Enacted. 1984 Cal. Stat. ch. 240
184. <i>Creditors' Remedies</i> , 17 Cal. L. Revision Comm'n Reports 975 (1984)	Enacted. 1984 Cal. Stat. ch. 538
185. <i>Rights Among Cotenants</i> , 17 Cal. L. Revision Comm'n Reports 1023 (1984)	Enacted. 1984 Cal. Stat. ch. 241

<b>Recommendation</b>	<b>Action by Legislature</b>
186. <i>Provision for Support if Support Obligor Dies</i> , 18 Cal. L. Revision Comm'n Reports 119 (1986)	Enacted. 1985 Cal. Stat. ch. 362
187. <i>Transfer of State Registered Property Without Probate</i> , 18 Cal. L. Revision Comm'n Reports 129 (1986)	Enacted. 1985 Cal. Stat. ch. 982
188. <i>Dividing Jointly Owned Property Upon Marriage Dissolution</i> , 18 Cal. L. Revision Comm'n Reports 147 (1986)	Enacted. 1985 Cal. Stat. ch. 362
189. <i>Probate Law</i> (clarifying revisions), 18 Cal. L. Revision Comm'n Reports 216 (1986)	Enacted. 1985 Cal. Stat. ch. 359
190. <i>Creditors' Remedies</i> (technical change), 18 Cal. L. Revision Comm'n Reports 217 (1986)	Enacted. 1985 Cal. Stat. ch. 41
191. <i>Uniform Transfers to Minors Act</i> (technical change), 18 Cal. L. Revision Comm'n Reports 218 (1986)	Enacted. 1985 Cal. Stat. ch. 90
192. <i>Protection of Mediation Communications</i> , 18 Cal. L. Revision Comm'n Reports 241 (1986)	Enacted. 1985 Cal. Stat. ch. 731
193. <i>Recording Severance of Joint Tenancy</i> , 18 Cal. L. Revision Comm'n Reports 249 (1986)	Enacted. 1985 Cal. Stat. ch. 157
194. <i>Abandoned Easements</i> , 18 Cal. L. Revision Comm'n Reports 257 (1986)	Enacted. 1985 Cal. Stat. ch. 157
195. <i>Distribution Under a Will or Trust</i> , 18 Cal. L. Revision Comm'n Reports 269 (1986)	Enacted. 1985 Cal. Stat. ch. 982
196. <i>Effect of Adoption or Out of Wedlock Birth on Rights at Death</i> , 18 Cal. L. Revision Comm'n Reports 289 (1986)	Enacted. 1985 Cal. Stat. ch. 982
197. <i>Durable Powers of Attorney</i> , 18 Cal. L. Revision Comm'n Reports 305 (1986)	Enacted. 1985 Cal. Stat. ch. 403

Recommendation	Action by Legislature
198. <i>Litigation Expenses in Family Law Proceedings</i> , 18 Cal. L. Revision Comm'n Reports 351 (1986)	Enacted. 1985 Cal. Stat. ch. 362
199. <i>Civil Code Sections 4800.1 and 4800.2</i> , 18 Cal. L. Revision Comm'n Reports 383 (1986)	One of two recommended measures enacted (Application of Civil Code Sections 4800.1 and 4800.2). 1986 Cal. Stat. ch. 49
200. <i>Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 501 (1986)	Enacted. 1986 Cal. Stat. ch. 820.
201. <i>Disposition of Estate Without Administration</i> , 18 Cal. L. Revision Comm'n Reports 1005 (1986)	Enacted. 1986 Cal. Stat. ch. 783
202. <i>Small Estate Set-Aside</i> , 18 Cal. L. Revision Comm'n Reports 1101 (1986)	Enacted. 1986 Cal. Stat. ch. 783
203. <i>Proration of Estate Taxes</i> , 18 Cal. L. Revision Comm'n Reports 1127 (1986)	Enacted. 1986 Cal. Stat. ch. 783

**APPENDIX 3**  
**REPORT OF**  
**ASSEMBLY COMMITTEE ON JUDICIARY**  
**ON ASSEMBLY BILL 625**

[Extract from Assembly Journal for January 8, 1986 (1985-86 Regular Session)]

**Report of Committee on Judiciary**

January 8, 1986

*Mr. James Driscoll, Chief Clerk*  
*State Capitol*  
*Sacramento, California*

Dear Mr. Driscoll: I am enclosing a copy of the "Report of Assembly Committee on Judiciary on Assembly Bill 625." I am requesting the printing of this report in the daily journal.

Thank you.

Sincerely,

ELIHU M. HARRIS, Assembly Member

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**Report of Assembly Committee on Judiciary**  
**on Assembly Bill No. 625**

Assembly Bill 625 effectuates the California Law Revision Commission's Recommendation Relating to Civil Code Sections 4800.1 and 4800.2, 18 Cal. L. Revision Comm'n Reports 383 (1986). Copies of this recommendation are on file with the Assembly Committee on Judiciary, the Senate Committee on Judiciary, and the Office of the Legislative Counsel. The Law Revision Commission recommendation reflects the intent of the Assembly Committee on Judiciary in approving Assembly Bill 625.





## APPENDIX 4

### COMMUNICATION FROM CALIFORNIA LAW REVISION COMMISSION CONCERNING ASSEMBLY BILL 2625

[Extract from Senate Journal for August 27, 1986 (1985-86 Regular Session)]

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#### MOTION TO PRINT IN JOURNAL

Senator Lockyer moved that the following letters be printed in the Journal.

California Law Revision Commission  
Palo Alto, June 20, 1986

*Mr. Darryl R. White, California State Senate*

Dear Mr. White: AB 2625 and AB 2652 were introduced to effectuate recommendations of the California Law Revision Commission. See Recommendations Relating to Probate Law (December 1985), 18 Cal. L. Revision Comm'n Reports 1001 (1986); Recommendation Proposing the Trust Law (December 1985), 18 Cal. L. Revision Comm'n Reports 1001 (1986).

The Comments contained in the Law Revision Commission recommendations to the various sections of the bill remain applicable except to the extent they are superseded by the new and revised Comments set out in the "Communication From California Law Revision Commission Concerning AB 2625" and the "Communication From California Law Revision Commission Concerning AB 2652" on file with the Assembly Committee on Judiciary, the Senate Committee on Judiciary, and the Office of the Legislative Counsel.

Sincerely,

John H. DeMouly, Executive Secretary  
Sacramento, August 27, 1986

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**Communication From California Law Revision  
Commission Concerning Assembly Bill 2625**

Assembly Bill 2625 was introduced to effectuate the California Law Revision Commission's *Recommendation Relating to Disposition of Estate Without Administration*, 18 Cal. L. Revision Comm'n Reports 1005 (1986), *Recommendation Relating to Small Estate Set-Aside*, 18 Cal. L. Revision Comm'n Reports 1101 (1986), and *Recommendation Relating to Proration of Estate Taxes*, 18 Cal. L. Revision Comm'n Reports 1127 (1986). The Comments in the Commission's recommendations to the sections contained in Assembly Bill 2625 remain applicable except to the extent they are replaced or supplemented by the revised and new Comments set out below.

**Code of Civil Procedure § 353.5 (technical amendment).  
Action against decedent's surviving spouse**

**Comment.** Section 353.5 is amended to replace the reference to former Section 649.4 of the Probate Code with a reference to the new provisions that have replaced it.

**Code of Civil Procedure § 385 (technical amendment).  
Nonabatement of action by death or disability of a party**

**Comment.** Section 385 is amended to replace the reference to former Section 630 of the Probate Code to the new provisions which have replaced that section.

**Health & Safety Code § 18102 (amended). Transfer of  
manufactured home, mobilehome, commercial coach,  
truck camper, or floating home without probate**

**Comment.** Section 18102 is amended to do the following:

(1) To add the provision for a 40-day delay after the decedent's death. This makes the section consistent with Probate Code §§ 13100 (affidavit procedure for collection or transfer of personal property), 13151 (court order determining succession to real property), 13540 (right of surviving spouse to dispose of real property); Veh. Code § 9916 (affidavit procedure for transfer of ownership of title or interest of decedent in vessel).

(2) To substitute references to the general provisions of the Probate Code governing intestate succession in place of the references to former Probate Code Section 630. Probate Code Section 630 has been repealed.

(3) To make clear that a beneficiary who takes a manufactured home, mobilehome, commercial coach, truck camper, or floating home under the decedent's will (whether or not the beneficiary is related to the decedent) may secure a transfer of registration of the title or interest of the decedent without the need to probate the decedent's estate. This is consistent with the practice of the department and with other comparable provisions. See Veh. Code §§ 5910 (vehicle), 9916 (vessel).

(4) To specify in somewhat more detail the contents of the certificate to be presented to the department and to limit to unsecured creditors the requirement that creditors have been paid. The section as amended is consistent with other comparable provisions. See Veh. Code §§ 5910 (vehicle), 9916 (vessel).

(5) To add subdivision (c). The first two sentences of subdivision (c) are drawn from the first sentence of former Section 631 of the Probate Code. The third sentence of subdivision (c) makes clear the extent of the liability of the person who secures the transfer under Section 18102. For provisions comparable to subdivision (c), see Veh. Code §§ 5910(c), 9916(c). See also Prob. Code § 13106.

### **Probate Code § 20 (amended). Application of definitions**

**Comment.** Section 20 is amended to apply the definitions in Sections 21 through 88 to Divisions 8 (disposition of estate without administration), 9 (trust law), and 10 (proration of taxes), as well as to Divisions 1, 2, and 6. The introductory clause of Section 20 recognizes that, in a particular context, special definitions may be used that differ from those provided in Sections 21-88. See, e.g., Sections 20100 ("person interested in the estate," "property"), 20200 ("property," "trustee").

### **Probate Code § 584.2 (technical amendment). Exercise of restricted stock options**

**Comment.** Section 584.2 is amended to substitute a reference to Section 1200.5 (giving notice of hearing by mail) in place of the reference to Section 1200 (posting notice of hearing). This is a technical, nonsubstantive revision.

Prior to 1980, Probate Code Section 1200 required notice both by posting and by mail. In 1980, the provisions for notice by mail

were split out of Section 1200 and relocated in a new Section 1200.5 (see 1980 Cal. Stat. ch. 955, §§ 29, 31), but conforming revisions were not made to all the sections of the Probate Code that made reference to Section 1200. The substitution in Section 584.2 of a reference to Section 1200.5 (giving notice by mail) in place of the former reference to Section 1200 (posting notice of hearing) will effectuate legislative intent. Subdivision (d) of Section 1200 provides that notice by posting under that section is not required, notwithstanding any other provision of the Probate Code, except for a few matters specifically enumerated in that section, and subdivision (e) of Section 1200.5 provides that the notice by mail under that section is in addition to the notice, if any, required to be given in the manner specified in Section 1200.

**Probate Code § 584.3 (technical amendment). Granting option to purchase real property**

**Comment.** Section 584.3 is amended to delete the obsolete cross-reference to Section 1213.5 of the Civil Code which has been repealed, and to substitute a reference to the new Civil Code provisions which replaced the repealed section.

**Probate Code § 584.5 (technical amendment). Investment of surplus moneys as provided in will**

**Comment.** Section 584.5 is amended to substitute references to Section 1200.5 in place of the former references to Section 1200. This is a technical, nonsubstantive revision. See the Comment to Section 584.2.

**Probate Code § 584.6 (technical amendment). Order authorizing investment of surplus moneys as provided in will**

**Comment.** Section 584.6 is amended to substitute a reference to Section 1200.5 in place of the former reference to Section 1200. This is a technical, nonsubstantive revision. See the Comment to Section 584.2.

**Probate Code § 704.2 (technical amendment). Claim for payment of debts of deceased spouse**

**Comment.** Section 704.2 is amended to replace the references to former Section 649.4 with references to the new provisions which have replaced the former section.

**Probate Code § 707 (technical amendment). Time to file certain claims**

**Comment.** Section 707 is amended to replace the reference to former Section 630 with a reference to the new provisions that have replaced it.

**Probate Code § 718.6 (technical amendment). Acceptance of deed in lieu of foreclosure or trustee's sale**

**Comment.** Section 718.6 is amended to substitute a reference to Section 1200.5 in place of the former reference to Section 1200. This is a technical, nonsubstantive revision. See the Comment to Section 584.2.

**Probate Code § 771.3 (technical amendment). Purchase of securities or commodities sold short**

**Comment.** Section 771.3 is amended to substitute a reference to Section 1200.5 in place of the former reference to Section 1200. This is a technical, nonsubstantive revision. See the Comment to Section 584.2.

**Probate Code § 851.5 (technical amendment). Conveyance or transfer of property claimed to belong to decedent or another**

**Comment.** Section 851.5 is amended to delete the language that requires the clerk to give notice as provided in Section 1200 (notice by posting). The posting requirement was eliminated by the addition of subdivision (d) to Section 1200. Subdivision (d) of Section 1200 provides that notice by posting under Section 1200 is not required unless the hearing is on a petition listed in subdivision (a) of Section 1200.

Section 851.5 also is amended to substitute a reference to Section 1200.5 in place of the former reference to Section 1200. This is a technical, nonsubstantive revision. See the Comment to Section 584.2.

**Probate Code § 854 (amended). Option to purchase given in will**

**Comment.** Section 854 is amended to make the following changes:

(1) To add subdivisions (a) and (c) to make clear that the optionee may exercise the option given by will within any time limits provided by the will, and if the option remains exercisable

when the estate is to be closed, the property is distributed subject to the option. This is consistent with *Estate of Secreto*, 134 Cal. App. 3d 938, 184 Cal. Rptr. 873 (1982), which held that the former six-month period for filing a petition did not limit the time the optionee had under the will to exercise the option.

(2) To add subdivision (d) to provide a one-year time limit from the decedent's death for exercise of the option when the will provides no time limit. This changes the former rule that when the will provided no time limit, the time limit was six months from issuance of letters. *Estate of Clark*, 152 Cal. App. 3d 894, 199 Cal. Rptr. 753 (1984).

(3) To permit the personal representative (whether or not the optionee) to file a petition under this section.

(4) To delete the language that required the clerk to give notice as provided in Section 1200 (notice by posting). The posting requirement was eliminated by the addition of subdivision (d) to Section 1200. Subdivision (d) of Section 1200 provides that notice by posting under Section 1200 is not required unless the hearing is on a petition listed in subdivision (a) of Section 1200.

(5) To substitute a reference to Section 1200.5 in place of the former reference to Section 1200. This is a technical, nonsubstantive revision. See the Comment to Section 584.2.

(6) To delete the fourth sentence which required either a court finding that all inheritance taxes had been paid or consent by the State Controller. Inheritance taxes have been eliminated in California. See Rev. & Tax. Code § 13301.

### **Probate Code § 1080 (technical amendment). Determination of heirship**

**Comment.** Section 1080 is amended to substitute a reference to Section 1200.5 (notice by mail) in place of the reference to Section 1200 (posting notice of hearing). This is a technical, nonsubstantive revision.

Prior to 1980, Probate Code Section 1200 required notice both by posting and by mail. In 1980, the provisions for notice by mail were split out of Section 1200 and relocated in a new Section 1200.5 (see 1980 Cal. Stat. ch. 955, §§ 29, 31), but conforming revisions were not made to all the sections of the Probate Code that made reference to Section 1200. The substitution in Section 1080 of a reference to Section 1200.5 (giving notice by mail) in place of the former reference to Section 1200 (posting notice of hearing) will effectuate legislative intent. Subdivision (d) of

Section 1200 provides that notice by posting under that section is not required, notwithstanding any other provision of the Probate Code, except for a few matters specifically enumerated in that section, and subdivision (e) of Section 1200.5 provides that the notice by mail under that section is in addition to the notice, if any, required to be given in the manner specified in Section 1200.

### **Probate Code § 1191 (technical amendment). Petition to determine heirship**

**Comment.** Section 1191 is amended to delete the language that requires the clerk to give notice as provided in Section 1200 (notice by posting). The posting requirement was eliminated by the addition of subdivision (d) to Section 1200. Subdivision (d) of Section 1200 provides that notice by posting under Section 1200 is not required unless the hearing is on a petition listed in subdivision (a) of Section 1200.

Section 1191 also is amended to substitute a reference to Section 1200.5 in place of the former reference to Section 1200. This is a technical, nonsubstantive revision. See the Comment to Section 584.2.

### **Probate Code § 1200.5 (amended). Notice by mail or personal service**

**Comment.** Subdivision (a) of Section 1200.5 is amended to make the following changes:

(1) To add a reference in paragraph (6) to a petition to authorize a transfer or conveyance to one given an option to purchase the decedent's property given in a will admitted to probate. See Section 854.

(2) To amend paragraph (22) to recognize that various sections in the Probate Code may require that notice of hearing be given for the period and in the manner required by Section 1200.5 although the subject of the hearing is not listed in paragraphs (1) to (21).

### **Probate Code § 1406 (repealed & added). Account in an insured savings and loan association**

**Comment.** Section 1406 is repealed and reenacted to conform to the Financial Code provisions as revised by Chapter 1091 of the Statutes of 1983.

**Probate Code § 1469 (technical amendment). Notice under guardianship-conservatorship law**

**Comment.** Section 1469 is amended to add a reference to Section 1200.5. The effect of this addition is to require that notice be given under the provisions of the guardianship-conservatorship law where this division applies provisions of the Probate Code that contain a reference to Section 1200.5.

**Probate Code § 6604 (added). Contents of petition**

**Comment.** Subdivision (a) of Section 6604 continues the first portion of the first sentence of former Section 641 without substantive change. Subdivision (b) supersedes the last sentence of former Section 641 which specified the contents of the petition.

Paragraph (1) of subdivision (b) is new. This paragraph implements Section 6603 (venue).

Paragraph (2) of subdivision (b) is new and is designed to implement the provision for giving notice of the hearing on the petition under this chapter. See Section 6607.

Paragraphs (3), (4), and (5) of subdivision (b) supersede the provision of former Section 641 that required that the petition include “a specific description and an estimate of the value of all of the decedent’s property” and “a list of all liens and encumbrances at the date of death.”

Paragraph (6) of subdivision (b) continues a requirement of former Section 641 without substantive change.

Paragraph (7) of subdivision (b) is new and is consistent with subdivision (d) of Section 6609 (court shall ensure that expenses of last illness, funeral charges, and expenses of administration are paid).

Paragraph (8) is new. This paragraph requires that the petition contain the information necessary so that the court may make an appropriate order under Section 6609. If the court makes an order under Section 6609, the court may set aside the small estate to the surviving spouse and minor children of the decedent, or to any one or more of them. See the Comment to 6609. The petition, for example, may request that the small estate be set aside to one of the minor children and that the other minor children and the spouse be excluded, or it may request that the small estate be set aside in unequal shares to the minor children. In determining whether to make such an order, the court must take into account the various considerations listed in subdivision (b) of Section 6609.



**Probate Code § 6609 (added). Court order**

**Comment.** Section 6609 supersedes former Section 645. Section 6609 makes significant substantive changes in the former law.

Under Section 6609, the court may decline to set aside a small estate if the court determines that it would be inequitable to do so. Under former Section 645, the court had no discretion; the court was required to set aside the small estate if the court made the findings prescribed by that section.

Under Section 6609, the court may assign the estate to the minor child or minor children of the decedent even if there is a surviving spouse. This may be desirable, for example, if the minor children live apart from the surviving spouse or where the minor children are not children of the surviving spouse. In this respect, Section 6609 is consistent with Section 6510 (setting aside exempt property other than family dwelling) and Section 6521 (setting apart probate homestead). Former law did not permit the small estate to be assigned to the minor child or children if there was an unmarried surviving spouse.

Under Section 6609, the court may assign the estate to a surviving spouse even if the surviving spouse has remarried. Under former Section 645, the small estate could be set aside only to a “surviving spouse who has not theretofore remarried.” Permitting the small estate to be set aside to a surviving spouse, whether or not remarried, makes Section 6609 consistent with Section 6510 (setting aside exempt property other than family dwelling) and Section 6521 (setting apart probate homestead). The last two sentences of subdivision (b) place on the remarried surviving spouse the burden of proof to establish the need for the small estate set aside.

Subdivision (b) of Section 6609, which specifies matters to be considered in determining whether to make an order under the section, is a new provision drawn from subdivision (a) of Section 6523 which specifies matters to be considered in selecting and setting apart a probate homestead. Under some circumstances, the court may order that the small estate be set aside to one of the minor children and that the other minor children and the spouse be excluded, or that the small estate be set aside in unequal shares to the minor children, or that the small estate be

set aside to the surviving spouse and that the minor children be excluded. In determining the assignment to make, the court must take into account the various considerations listed in subdivision (b). See also Section 6604(b)(8) (petition must include the requested disposition of the decedent's estate and the considerations justifying the requested disposition).

The word "mortgages," which was found in former Section 645, has been omitted as unnecessary, mortgages being included within the phrase "liens and encumbrances."

Subdivision (d) of Section 6609 supersedes the portion of the first sentence of former Section 645 that required expenses of last illness, funeral charges, and expenses of administration to be paid before the court could set aside a small estate. Under subdivision (d), the court may set aside a small estate whether or not such expenses have been paid, but the court must make an appropriate order to ensure that they will be paid.

Subdivision (e) of Section 6609 continues the last sentence of former Section 645, revised to reflect the new authority of the court to assign the small estate to one or more of the minor children of the decedent where there is a surviving spouse.

### **Probate Code § 6611 (added). Liability for unsecured debts of decedent**

**Comment.** Section 6611 continues former Section 645.3 without substantive change, except as follows:

(1) Subdivision (b) of Section 6611 makes clear that the personal liability of a person who takes only a share or portion of the decedent's estate is limited to the net value of the share or portion (fair market value less liens and encumbrances and any probate homestead or exempt property set apart out of the share), rather than the net value of the entire estate.

(2) Subdivision (e) of Section 6611 is new and is drawn from Section 13552 (liability for debts of deceased spouse). Subdivision (e) is a limitation on the one-year limitation period of subdivision (c) where estate proceedings are commenced, and provides the same period as for creditors' claims in estate proceedings generally.

**Probate Code § 6612 (added). Order where estate not set aside**

**Comment.** Section 6612 is drawn from former Section 646 but the language of the former section has been revised to recognize that the court has discretion to deny a petition filed under this chapter. Under Section 6609, the court is required to deny a petition filed under this chapter if the decedent's estate is not a small estate (see Sections 6600 and 6609), or if there is neither a surviving spouse nor a minor child. The court also may decline to order a small estate set-aside when it would be inequitable to do so. See Section 6609.

**Probate Code § 6614 (added). Applicability of chapter**

**Comment.** Section 6614 supersedes former Section 647.5 and makes clear that Sections 6600 to 6613, inclusive, apply only if the decedent dies on or after July 1, 1987, the operative date of those sections. If the decedent died before that date, the right to a small estate set-aside is determined under the law that was applicable prior to July 1, 1987. The application of Sections 6600 to 6613 is limited to cases where the decedent died on or after the operative date because in a case where the decedent died before the operative date there was a right to have a small estate set-aside. Under Sections 6600 to 6613, the court may decline to order a small estate set-aside when it would be inequitable to do so. See Section 6609.

**Probate Code § 6615 (added). Reference to provision of former law deemed reference to new provision**

**Comment.** Section 6615 is new and is drawn from Section 1490 and former Section 649.6. Section 6615 makes clear that, after the operative date of this chapter, a reference in a statute or written instrument to a provision of former law will be deemed to be a reference to the comparable provision of this chapter.

**Probate Code § 13052 (added). Date of valuation of property**

**Comment.** Section 13052 makes clear that the probate referee is to use the date of the decedent's death as the date of valuation in making an inventory and appraisal for the purposes of this part. For provisions concerning inventory and appraisal, see Sections 13103 (affidavit procedure for

collection or transfer of personal property), 13152(b) (petition for court order determining succession to real property), 13200(c) (affidavit procedure for real property of small value).

Under this part, valuation is as of the date of death. Date of death values are used for all other probate inventory purposes, are used for tax purposes for the federal estate tax, the California estate tax, and in connection with adjustment of basis of property for income tax purposes. Because of these tax considerations in particular, the appraisal used for the purposes of this part is the date of death value, not some more current value. Thus, for example, record title to real property may be transferred by affidavit under Chapter 5 (commencing with Section 13200) even if the real property since the date of death has appreciated to a value in excess of \$10,000.

#### **Probate Code § 13053 (added). Application of this part**

**Comment.** Section 13053 is a new provision that preserves prior law where a payment, delivery, or transfer was made under prior law before the operative date of this part. The section also makes clear that this part applies if the payment, delivery, or transfer is made on or after the operative date, without regard to whether the decedent died before or after that date. Thus, where the decedent died before the operative date, the provisions of this part may be used to require the payment, delivery, or transfer if the property was not paid, delivered, or transferred prior to the operative date pursuant to the provisions of former Probate Code Sections 630-632.

#### **Probate Code § 13054 (added). Reference to provision of former law deemed reference to new provision**

**Comment.** Section 13054 is new and is drawn from Section 1490 and former Section 649.6. Section 13054 makes clear that, after the operative date of Sections 13100-13115, a reference in a statute or written instrument to a provision of former law will be deemed to be a reference to the comparable provision of Chapter 3 (commencing with Section 13100).

#### **Probate Code § 13106 (added). Protection of transferor from liability**

**Comment.** Subdivision (a) of Section 13106 continues the first sentence of former Probate Code Section 631 without substantive change but with the addition of clarifying language. Subdivision (b) is new and is drawn from Section 6855 of the Financial Code. See also Section 13102(b) (bond to protect person paying, delivering, or transferring property).

**Probate Code § 13153 (added). Notice of hearing**

**Comment.** Section 13153 is drawn from subdivision (b) of Section 13655 (petition for order determining property is property passing to surviving spouse). See also the Comment to Section 13655.

**Probate Code § 13154 (added). Court order**

**Comment.** Section 13154 states the determinations required for a court order determining that real property described in the order is property of the decedent passing to the petitioners.

The court does not make a determination under Section 13154 as to the value of specific items or parcels of property; the court makes a determination only that “the gross value of the decedent’s real and personal property in California, excluding the property described in Section 13050 of the Probate Code, does not exceed \$60,000.”

**Probate Code § 13206 (added). Restitution if estate proceeding commenced**

**Comment.** Section 13206 is comparable to Section 13111. See the Comment to that section.

**Probate Code § 13209 (added). Judicial Council to prescribe form of affidavit**

**Comment.** Section 13209 is new and is comparable to Section 1456.

**Probate Code § 13506 (added). Reference in statute or written instrument to repealed statutory provision**

**Comment.** Section 13506 is new and is drawn from Sections 649.6 and 1490 of the Probate Code. Section 13506 supersedes former Section 649.6. Section 13506 makes clear that, after the operative date of Sections 13500-13660, a reference in a statute or written instrument to a provision of former law will be deemed to be a reference to the comparable provision of this part.

**Probate Code § 13540 (added). Right of surviving spouse to dispose of real property**

**Comment.** Section 13540 continues the first portion of the first sentence and all of the last sentence of former Section 649.2.

Subdivision (b) of Section 13540 is a new provision that makes clear that Section 13540 does not affect or limit the liability of a

surviving spouse under Sections 13550-13554. Although Section 13540 may preclude a devisee or creditor from enforcing his or her rights against a grantee, purchaser, encumbrancer, or lessee or against the property interest transferred to the grantee, purchaser, encumbrancer, or lessee, the section does not relieve the surviving spouse of any liability under Sections 13550-13554. If the surviving spouse is liable under those sections and the devisee or creditor obtains a judgment against the surviving spouse, the judgment may be enforced against any property of the surviving spouse (including the proceeds of the disposition described in Section 13540) that is subject to the enforcement of a judgment.

**Probate Code § 13542 (added). Dispositions under former law not affected**

**Comment.** Section 13542 is a new provision that makes clear that dispositions made under prior law are not affected.

**Probate Code § 13600 (added). Collection of salary or other compensation, not exceeding \$5,000, by affidavit**

**Comment.** Sections 13600-13606 provide a simple procedure that permits a surviving spouse immediately to collect not more than \$5,000 of the earnings owed by an employer to the deceased spouse. Use of this new procedure will provide funds for the surviving spouse until the probate proceeding is commenced and a family allowance may be obtained.

If the employer does not personally know the surviving spouse, reasonable proof of identity must be provided to the employer. The kinds of proof of identity that may be relied on are specified in Section 13104. See Section 13601(c).

Section 13600 permits the guardian or conservator of the estate of the surviving spouse to use the new procedure under this chapter to collect compensation owing to the deceased spouse. See also Section 13601(d) (proof of appointment of person as guardian or conservator). Letters of the conservator of the estate of the surviving spouse would be reasonable proof of authority to act for the surviving spouse.

This chapter is drawn from Sections 13100-13115 (affidavit procedure for collection or transfer of property of small estate where death occurred not less than 40 days before affidavit presented to holder of property). However, use of the procedure under this chapter applies without regard to the amount of the decedent's estate; use of the procedure is not limited to cases

where the estate is a small estate. And use of the procedure under this chapter is permitted without any delay after the death of the decedent; use of the procedure is not limited to cases where the decedent died not less than 40 days before the affidavit or declaration is presented to the employer.

**Probate Code § 13606 (added). Other methods of collecting compensation not affected**

**Comment.** Section 13606 makes clear that the procedure provided by this chapter is in addition to and not in lieu of any other method of collecting unpaid compensation owed to a decedent. See, e.g., Sections 160 (payment of money due to decedent to person designated by decedent), 6600-6615 (small estate set-aside), 13100-13115 (affidavit procedure for collection or transfer of personal property of a small estate), 13650-13660 (court order determining that property passed to surviving spouse). See also Gov't Code §§ 12479 (designation by state employee of person to receive warrants upon employee's death), 53245 (designation by public employee of person to receive warrants upon employee's death).

**Probate Code § 13655 (added). Notice of hearing**

**Comment.** Subdivision (a) of Section 13655 restates the substance of former Section 654 with two omissions:

(1) The last sentence of former Section 654, which required that a copy of the petition also be served, is not continued.

(2) The requirement of former Section 654 that notice of the hearing be given at least 20 days prior to the date of the hearing is not continued. By adopting the provisions of Sections 328 and 441, subdivision (a) of Section 13655 incorporates the requirement of those sections that notice of hearing be given at least 10 days before the hearing on the petition.

Subdivision (b) of Section 13655 restates the substance of former Section 653 with the following changes:

(1) The requirement of former Section 653 that a copy of the petition be served is not continued.

(2) The requirement of former Section 653 that notice of hearing be given at least 20 days prior to the hearing is replaced by a requirement that notice of hearing be given at least 10 days before the hearing.

(3) The requirement of former Section 653 that notice of hearing be given to “[a]ll other persons who are named in the will of the deceased spouse, if the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will” is not continued.

This requirement is replaced by the addition of new language in paragraph (2) of subdivision (b) that requires notice, if the personal representative is the trustee of a trust that is a devisee under the decedent's will, to all persons interested in the trust as determined in the case of future interests pursuant to the general statutory provision governing notice in future interests cases. Subdivision (b) requires notice to all persons who might be adversely affected by the order. The former requirement that required notice to all persons named in the will, however, apparently required notice to persons named in the will who were neither devisees nor named as executors of the will. Elimination of the requirement that notice be given to all persons named in the will avoids the need to give notice of hearing to persons who have no interest in the proceeding. For example, notice no longer needs to be given to a mortuary designated in the will to handle funeral arrangements, or to a former spouse where the will recites dissolution of a prior marriage.

**Probate Code § 20110 (added). Proration among persons interested in estate**

**Comment.** Section 20110 restates former Section 970 without substantive change, but recognizes that federal law may provide for a different manner of proration. See, *e.g.*, I.R.C. § 2207A. In such a situation, proration of the California estate tax must conform to the federal proration.

Section 20110 allows proration of an extended estate tax prior to actual payment of the tax. Section 20115 (proration of extended estate tax). Penalties and interest on an estate tax are prorated pursuant to Section 20112 (allowance and charges for credits, deductions, interest, and other adjustments).

**Probate Code § 20115 (added). Proration of extended estate tax**

**Comment.** Section 20115 ensures that the persons who receive property that gives rise to the extension of estate tax are the persons who benefit from the extension privilege. With respect to allocation of any interest on the extension, see Section 20112 (allowance and charges for credits, deductions, interest, and other adjustments).

Section 20115 makes clear that where a decedent's estate consists of a closely held business with respect to which estate taxes may be extended, the deferred tax and interest thereon



follow the business. If the persons who receive the property fail to pay the tax when due and the tax is collected from persons other than the persons to whom the tax is prorated, the persons from whom the tax is collected have a right of reimbursement against the persons to whom the tax is prorated. See Section 20117 (reimbursement for overpayment).

**Probate Code § 20116 (added). Where property not in possession of personal representative**

**Comment.** Subdivision (a) of Section 20116 continues former Section 975 without substantive change. Subdivision (b) is new. Recovery of estate taxes pursuant to this section includes prorated interest and penalties. See Sections 20112 (allowance and charges for credits, deductions, interest, and other adjustments) and 20100(a) (“estate tax” defined).

The court may by order direct payment of the amount of taxes owed by a person to the personal representative. Section 20123 (court order to effectuate proration). As to costs incurred in enforcing a proration order, see Code Civ. Proc. § 685.040. Failure of the personal representative to make a good faith effort to collect taxes prorated against a person is a breach of the fiduciary obligation of the personal representative, for which the personal representative is liable personally and on the bond, if any.

**Probate Code § 20117 (added). Reimbursement for overpayment**

**Comment.** Section 20117 is new. Subdivision (c) incorporates the judicial proration procedure, *mutatis mutandis*.

**Probate Code § 20120 (added). Who may commence proceeding**

**Comment.** Sections 20120 to 20125 supersede a portion of former Section 971, requiring court proration, and a portion of former Section 975, providing for a court order for payment. The general rules applicable to civil actions and proceedings, including the rules applicable to parties and pleadings, govern proceedings under this article. See Section 1233 (general rules of practice govern).

**Probate Code § 20215 (added). Reimbursement for overpayment**

**Comment.** See Comment to Section 20200.

**Vehicle Code § 5910 (amended). Transfer of vehicle without probate**

**Comment.** Section 5910 is amended to do the following:

(1) To substitute references to the general provisions of the Probate Code governing intestate succession in place of the references to former Probate Code Section 630. Probate Code Section 630 has been repealed.

(2) To add a new subdivision (c), and to redesignate former subdivision (c) as subdivision (d). The first two sentences of subdivision (c) are drawn from the first sentence of former Section 631 of the Probate Code. The third sentence of subdivision (c) makes clear the extent of the liability of the person who secures the transfer under Section 5910. For provisions comparable to subdivision (c), see Health & Safety Code § 18102(c); Veh. Code § 9916(c). See also Prob. Code § 13106.

**Vehicle Code § 9916 (amended). Transfer of vessel without probate**

**Comment.** Section 9916 is amended to do the following:

(1) To substitute references to the general provisions of the Probate Code governing intestate succession in place of the references to former Probate Code Section 630. Probate Code Section 630 has been repealed.

(2) To add a new subdivision (c). The first two sentences of subdivision (c) are drawn from the first sentence of former Section 631 of the Probate Code. The third sentence of subdivision (c) makes clear the extent of the liability of the person who secures the transfer under Section 9916. For provisions comparable to subdivision (c), see Health & Safety Code § 18102(c); Veh. Code § 5910(c). See also Prob. Code § 13106.

**COMMENTS TO REPEALED SECTIONS****Probate Code § 631 (repealed). Effect of receipt of affidavit**

**Comment.** The first sentence of former Section 631 is continued without substantive change in Section 13106(a) with the addition of clarifying language. The last sentence is continued without substantive change in Section 13108(b). See the Comment to that section. See also Section 13111 (restitution if estate proceeding commenced).

**Probate Code § 645.3 (repealed). Liability for debts**

**Comment.** Former Section 645.3 is continued in substance in Section 6611 with a clarifying revision in subdivision (b) of Section 6611, and with the addition of a new limitation in subdivision (e) of Section 6611 on an action to enforce personal liability where estate proceedings have been commenced.

**Probate Code §§ 649.1-649.6 (repealed). Passage of property to surviving spouse without administration**

**Comment.** Former Article 2.5 (commencing with Section 649.1) of Chapter 10 of Division 3 is replaced by Sections 13500-13554.



## APPENDIX 5

### COMMUNICATION FROM CALIFORNIA LAW REVISION COMMISSION CONCERNING ASSEMBLY BILL 2652

[Extract from Senate Journal for August 27, 1986 (1985-86 Regular Session)]

#### MOTION TO PRINT IN JOURNAL

Senator Lockyer moved that the following letters be printed in the Journal.

California Law Revision Commission  
Palo Alto, June 20, 1986

*Mr. Darryl R. White, California State Senate*

Dear Mr. White: AB 2625 and AB 2652 were introduced to effectuate recommendations of the California Law Revision Commission. See Recommendations Relating to Probate Law (December 1985), 18 Cal. L. Revision Comm'n Reports 1001 (1986); Recommendation Proposing the Trust Law (December 1985), 18 Cal. L. Revision Comm'n Reports 1001 (1986).

The Comments contained in the Law Revision Commission recommendations to the various sections of the bill remain applicable except to the extent they are superseded by the new and revised Comments set out in the "Communication From California Law Revision Commission Concerning AB 2625" and the "Communication From California Law Revision Commission Concerning AB 2652" on file with the Assembly Committee on Judiciary, the Senate Committee on Judiciary, and the Office of the Legislative Counsel.

Sincerely,

John H. DeMouly, Executive Secretary

Sacramento, August 27, 1986

**Communication From California Law Revision  
Commission Concerning Assembly Bill 2652**

Assembly Bill 2652 was introduced to effectuate the California Law Revision Commission's *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1985). The comments in the Commission's recommendation to the sections contained in Assembly Bill 2652 remain applicable except to the extent they are replaced or supplemented by the revised and new comments set out below. This report includes comments revised to reflect amendments made in the Senate and also the comments that were revised to reflect Assembly amendments.

**Civil Code § 2225 (added). Involuntary trust of proceeds of felon's story**

**Comment.** Section 2225 continues former Section 2224.1 without change.

**Civil Code § 5110.150 (added). Revocable living trust of community property**

**Comment.** Section 5110.150 replaces former Section 5113.5. It should be noted that a transfer in trust by a married person is not exempt from the general limitations on transfers and transmutations by married persons acting alone. See Sections 5125 and 5127 (joinder or consent) and Sections 5110.710-5110.740 (transmutation).

Subdivision (a) states the rule that a revocable living trust of community property retains its community character regardless of the lack of other trust provisions referred to in former Section 5113.5. Although subdivision (a) is intended to be consistent with Revenue Ruling 66-283 in order to obtain community property income tax treatment for the trust property under Internal Revenue Code Section 1014(b)(6), whether the terms of a particular trust are sufficient to obtain such treatment is ultimately a matter of federal law.

One consequence of retention of its community character is that the trust property is subject to claims of creditors and to division at dissolution to the same extent as any other community property. See Civil Code § 5120.010 *et seq.*; Prob. Code § 18200 (creditors' rights against revocable trust during settlor's lifetime). Likewise, the interest of the decedent in the community property is subject to testamentary disposition at death unless a contrary method of disposition is provided in the

trust instrument, as is typically the case. Prob. Code § 104. In this situation, the spouses' traditional community property right of testamentary disposition is substantially preserved by the unilateral power of revocation. See subdivision (b). Where the trust requires joint action for revocation, the trust could preserve the power of testamentary disposition by granting the first spouse to die a testamentary power of modification, appointment, or disposition as to the spouse's share of the community property.

Subdivision (b) establishes the presumption that either spouse acting alone may revoke the trust as to the community property. Prior law was not clear. The statute makes clear, however, that a unilateral revocation does not change the community property character of property received by the revoking spouse.

Subdivision (c) makes clear that the trustee may manage the trust community property in the same manner as other trust assets, free from the general limitations on disposition of community property imposed on spouses, unless the trust expressly provides such limitations.

Section 5110.150 is not restrictive and does not provide the exclusive means by which community property may be held in trust without loss of its community character. See subdivision (d).

### **Probate Code § 82 (amended). "Trust" defined**

**Comment.** Section 82 is amended to eliminate from the general definition of trusts those charitable trusts that are not subject to the jurisdiction of the Attorney General. See Section 15004 (application of Trust Law to charitable trusts). Section 82 is also amended to include descriptions of various arrangements that appeared in former Section 1138. Section 82 has also been divided into subdivisions.

### **Probate Code § 83 (added). "Trust company" defined**

**Comment.** Section 83 is drawn from parts of Probate Code Sections 480 and 1120.1a. See also Section 15643 (vacancy in office of trustee), 17351-17353 (removal of trust from continuing court jurisdiction). Entities that may qualify to conduct a trust business in this state include state chartered commercial banks (see Fin. Code §§ 107, 1500.1) and national banking associations (see Fin. Code §§ 1502, 1503), corporations authorized to conduct a trust business (see Fin. Code § 107), trust departments of title insurance companies (see Fin. Code §§ 107, 1501; Ins. Code §§ 12392, 12395), and state and federal savings and loan

associations (see Fin. Code §§ 5102, 6515). See also Fin. Code § 106 (“trust business” defined). Whether an entity has qualified to engage in and conduct a trust business in this state depends on other law. In order to fall within the definition of “trust company” in Section 83, a corporation, association, or other entity must satisfy the requirements of state or federal law that apply to the particular type of entity.

**Probate Code § 2574 (technical amendment). Investment in securities and governmental obligations**

**Comment.** Section 2574 is amended to correct a cross-reference.

**Probate Code § 6325 (technical amendment). Jurisdiction over trusts for insurance or other employee benefits**

**Comment.** Section 6325 is amended to correct cross-references. For changes in the law applicable to trust administration, see the Comments to the new sections referred to in Section 6325. Subdivision (a) (11) is amended to replace the reference to “assets” with “property”; this is a non-substantive change. See Section 62 (“property” defined).

**Probate Code § 15001 (added). General rule concerning application of division**

**Comment.** Section 15001 provides the general rule governing the application of this division to administration of existing trusts and pending proceedings involving trusts. Subdivision (a) continues without substantive change the second sentence of former Civil Code Section 2225 (application of doctrine of merger), the first sentence of subdivision (e) of former Civil Code Section 2261 (application of rules governing investments), and the first sentence of former Probate Code Section 1138.13 (application of provisions governing court proceedings involving trusts), and supersedes the second paragraph of former Probate Code Section 1120.2. Subdivision (a) is also comparable to Section 8 of the Uniform Trustees’ Powers Act (1964).

Subdivision (b) is drawn from Code of Civil Procedure Section 694.020 (application of Enforcement of Judgments Law).

For special transitional provisions, see Sections 15401(d) (application of rules governing method of revocation by settlor), 16042 (interpretation of trust terms concerning legal investments), 16062(b) (application of duty to account annually



to beneficiaries), 16203 (application of rules governing trustee's powers), 16401(c) (application of rules governing trustee's liability to beneficiary for acts of agent), 16402(c) (application of rules governing trustee's liability to beneficiary for acts of cotrustee), 16403(c) (application of rules governing trustee's liability to beneficiary for acts of predecessor trustee), 16460(c) (application of limitations period in proceedings by beneficiaries against trustees), 18000(b) (application of rule governing personal liability of trustee to third persons on contracts).

**Probate Code § 15003 (added). Constructive and resulting trusts and fiduciary relationships not affected**

**Comment.** Subdivision (a) of Section 15003 makes clear that the provisions in this division, relating as they do to express trusts, have no effect on the law relating to constructive and resulting trusts. See Section 82 ("trust" defined). Thus Section 15003 supersedes various provisions of former law relating to "involuntary" trusts. See former Civil Code §§ 856, 2215, 2217, 2275. For provisions relating to "involuntary trusts," see Civil Code Sections 2223-2225.

Subdivision (b) makes clear that the repeal of the Civil Code provisions relating to trusts, particularly former Civil Code Sections 2215-2244, is not intended to affect the general fiduciary principles applicable to confidential relationships. Over the years, courts have cited these provisions in cases involving different types of confidential and fiduciary relationships. See, e.g., *Baker v. Baker*, 260 Cal. App. 2d 583, 586, 67 Cal. Rptr. 523 (1968) (husband and wife); *Bone v. Hayes*, 154 Cal. 759, 763, 99 P. 172 (1908) (agent and principal); *Wickersham v. Crittenden*, 93 Cal. 17, 29-30, 28 P. 788 (1892) (corporate officers); *City of Fort Bragg v. Brandon*, 41 Cal. App. 227, 229, 82 P. 454 (1919) (municipalities); *Cooley v. Miller & Luz*, 168 Cal. 120, 131, 142 P. 83 (1914) (attorney and client). On the other hand, courts have also decided cases in this area on the basis of general equitable principles without citing the former Civil Code provisions. See, e.g., *Estate of Kromrey*, 98 Cal. App. 2d 639, 645-46, 220 P.2d 805 (1950) (attorney and client); *Committee of Missions v. Pacific Synod*, 157 Cal. 105, 127, 106 P. 395 (1909) (church); *Schwab v. Schwab-Wilson Machine Corp.*, 13 Cal. App. 2d 1, 3, 55 P.2d 1268 (1936) (corporate directors). See also Civil Code §§ 2322 (authority of agent), 5103 (spouses' duty in transactions with each other); Corp. Code § 309 (performance of duties by corporate director).

Subdivision (b) is also intended to recognize that the courts have the inherent power to fashion appropriate remedies under the circumstances and that this power in the area of confidential relationships does not depend upon the particular language of former Civil Code Sections 2215-2244. See Civil Code § 22.2 (common law as law of state); see also Prob. Code § 15002 (common law as law of state). Of course, trusts now governed by the new Trust Law are no longer subject to the repealed statutes. See Sections 82 (“trust” defined), 15001 (application of Trust Law).

### **Probate Code § 15300 (added). Restraint on transfer of income**

**Comment.** Section 15300 continues the power of a settlor to restrain transfer of the beneficiary’s interest in income that was provided in former Civil Code Section 867. The reference in former Civil Code Section 867 to restraints during the life of the beneficiary or for a term of years is not continued because it is unnecessary. The settlor is free to impose a restraint for a term of years under Section 15300.

For qualifications of the protection provided by Section 15300, see Sections 15304 (settlor as beneficiary), 15305 (claim for child or spousal support), 15306 (claim for reimbursement of public support), 15306.5 (right of general creditors to reach maximum of one-fourth of payments due beneficiary), 15307 (amount of income in excess of amount needed for education and support subject to creditors’ claims). Once the income is paid to the beneficiary, it is subject to claims of creditors. *Kelly v. Kelly*, 11 Cal. 2d 356, 362-65, 79 P.2d 1059 (1938).

### **Probate Code § 15301 (added). Restraint on transfer of principal**

**Comment.** Subdivision (a) of Section 15301 makes clear that a restraint on voluntary or involuntary transfer of principal is valid. This rule is consistent with the result in several California cases. See *Seymour v. McAvoy*, 121 Cal. 438, 444, 53 P. 946 (1898) (creditor could not reach contingent remainder); *San Diego Trust & Sav. Bank v. Heustis*, 121 Cal. App. 675, 683-84, 694-97, 10 P.2d 158 (1932) (where husband was income and remainder beneficiary, estranged wife could not reach trust funds for support); *Coughran v. First Nat’l Bank*, 19 Cal. App. 2d 152, 64 P.2d 1013 (1937) (in an action to quiet title, attachment levied against beneficiary’s contingent fractional interest in trust

property was held invalid). There was no clear holding under former California law as to the validity of disabling restraints on transfer of trust principal by a vested remainder beneficiary.

Subdivision (b) permits a creditor to reach principal that is due or payable to the beneficiary, notwithstanding a spendthrift provision in the trust. Under former California law, there was no decision determining whether a judgment creditor could reach principal held by the trustee that was due or payable where the beneficiary's interest was subject to a restraint on transfer.

For qualifications of the protection provided by Section 15301, see Sections 15304 (settlor as beneficiary), 15305 (claim for child or spousal support), 15306 (claim for reimbursement of public support), 15306.5 (right of general creditors to reach maximum of one-fourth of payments due beneficiary), 15307 (amount of income in excess of amount needed for education and support subject to creditors' claims). Where trust principal that was subject to a restraint on transfer has been paid to the beneficiary, it is subject to the claims against the beneficiary. See *Kelly v. Kelly*, 11 Cal. 2d 356, 362-65, 79 P.2d 1059 (1938).

### **Probate Code § 15302 (added). Trust for support**

**Comment.** Section 15302 is the same in substance as Section 154 of the Restatement (Second) of Trusts (1957), but is drafted to make clear that the protection applies to the extent that a trust provides for the education or support of the beneficiary and not only where the trust provides solely for the payment of an amount for education or support. Section 15302 is consistent with prior California law. See former Civil Code § 859; *Seymour v. McAvoy*, 121 Cal. 438, 442-44, 53 P. 946 (1898).

For qualifications of the protection provided by Section 15302, see Sections 15304 (settlor as beneficiary), 15305 (claim for child or spousal support), 15306 (claim for reimbursement of public support), 15306.5 (right of general creditors to reach maximum of one-fourth of payments due beneficiary), 15307 (amount of income in excess of amount needed for education and support subject to creditors' claims).

### **Probate Code § 15304 (added). Where settlor is a beneficiary**

**Comment.** The first sentence of subdivision (a) of Section 15304 is the same in substance as Section 156(1) of the Restatement (Second) of Trusts (1957). See the comments to Restatement § 156. Subdivision (a) codifies the case-law rule

applicable under former law. See, e.g., *Nelson v. California Trust Co.*, 33 Cal. 2d 501, 202 P.2d 1021 (1949). This section does not affect the protection of certain pension trusts by Code of Civil Procedure Section 704.115. See Section 82 (“trusts” defined to exclude trusts for the primary purpose of paying pensions).

Subdivision (b) is drawn from Section 156(2) of the Restatement (Second) of Trusts (1957). The limitation on the amount that may be reached by transferees and creditors to the proportionate amount of the settlor’s contribution is drawn from Wisconsin law. See Wis. Stat. Ann. § 701.06(6) (West 1981); see also the comments to Restatement § 156.

A person who furnishes the consideration for the creation of a trust is the settlor. *McColgan v. Walter Magee, Inc.*, 172 Cal. 182, 155 P. 995 (1916) (beneficiary transferred assets into trust although certain other persons could have prevented transfer by refusal to consent); *Parscal v. Parscal*, 148 Cal. App. 3d 1098, 1104, 196 Cal. Rptr. 462 (1983) (child support enforceable against beneficiary’s interest in trust created by beneficiary’s employers under a collective bargaining agreement with benefit credits according to the amount contributed by employers to employee’s account).

### **Probate Code § 15306.5 (added). Rights of general creditors**

**Comment.** Section 15306.5 restates the substance of former provisions of Code of Civil Procedure Section 709.010. Subdivision (a) permits general creditors to seek to satisfy a money judgment from payments that are to be made to a trust beneficiary. This right applies to payments that are required by the terms of the trust, or that are determined by the trustee in the exercise of the trustee’s discretion under the trust. Subdivision (e), however, makes clear that the right of the creditor does not affect any discretion the trustee may have under the trust instrument to change the amount of the payment, or even to cease payment altogether. See also Section 15307 (creditor’s right to reach income in excess of amount for education and support). As provided in the introductory clause, this creditor’s right applies regardless of a restraint on transfer provided in the trust instrument.

The creditor’s right under subdivision (a) is subject to important limitations provided in subdivisions (b) and (c). Subdivision (b) provides a maximum amount that the creditor can reach, equal to 25% of each payment. This provision is comparable to the rule that applied under former subdivision (c)

of Code of Civil Procedure Section 709.010 (incorporating the wage garnishment withholding standard of Code of Civil Procedure Section 706.050). See Code Civ. Proc. § 706.050 and the Comment thereto.

Subdivision (c) protects part or all of the payment that otherwise would be applied to the judgment where the amount is necessary for the support of the beneficiary and persons the beneficiary is required to support. This provision is comparable to Code of Civil Procedure Section 706.051 (wage garnishment exemption) which was incorporated by former subdivision (c) of Code of Civil Procedure Section 709.010 for purposes of enforcement of money judgments against trust payments.

Subdivision (d) makes clear that an order in favor of a creditor under this section is subject to the claim of a creditor who has obtained an order for enforcement of a support judgment, i.e., a minor child, spouse, or former spouse. The second sentence of subdivision (d) makes clear that the priority of support judgments does not depend on the time of issuance of the order for enforcement. This scheme is comparable to the priority that applies to earnings withholding orders under the Wage Garnishment Law. See Code Civ. Proc. § 706.030(b)(2). It should also be noted that while a spouse, former spouse, or minor child enforcing a support judgment may use this section, in the normal case, support creditors will apply under Section 15305. The limitations provided in this section do not apply to enforcement of a support judgment under Section 15305.

Subdivision (e) continues former subdivision (e) of Code of Civil Procedure Section 709.010 without substantive change.

Subdivision (f) limits the aggregate amount of the beneficiary's interest in one trust that is subject to enforcement where several creditors have obtained orders. Thus, if one creditor is receiving 25% of the payment that otherwise would have been made to the beneficiary, a second general creditor will not be able to reach any of the payment in the hands of the trustee. If one creditor is receiving 15%, a second general creditor can reach only 10% of the original amount of the payment. Of course, the aggregate amount of all orders may be less than 25% if the court has determined under subdivision (c) that more than 75% of the original payment is necessary for the beneficiary's support. The introductory clause of subdivision (f) recognizes that the 25% limitation does not affect the amount that may be reached in satisfaction of a support judgment.

**Probate Code § 15307 (added). Income in excess of amount for education and support subject to creditors claims**

**Comment.** Section 15307 replaces former Civil Code Section 859. While Sections 15305 and 15306 permit only certain preferred creditors to reach the beneficiary's interest in the trust, Section 15307 permits an ordinary creditor to reach income under limited circumstances. To obtain relief under Section 15307, the judgment creditor must file a petition under Section 709.010 of the Code of Civil Procedure. See Code Civ. Proc. § 709.010(b). Under Code of Civil Procedure Section 709.010, the court may make a continuing order for application of future payments to the satisfaction of the judgment. It should also be noted, however, that a creditor does not have the power to compel the trustee to exercise discretion. See Section 15303.

The introductory clause of Section 15307 makes clear that this section applies only to a trust in which transfer of the beneficiary's interest is restrained. Section 15307 does not apply to enforcement against a trust that does not restrain transfer of the beneficiary's interest; the entire interest of a beneficiary under such a trust may be applied to the satisfaction of a money judgment under Code of Civil Procedure Section 709.010.

A station-in-life test is used to determine the amount necessary for education and support under this section. See *Canfield v. Security-First Nat'l Bank*, 13 Cal. 2d 1, 21-24, 87 P.2d 830 (1939); *Magner v. Crooks*, 139 Cal. 640, 642, 73 P. 585 (1903); *Smith v. Smith*, 51 Cal. App. 2d 29, 35-38, 124 P.2d 117 (1942); *cf. Alvis v. Bank of America*, 95 Cal. App. 2d 118, 122-24, 212 P.2d 608 (1949) (beneficiary who had disappeared). The California Supreme Court has rejected the more extreme New York cases, but has continued to embrace the station-in-life test which considers factors such as the social background of the beneficiary. See, e.g., *Canfield v. Security-First Nat'l Bank*, 13 Cal. 2d 1, 24-28, 87 P.2d 830 (1939). If the trustee has discretion to determine the disposition of the trust income, the trustee may be able to defeat the creditor's attempt to reach the excess income under this section by reducing the amount to be paid to the beneficiary to the amount determined by the court to be necessary for the support and education of the beneficiary. See *Estate of Canfield*, 80 Cal. App. 2d 443, 450-52, 181 P.2d 732 (1947); *E. Griswold, Spendthrift Trusts* § 428 (2d ed. 1947).

Other provisions may permit a creditor of the beneficiary to satisfy all or part of the creditor's claim out of all or part of the payments of the income or principal as they fall due, presently or in the future. See Sections 15305 (child or spousal support), 15306 (public support); see also Section 15304 (settlor as beneficiary).

**Probate Code § 15400 (added). Presumption of revocability**

**Comment.** The first sentence of Section 15400 restates part of the first sentence of former Civil Code Section 2280 without substantive change. For the procedure for revoking a trust, see Section 15401. See also Section 15402 (power to revoke includes power to modify). The second sentence of Section 15400 is a new provision that limits the application of the California rule presuming revocability.

**Probate Code § 15602 (added). Trustee's bond**

**Comment.** Subdivisions (a)-(c) of Section 15602 are drawn from Section 7-304 of the Uniform Probate Code (1977). Subdivision (a) (3) restates part of former Probate Code Section 1127 without substantive change, except that subdivision (a) (3) applies only to an individual trustee who is not named or nominated as an original or successor trustee in the trust instrument. See also Sections 15643 (vacancy in office of trustee), 15660 (appointment of trustee to fill vacancy). In other respects this section supersedes former Probate Code Sections 1127 (bond of trustee named by court) and 1127.5 (exception for substitute or successor trustee that is charitable corporation). Subdivision (d) supersedes the second sentence of former Probate Code Section 1127.

Subdivision (e) makes clear that a trust company is not required to give a bond. See Section 83 ("trust company" defined). This restates part of former Probate Code Sections 480 and 481 without substantive change. A nonprofit or charitable corporation that acts as trustee under a charitable trust is not a trust company, as defined in Section 83, and thus is subject to the provisions of paragraphs (1) and (2) of subdivision (a) of this section relating to when a bond is required. A bond is required if the trust instrument requires it (subject to the court's power to excuse the bond) or if the bond is found by the court to be necessary to protect the interests of beneficiaries. But a bond is not required of a nonprofit or charitable corporation that is appointed as trustee under a charitable trust merely because the

corporation is not named as a trustee in the trust instrument. For provisions relating to nonprofit or charitable corporations acting as trustees, see, e.g., Corp. Code §§ 5140(k) (power of nonprofit public benefit corporation to act as trustee), 7140(k) (power of nonprofit mutual benefit corporation to act as trustee), 9140(k) (power of nonprofit religious corporation to act as trustee); Gov't Code § 12582.1 ("charitable corporation" defined for purposes of Uniform Supervision of Trustees for Charitable Purposes Act).

**Probate Code § 15643 (added). Vacancy in office of trustee**

**Comment.** Section 15643 restates the first paragraph (including subdivisions (1) and (2)) of former Civil Code Section 2281 without substantive change, except that the reference in former law to discharge of the trustee is omitted as unnecessary. Section 15643 also restates part of the first sentence of former Probate Code Section 1126 and part of the first sentence of former Probate Code Section 1138.9 without substantive change. Section 15643 supersedes part of former Civil Code Section 860 to the extent it related to the occurrence of a vacancy in the office of a trustee. For rules concerning filling a vacancy, see Section 15660. See also Sections 83 ("trust company" defined), 15601 (rejection of trust), 15640 (resignation of trustee), 15641 (liability of resigning trustee), 15642 (removal of trustee), 16460 (limitations on proceedings against trustee), 17200(b)(5) (petition to settle trustee's account), 18102 (protection of third person dealing with former trustee).

**Probate Code § 15644 (added). Delivery of property by former trustee upon occurrence of vacancy**

**Comment.** The first sentence of Section 15644 restates part of the second paragraph of former Probate Code Section 1125.1 and part of the last sentence of former Probate Code Section 1138.8 without substantive change. See Section 15643 (vacancy in office of trustee); see also Sections 16420(a)(4) (appointment of receiver or temporary trustee upon breach of trust), 17206 (authority to make necessary orders and appoint temporary trustee). The second sentence makes clear that a trustee who has resigned or is removed has the powers needed to complete the trustee's remaining duties. The trustee who has resigned remains liable for actions or omissions during his or her term as trustee even after the property is delivered to the successor until liability is barred. See Section 16460 (limitations on proceedings against trustee).



**Probate Code § 15801 (added). Consent by beneficiary of revocable trust**

**Comment.** Section 15801 is new. Subdivision (a) recognizes the principle that the consent of a beneficiary of a revocable trust should not have any effect during the time that the trust is presently revocable, since the power over the trust is held by the settlor or other person holding the power to revoke. See the Comment to Section 15800. See also Section 15803 (holder of general power of appointment or power to withdraw property from trust treated as settlor). Under the rule provided in Section 15801, the consent of the person holding the power to revoke, rather than the beneficiaries, excuses the trustee from liability as provided in Section 16460(a) (limitations on proceedings against trustee). For provisions permitting a trustee to be relieved of liability by the beneficiaries, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). Subdivision (b) makes clear that this section does not eliminate the requirement of obtaining the consent of beneficiaries in cases where the consent of the settlor and all beneficiaries is required. See Section 15404 (modification or termination by settlor and all beneficiaries).

**Probate Code § 16000 (added). Duty to administer trust**

**Comment.** Section 16000 is drawn in part from Sections 164 and 169 of the Restatement (Second) of Trusts (1957). Section 16000 restates the part of former Civil Code Section 2258 requiring the trustee to “fulfill the purpose of the trust” and also supersedes former Civil Code Section 2253 insofar as it related to control of the trustee’s duties by the trust instrument. See also Sections 15600 (acceptance of trust by trustee), 15800 (duties owed to person holding power to revoke), 15803 (duties owed to person with general power of appointment or power to withdraw trust property), 16001 (duties of trustee of revocable trust), 16040 (trustee’s standard of care in performing duties). For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance).

**Probate Code § 16001 (added). Duties of trustee of revocable trust**

**Comment.** Subdivision (a) of Section 16001 continues the first sentence of former Civil Code Section 2258(b) without substantive change. The qualification that a direction be acceptable to the trustee does not mean that the trustee is

required to determine the propriety of the direction. For the rule protecting the trustee from liability for following directions under this section, see Section 16462. See also Sections 15800 (duties owed to person holding power to revoke), 16000 (duties subject to control in trust instrument), 16040 (standard of care in performing duties).

Subdivision (b) is a new provision that clarifies the relationship between the duty to follow directions provided in subdivision (a) and the rules governing modification of trusts. See Sections 15401 (method of revocation by settlor), 15402 (power to revoke includes power to modify).

### **Probate Code § 16002 (added). Duty of loyalty**

**Comment.** Subdivision (a) of Section 16002 codifies the substance of Section 170(1) of the Restatement (Second) of Trusts (1957). Section 16002 restates the general duty of loyalty expressed in former Civil Code Sections 2228 (trustee to act in “highest good faith”), 2229 (not to use property for trustee’s profit), 2231 (influence not to be used for trustee’s advantage), 2232 (trustee not to undertake adverse trust), 2233 (trustee to disclose adverse interest), 2235 (transactions between trustee and beneficiary presumed under undue influence), and 2263 (trustee cannot enforce claim against trust purchased after becoming trustee). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee’s standard of care in performing duties). This article does not attempt to state all aspects of the trustee’s duty of loyalty, nor does this article seek to cover all duties that may exist. See Section 15002 (common law as law of state). See also Section 16015 (certain actions not violations of duties). For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance).

Subdivision (b) is a new provision drawn from Indiana law. See Ind. Code Ann. § 30-4-3-7(c) (West Supp. 1983-84). This subdivision permits sales or exchanges between two or more trusts that have the same trustee without running afoul of the duty of loyalty. See Restatement (Second) of Trusts § 170 comment r (1957). Subdivision (b) does not require the trustee to give notice to all beneficiaries of both trusts; for limitations on the need to give notice, see Sections 15802 (notice to beneficiary of revocable trust) and 15804 (notice in case involving future interest of beneficiary). See also Sections 15800 (limits on rights of beneficiary of revocable trust), 15801 (consent of beneficiary of revocable trust).

**Probate Code § 16003 (added). Duty to deal impartially with beneficiaries**

**Comment.** Section 16003 codifies the substance of Section 183 of the Restatement (Second) of Trusts (1957). This section is in accord with case law. See *Estate of Miller*, 107 Cal. App. 438, 290 P. 528 (1930). For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's standard of care in performing duties).

**Probate Code § 16004 (added). Duty to avoid conflict of interest**

**Comment.** Subdivision (a) of Section 16004 restates former Civil Code Section 2229 and part of the introductory provision of former Civil Code Section 2230 without substantive change. For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's standard of care in performing duties), 16015 (certain actions not violations of duties).

Subdivision (b) restates former Civil Code Section 2263 without substantive change. The court referred to in subdivision (b) may be the court where the trust is administered, such as where the trustee seeks reimbursement for the claim under Section 17200(b), or the court where enforcement of the claim is sought, such as where the trustee seeks to foreclose a lien or seeks recognition of the claim in proceedings commenced by some other creditor.

The first sentence of subdivision (c) restates the presumption of former Civil Code Section 2235, but the presumption is phrased in terms of a violation of the trustee's fiduciary duties, rather than a presumption of insufficient consideration and undue influence. The second sentence relating to the nature of the presumption is consistent with case law. See, e.g., *McDonald v. Hewlett*, 102 Cal. App. 2d 680, 687-88, 228 P.2d 83 (1951); see also Evid. Code §§ 605 (presumption affecting burden of proof defined), 606 (effect of presumption affecting burden of proof). The exception to the burden of proof provided in the last sentence of subdivision (c) restates the second sentence of former Civil Code Section 2235 without substantive change.

**Probate Code § 16005 (added). Duty not to undertake adverse trust**

**Comment.** Section 16005 supersedes former Civil Code Section 2232. For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's standard of care in performing duties).

**Probate Code § 16006 (added). Duty to take control of and preserve trust property**

**Comment.** Section 16006 codifies the substance of Sections 175 and 176 of the Restatement (Second) of Trusts (1957). This section is in accord with case law. See, e.g., *Purdy v. Bank of America Nat'l Tr. & Sav. Ass'n*, 2 Cal. 2d 298, 303, 40 P.2d 481 (1935); *Estate of Duffill*, 188 Cal. 536, 547, 206 P. 42 (1922); *Martin v. Bank of America Nat'l Tr. & Sav. Ass'n*, 4 Cal. App. 2d 431, 41 P.2d 200 (1935). For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's standard of care in performing duties).

**Probate Code § 16007 (added). Duty to make trust property productive**

**Comment.** Section 16007 codifies the substance of Section 181 of the Restatement (Second) of Trusts (1957). For the trustee's standard of care governing investments and management of trust property, see Section 16040(b). In appropriate circumstances under Section 16007, property may be made productive by appreciation in value rather than by production of income. If the trust instrument imposes a duty on the trustee to hold property and give possession of it to a beneficiary at a later date, this duty would override the general duty to make the property productive. See Restatement (Second) of Trusts § 181 comment a (1957). Similarly, if a beneficiary has the right under the trust instrument to occupy a home, the trustee would have no duty to make the property productive of income. For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Section 16000 (duties subject to control by trust instrument).

### **Probate Code § 16008 (added). Duty to dispose of improper investments**

**Comment.** Subdivision (a) of Section 16008 codifies the substance of Section 230 of the Restatement (Second) of Trusts (1957), subject to the exception provided in subdivision (b). In contrast with the Restatement rule, subdivision (a) is not limited to property received in the trust at the time of its creation, but applies as well to property added or acquired later. For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's standard of care in performing duties).

Subdivision (b) restates the exception to the traditional duty to dispose of "improper investments" which was provided in the first sentence of former Civil Code Section 2261(b). Subdivision (b) does not continue the standard of care provided in former Civil Code Section 2261(b). Exercise of the discretion under subdivision (b) is governed by the general standard of care provided in Section 16040. See also Sections 16220 (power to collect and hold property), 16221 (power to receive additions to trust).

### **Probate Code § 16009 (added). Duty to keep trust property separate and identified**

**Comment.** Section 16009 codifies the substance of Section 179 of the Restatement (Second) of Trusts (1957), but the Restatement provision for keeping trust property separate from the trustee's individual property is omitted since it is redundant with subdivision (a). Section 16009 supersedes the rule against commingling provided in former Civil Code Section 2236. For exceptions to this general duty, see, e.g., Fin. Code §§ 1563 (securities registered in name of nominee), 1564 (Uniform Common Trust Fund Act). For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's standard of care in performing duties).

**Probate Code § 16010 (added). Duty to enforce claims**

**Comment.** Section 16010 codifies the substance of Section 177 of the Restatement (Second) of Trusts (1957). This section is in accord with case law. See *Ellig v. Naglee*, 9 Cal. 683, 695-96 (1858). Under this section, it may not be reasonable to enforce a claim depending upon the likelihood of recovery and the cost of suit and enforcement. For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's standard of care in performing duties).

**Probate Code § 16011 (added). Duty to defend actions**

**Comment.** Section 16011 codifies the substance of the first part of Section 178 of the Restatement (Second) of Trusts (1957). This section is in accord with case law. See, e.g., *Estate of Duffill*, 188 Cal. 536, 554-55, 206 P. 42 (1922). Depending on the circumstances of the case, it might be reasonable to settle an action or suffer a default rather than to defend an action. For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's standard of care in performing duties).

**Probate Code § 16012 (added). Duty not to delegate**

**Comment.** The first part of subdivision (a) of Section 16012 codifies the substance of Section 171 of the Restatement (Second) of Trusts (1957). The second part of subdivision (a) codifies the substance of Section 4 of the Uniform Trustees' Powers Act (1964). The duty not to delegate administration of the trust does not preclude employment of an agent in a proper case. A trust company may delegate matters involved in trust administration to its affiliates. For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 15620 (actions by cotrustees), 15621 (vacancy in office of cotrustee), 15622 (temporary incapacity of cotrustee), 16000 (duties subject to control by trust instrument), 16040 (trustee's standard of care in performing duties), 16247 (power to hire agents of trust).

Subdivision (b) is drawn from comment k to Section 171 of the Restatement (Second) of Trusts (1957).

**Probate Code § 16013 (added). Duty with respect to cotrustees**

**Comment.** Section 16013 codifies the substance of Section 184 of the Restatement (Second) of Trusts (1957). This section is in accord with case law. See *Bemmerly v. Woodward*, 124 Cal. 568, 57 P. 561 (1899). For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's standard of care in performing duties), 16402 (trustee's liability to beneficiary for acts of cotrustee). If a cotrustee is also a settlor under a revocable trust, a cotrustee who is not a settlor has a duty to follow the directions of the settlor-cotrustee pursuant to Section 16001. That duty supersedes the general duty under this section.

**Probate Code § 16014 (added). Duty to use special skills**

**Comment.** Subdivision (a) of Section 16014 codifies a duty set forth in *Coberly v. Superior Court*, 231 Cal. App. 2d 685, 689, 42 Cal. Rptr. 64 (1965).

Subdivision (b) is similar to the last part of Section 7-302 of the Uniform Probate Code (1977) and the last part of Section 174 of the Restatement (Second) of Trusts (1957). Subdivision (b) does not limit the duty provided in subdivision (a). Thus, the nature of the trustee's representations to the settlor leading up to the selection of the trustee does not affect the trustee's duty to use the full extent of his or her skills.

For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's standard of care in performing duties).

**Probate Code § 16040 (added). Trustee's standard of care in administering trust**

**Comment.** Subdivision (a) of Section 16040 provides a general standard of care drawn from subdivision (a)(1) of former Civil Code Section 2261 which applied to investment and management decisions. Subdivision (a) supersedes the "ordinary care and diligence" standard that was provided in former Civil Code Section 2259.

Subdivision (b) of Section 16040 provides the standard of care applicable to investment and management of trust property. Subdivision (b) restates subdivision (a) (1) of former Civil Code Section 2261 without substantive change. The former reference to attaining the goals of the settlor has been changed to refer to accomplishing the purposes of the trust. An expert trustee is held to the standard of care of other experts. See the discussions in *Estate of Collins*, 72 Cal. App. 3d 663, 673, 139 Cal. Rptr. 644 (1977); *Coberly v. Superior Court*, 231 Cal. App. 2d 685, 689, 42 Cal. Rptr. 64 (1965); *Estate of Beach*, 15 Cal. 3d 623, 635, 542 P.2d 994, 125 Cal. Rptr. 570 (1975) (bank as executor); see also the Comment to Section 2401 (standard of care applicable to professional guardian or conservator of estate) and the Comment to Section 3912 (standard of care applicable to professional fiduciary acting as custodian under Uniform Transfers to Minors Act). The last sentence of subdivision (b) reflects the portfolio approach for judging investment decisions.

Subdivision (c) restates subdivision (a) (2) of former Civil Code Section 2261 without substantive change.

### **Probate Code § 16062 (added). Duty to account to beneficiaries**

**Comment.** Subdivision (a) of Section 16062 supersedes parts of subdivisions (b) and (c) of former Probate Code Section 1120.1a and parts of former Probate Code Sections 1121 and 1138.1(a)(5). The requirement of an annual account is drawn from the statute formerly applicable to testamentary trusts created before July 1, 1977. See former Prob. Code § 1120.1a. 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 annual account under subdivision (a) does not apply to pre-operative date trusts. This section does not affect any requirement for an account that may exist under prior law, whether pursuant to a statute, trust instrument, or court order. See, e.g., former Prob. Code § 1120.1a(b). However, under subdivision (b), the accounting requirement may be satisfied by furnishing an account in the form provided by Section 16063. A trust created by a will executed before July 1, 1987, is governed by prior law regardless of whether any codicils are executed after the operative date.



**Probate Code § 16304 (added). When right to income arises; apportionment of income**

**Comment.** Section 16304 continues former Civil Code Section 730.04 without substantive change, except that subdivision (b) (2) has been conformed to Section 4(b) (2) of the Revised Uniform Principal and Income Act (1962) and references to the testator and the will have been replaced. The first change requires apportionment of rent, interest, and annuities, contrary to the former rule. The effect of the last change is to make the principles of this section applicable to the problem of apportionment of income following the death of a settlor of a revocable living trust. The references to “assets” in former Civil Code Section 730.04 have been replaced with references to “property”; these are non-substantive changes. See Section 62 (“property” defined).

**Probate Code § 16305 (added). Income earned during administration of decedent’s estate**

**Comment.** Subdivision (a) of Section 16305 continues former Civil Code Section 730.05(a) and (b) without change. The reference to “assets” in former Civil Code Section 730.05 has been replaced with a reference to “property”; this is a non-substantive change. See Section 62 (“property” defined). Subdivision (b) continues former Civil Code Section 730.05(c) without change.

**Probate Code § 16308 (added). Business and farming operations**

**Comment.** Section 16308 continues former Civil Code Section 730.08(a) and (c) without substantive change, except for two important changes: (1) The last sentence of subdivision (a) reverses the former rule against carrying losses forward. This revision is drawn from statutes in Nebraska and Wisconsin. Neb. Rev. Stat. § 30-3109 (Cum. Supp. 1982); Wis. Stat. Ann. 701.20(8) (West 1981). (2) The reference in former law to “generally accepted accounting principles” is replaced with a reference to “recognized methods of accounting.” This change avoids use of the term of art “generally accepted accounting principles” which may be inappropriate as applied to certain types of businesses, such as agricultural and farming operations. This revision is drawn from the Nebraska statute. Neb. Rev. Stat. § 30-3109 (Cum. Supp. 1982).

**Probate Code § 16311 (added). Underproductive property**

**Comment.** Subdivisions (a), (b), and (c) of Section 16311 continue former Civil Code Section 730.12 without change. Subdivision (d) is a new provision that resolves a conflict between the portfolio approach to investment decisions provided in Section 16040(b) and the underproductive property provisions of this section as it applies to securities.

**Probate Code § 16312 (added). Charges against income and principal**

**Comment.** Subdivision (a) of Section 16312 continues subdivision (c) of former Civil Code Section 730.03 without substantive change. Subdivisions (b)-(e) continue former Civil Code Section 730.13 with the following changes: The reference to “absolute discretion” is revised to read “discretion”; this revision makes no substantive change. See Sections 16080-16081 (duties with regard to discretionary powers). A reference to “proceeding” has been added to subdivision (d) (2). See Section 17200 *et seq.* (judicial proceedings concerning trusts).

**Probate Code § 16401 (added). Trustee’s liability to beneficiary for acts of agent**

**Comment.** Subdivisions (a) and (b) of Section 16401 are new and are drawn from Section 225 of the Restatement (Second) of Trusts (1957). The former statutes did not provide a rule governing the trustee’s liability for the acts or omissions of agents of the trust. Whether a trustee has acted reasonably under this section depends upon application of the standard of care provided in Section 16040. The trustee of a revocable trust is not liable where the agent’s act is performed or omitted pursuant to the written instructions of the person having the power to revoke the trust. See Section 16462. Similarly, the trustee of a revocable trust is not liable for hiring an agent where the trustee is directed to do so in writing by the person having the power to revoke. See Section 16462. It should also be noted that the liability to beneficiaries does not include beneficiaries under a revocable trust during the time that the trust can be revoked. See Section 15800; see also Sections 15803 (holder of general power of appointment or power to withdraw property from trust treated as settlor), 16000 (duty to administer trust).

The six paragraphs of subdivision (b) state independent bases for imposition of liability on the trustee. For example, if the trustee has not used reasonable care in selecting or retaining an agent, the trustee may be held liable for the agent's breach under paragraph (3); but even if the trustee has no control over selection or retention of the agent, the trustee may still be held liable for the agent's breach under paragraph (1) if the trustee has the power to direct the agent's actions. It should also be noted that paragraphs (2), (5), and (6) of subdivision (b) apply regardless of whether the trustee has any control over the agent.

Subdivision (c) preserves the prior law governing the trustee's liability for acts or omissions of agents occurring before the operative date.

### **Probate Code § 16402 (added). Trustee's liability to beneficiary for acts of cotrustee**

**Comment.** Section 16402 is drawn from Section 224 of the Restatement (Second) of Trusts (1957). Section 16402 restates the substance of former Civil Code Section 2239 as follows: the substance of the former liability for consenting to wrongful acts of the cotrustee is restated in subdivision (b) (3), the substance of the former liability for negligently enabling the cotrustee to commit a breach is restated in subdivision (b) (4), and the substance of the former statement that the trustee was liable "for no others" is restated in subdivision (a). Subdivision (b) (5) is consistent with the case-law rule under former law. See *Estate of Hensel*, 144 Cal. App. 2d 429, 438, 301 P.2d 105 (1956) (citing the rule from the first Restatement). See also *Blackmon v. Hale*, 1 Cal. 3d 548, 559, 463 P.2d 418, 83 Cal. Rptr. 194 (1970) (negligent inattention to duties). For the duty of a trustee with respect to cotrustees, see Section 16013. It should also be noted that the liability to beneficiaries does not include beneficiaries under revocable trusts during the time that the trust can be revoked. See Section 15800; see also Sections 15803 (holder of general power of appointment or power to withdraw property from trust treated as settlor), 16000 (duty to administer trust).

Subdivision (c) preserves the prior law governing the trustee's liability for acts or omissions of cotrustees occurring before the operative date.

**Probate Code § 16403 (added). Trustee's liability to beneficiary for acts of predecessor**

**Comment.** Section 16403 is new and is the same in substance as Section 223 of the Restatement (Second) of Trusts (1957), except that the language in subdivision (b) (3) relating to what the trustee should have known in subdivisions (b) (1) and (b) (3) differs from the Restatement. In certain circumstances it may not be reasonable to enforce a claim against a former trustee, depending upon the likelihood of recovery and the cost of suit and enforcement. It should also be noted that the liability to beneficiaries does not include beneficiaries under revocable trusts during the time that the trust can be revoked. See Section 15800; see also Section 15803 (holder of general power of appointment or power to withdraw property from trust treated as settlor). For provisions permitting a trustee to be relieved of liability for acts of a predecessor trustee, see Sections 16463 (consent), 16464 (release), 16465 (affirmance).

Subdivision (c) preserves the prior law governing the trustee's liability for acts or omissions of a predecessor trustee occurring before the operative date.

**Probate Code § 16421 (added). Remedies for breach exclusively in equity**

**Comment.** Section 16421 is a new provision that is drawn from Section 197 of the Restatement (Second) of Trusts (1957). For a list of remedies, see Section 16420. Under this section, for example, the beneficiary may not commence an action against the trustee for breach of contract. See Restatement (Second) of Trusts § 197 comment b (1957). However, the trustee may be found liable for the payment of money on account of the breach. See Sections 16420(a) (3) (compelling payment of money for breach of trust), 16440-16441 (measure of liability for breach of trust).

**Probate Code § 16442 (added). Other remedies not affected**

**Comment.** Section 16442 makes clear that Sections 16440 and 16441 do not prevent resort to any other remedy available against the trustee under the statutory or common law. See Section 15002 (common law as law of state); see also 16420 (remedies for breach of trust).

## **Probate Code § 16460 (added). Limitations on proceedings against trustee**

**Comment.** Section 16460 is a new provision drawn in part from Section 7-307 of the Uniform Probate Code (1977). 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.

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.

Subdivision (c) applies the three-year statute of limitations provided by subdivision (a) to claims arising prior to the operative date, but also provides a one-year grace period before such claims are barred by application of this section.

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

**Probate Code § 16463 (added). Consent of beneficiary to relieve trustee of liability for breach of trust**

**Comment.** Section 16463 is a new provision that is the same in substance as Section 216 of the Restatement (Second) of Trusts (1957). Section 16463 supersedes provisions relating to beneficiaries' consent to relieve a trustee of liability that appeared in former Civil Code Sections 2230, 2232, and 2282(d). See also Sections 16460 (limitations on proceedings against trustee), 16464 (release), 16465 (affirmance). As to other rules that may limit the trustee's liability, see the Comment to Section 16460.

**Probate Code § 16464 (added). Discharge of trustee's liability by release or contract**

**Comment.** Section 16464 is a new provision that is the same in substance as Section 217 of the Restatement (Second) of Trusts (1957). Section 16464 supersedes former Civil Code Section 2230 to the extent that section governed release. See also Sections 16460 (limitations on proceedings against trustee), 16463 (consent), 16465 (affirmance). As to other rules that may limit the trustee's liability, see the Comment to Section 16460.

**Probate Code § 16465 (added). Discharge of trustee's liability by subsequent affirmance**

**Comment.** Section 16465 is a new provision that is the same in substance as Section 218 of the Restatement (Second) of Trusts (1957). See also Sections 16460 (limitations on proceedings against trustee), 16463 (consent), 16464 (release). As to other rules that may limit the trustee's liability, see the Comment to Section 16460.

**Probate Code § 17208 (added). Appointment of guardian ad litem**

**Comment.** Section 17208 continues without substantive change paragraph (2) of subdivision (a) and subdivision (b) of former Probate Code Section 1215.3 and subdivision (a) of former Probate Code Section 1138.7, and supersedes part of the last paragraph of subdivision (b) of former Probate Code Section 1120. Subdivision (c) is drawn from the third paragraph of Code of Civil Procedure Section 373.5. Subdivision (d) supersedes subdivision (c) of former Probate Code Section 1138.7 and the last sentence of subdivision (b) of former Probate Code Section 1120. A guardian ad litem may be appointed in situations where

a guardian or conservator has already been appointed, if the need for a guardian ad litem exists. This section is not intended to limit any power the court may have to appoint an attorney to represent the interests of an incapacitated person.

**Probate Code § 17455 (added). Order accepting transfer and appointing trustee**

**Comment.** Section 17455 restates former Probate Code Section 1139.16 without substantive change, except that (1) the court is required to take into account the interest in economical and convenient administration rather than to find that it would necessarily result from the transfer, (2) a bond is required only if the law of the other jurisdiction or California so provides, and (3) the court's authority to require bond under general provisions is recognized. See, e.g., Section 15602(a)(3) (bond required of trustee appointed by court). The reference to "assets" in former Probate Code Section 1139.16 has been replaced with a reference to "property"; this is a non-substantive change. See Section 62 ("property" defined).

**Probate Code § 18000 (added). Personal liability of trustee to third persons on contracts**

**Comment.** Subdivision (a) of Section 18000 is new and is drawn from Section 7-306(a) of the Uniform Probate Code (1977). However, unlike the Uniform Probate Code, this section excuses the trustee from personal liability on a contract where *either* the trustee's representative capacity *or* the identity of the trust is revealed in the contract. Under Section 18000, it is assumed that either one of these statements in a contract puts the person contracted with on notice of the fact that the other person is a trustee. The protection afforded the trustee by this section applies only to contracts that are properly entered into in the trustee's fiduciary capacity, meaning that the trustee is exercising an available power and is not violating a duty. This section does not excuse any liability the trustee may have for breach of trust. See Section 18005 (liability as between trustee and trust estate).

The rule provided in subdivision (a) is the reverse of the case-law rule in California that a trustee was personally liable on a contract unless the contract stipulated that the trustee was not liable. See *Hall v. Jameson*, 151 Cal. 606, 611, 91 P. 518 (1907); *Duncan v. Dormer*, 94 Cal. App. 218, 221, 270 P. 1003 (1928); but *cf.* *Purdy v. Bank of America*, 2 Cal. 2d 298, 301-02, 40 P.2d, 481 (1935) (trust estate also liable when properly bound by acts of

trustee). However, to fall within the rule of subdivision (a) of Section 18000, either the trustee's status or the identity of the trust must be revealed. This was not sufficient under prior case law. See *Hall v. Jameson*, *supra*. Subdivision (a) also supersedes former Civil Code Section 2267 to the extent it affected liability.

Subdivision (b) preserves the case-law rule governing a trustee's personal liability for pre-operative date contracts.

## COMMENTS TO REPEALED SECTIONS

### **Civil Code § 2230 (repealed). Prohibited transactions**

**Comment.** The introductory provision of former Section 2230 is restated in Probate Code Section 16004(a) without substantive change, subject to the exceptions provided in Probate Code Section 16015 (certain actions not violations of duties). The remainder of former Section 2230 relating to consent by beneficiaries is replaced by Probate Code Section 16463 (consent of beneficiary to relieve trustee of liability for breach of trust). See also Prob. Code §§ 16464 (release by beneficiary), 16465 (affirmance by beneficiary).

### **Civil Code § 2232 (repealed). Undertaking trust adverse to interest of beneficiary**

**Comment.** Former Section 2232 is superseded by Probate Code Section 16005 (duty not to knowingly undertake adverse trust). See also Prob. Code § 16002 (duty of loyalty). The last part of former Section 2232 relating to consent by beneficiaries is replaced by Probate Code Section 16463 (consent of beneficiary to relieve trustee of liability for breach of trust). See also Prob. Code §§ 16464 (release by beneficiary), 16465 (affirmance by beneficiary).

### **Civil Code § 2234 (repealed). Violations as fraud against beneficiary**

**Comment.** Former Section 2234 is superseded by Probate Code Section 16400 (violation of duty is breach of trust). The liability for breach is governed by statute. See Prob. Code §§ 16440 (measure of liability for breach of trust), 16441 (measure of liability for interest).



**Civil Code § 2262 (repealed). Trustee's liability for interest for failure to invest**

**Comment.** Former Section 2262 is superseded by Probate Code Sections 16440 (measure of liability for breach of trust) and 16441 (measure of liability for interest). See also Prob. Code § 16420(a)(3) (redress of breach by payment of money).

**Civil Code § 2282 (repealed). Discharge of trustee**

**Comment.** The parts of former Section 2282 relating to discharge from liability are superseded by Probate Code Sections 15641 (liability of resigning trustee) and 16460 (limitations on proceedings against trustees). Subdivision (d) is superseded by Probate Code Sections 15640(a)(3) (resignation with consent of beneficiaries), 16463 (consent of beneficiary), 16464 (release by beneficiary), 16465 (affirmance by beneficiary). Subdivision (e) is restated in Probate Code Section 15640(a)(4) (resignation with approval of court) without substantive change. See also Prob. Code §§ 15407(b) (trustee's powers on termination), 15641 (liability of resigning trustee), 16460(a) (limitations based on consent), 16461 (exculpation of trustee).



APPENDIX 6

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

RECOMMENDATION

*relating to*

Notice in Guardianship and  
Conservatorship Proceedings

December 1986

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

#### NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this Recommendation as *Recommendation Relating to Notice in Guardianship and Conservatorship Proceedings*, 18 Cal. L. Revision Comm'n Reports 1793 (1986).

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**CALIFORNIA LAW REVISION COMMISSION**

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December 5, 1986

To: The Honorable George Deukmejian  
*Governor of California*  
and  
The Legislature of California

The California Law Revision Commission is devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission's ultimate goal is to submit a new code to replace the existing Probate Code.

Pending preparation of the complete new code, the Commission is proposing substantial revisions in the existing Probate Code. This recommendation proposes revisions designed to make the notice provisions under the guardianship and conservatorship law more uniform.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Arthur K. Marshall  
*Chairperson*



# RECOMMENDATION

*relating to*

## NOTICE IN GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS

### Introduction

The Law Revision Commission has reviewed the notice provisions of the guardianship-conservatorship law and submits this recommendation designed to make the notice provisions under that law more uniform.

### Manner of Giving Notice of Hearing

After a guardianship or conservatorship proceeding is commenced and the guardian or conservator has been appointed, notice of hearing of petitions filed in the proceeding generally is given by mail under the general provisions governing the manner of giving notice.<sup>1</sup> Thus, notice of hearing is given by mail of petitions concerning the following matters:

—termination of guardianship.<sup>2</sup>

—authority for conservatee to enter particular transactions.<sup>3</sup>

—conservatee's capacity to marry.<sup>4</sup>

—order limiting powers and duties of conservator of the person.<sup>5</sup>

—court-ordered medical treatment.<sup>6</sup>

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1. The general notice provisions of guardianship-conservatorship law provide for notice of hearing by mail. Prob. Code § 1460. The general notice provisions apply if notice of hearing is required by a particular provision of guardianship-conservatorship law but that provision does not fix the manner of giving notice. *Id.* In addition, the general notice provisions are expressly incorporated by statute for many kinds of petitions in guardianship-conservatorship proceedings. See *infra* notes 2-25 and accompanying text.

2. Prob. Code § 1601.

3. Prob. Code § 1873.

4. Prob. Code § 1901.

5. Prob. Code § 2351.

6. Prob. Code § 2357.

- instructions.<sup>7</sup>
- compelling guardian or conservator to pay support or debts.<sup>8</sup>
- allowance for ward or conservatee.<sup>9</sup>
- order for support notwithstanding third party liability.<sup>10</sup>
- payment of surplus income to relatives of conservatee.<sup>11</sup>
- order limiting authority of guardian or conservator of the estate.<sup>12</sup>
- order limiting authority to compromise claims.<sup>13</sup>
- court approval of compromise.<sup>14</sup>
- property claimed to belong to ward, conservatee, or other person.<sup>15</sup>
- borrowing money and giving security.<sup>16</sup>
- order authorizing refinancing, improving, or repairing property.<sup>17</sup>
- approval of lease.<sup>18</sup>
- dedication or conveyance of real property or easement.<sup>19</sup>
- investments and purchase of property.<sup>20</sup>
- independent exercise of powers.<sup>21</sup>
- limitation of independent powers.<sup>22</sup>
- hearing on accounts.<sup>23</sup>

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7. Prob. Code §§ 2359, 2403.

8. Prob. Code § 2404.

9. Prob. Code § 2421.

10. Prob. Code § 2422.

11. Prob. Code § 2423.

12. Prob. Code § 2450.

13. Prob. Code § 2500.

14. Prob. Code § 2506.

15. Prob. Code § 2521.

16. Prob. Code § 2551.

17. Prob. Code § 2552.

18. Prob. Code § 2553.

19. Prob. Code § 2556.

20. Prob. Code § 2570.

21. Prob. Code § 2592.

22. Prob. Code § 2593.

23. Prob. Code § 2621.



—compensation of guardian, conservator, or attorney, including periodic payment and approval of contingent fee contract of attorney.<sup>24</sup>

—resignation of guardian or conservator.<sup>25</sup>

For a few hearings, a different manner of giving notice of hearing is prescribed: Notice of hearing is required to be served in the manner prescribed in Section 415.10 or 415.30 of the Code of Civil Procedure, or in such other manner as may be authorized by the court. Service of notice of hearing is required to be made in this special manner for a petition to terminate the conservatorship,<sup>26</sup> a petition concerning the conservatee's capacity to consent to medical treatment,<sup>27</sup> a petition to modify the powers of a limited conservator,<sup>28</sup> and a petition to remove a guardian or conservator.<sup>29</sup>

There is no justification for not using the general provisions governing notice of hearing for these petitions.<sup>30</sup> The existing special provisions should be eliminated and the general provisions made applicable. Not only will this result in more uniformity in the manner of giving notice of

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24. Prob. Code §§ 2640-2644.

25. Prob. Code § 2660.

26. Prob. Code § 1862. If the person to be served is outside the state, service also may be made in the manner provided in Section 415.40 of the Code of Civil Procedure. If the conservator or conservatee cannot with reasonable diligence be served with a copy of the petition and notice of hearing, the court may dispense with such notice. *Id.*

27. Prob. Code § 1892. If the person to be served is outside the state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure. *Id.*

28. Prob. Code § 2351.5. If the limited conservator cannot, with reasonable diligence, be served in the prescribed manner, the court may dispense with giving the limited conservator notice of the hearing. *Id.*

29. Prob. Code § 2652.

30. It has been argued that notice of a petition for an order concerning the conservatee's capacity to consent to medical treatment must be personally served, since the hearing will involve "a fundamental civil right of the conservatee, namely, the right to choose his or her own medical treatment." W. Johnstone, G. Zillgitt, & S. House, *California Conservatorships* § 3.26, at 104-05 (Cal. Cont. Ed. Bar 2d ed. 1983). The Commission is of the view that there is not a constitutional problem with mailed notice in this instance, because the conservatee has been subjected to the court's jurisdiction by service of the citation and petition to establish the conservatorship. See Prob. Code § 1824; *cf.* W. Johnstone, G. Zillgitt, & S. House, *supra* § 3.27, at 105-06. Moreover, under existing law, mailed notice of hearing is used for a petition for court-ordered medical treatment (Prob. Code § 2357) and for such fundamental rights of the conservatee as the right to marry (Prob. Code § 1901).

hearing and eliminate a possible trap for the unwary lawyer, but it also will reduce the expense and delay of giving notice of hearing in the cases where the special provisions now apply.<sup>31</sup>

### **Notice of Hearing on Objections to Appraisal**

The provisions for hearing objections to an appraisal contain their own notice requirements,<sup>32</sup> rather than applying the general notice provisions of guardianship-conservatorship law.<sup>33</sup> Like the general notice provisions, these provide for notice by mail, but the persons to whom notice is given differ from those specified in the general provisions: Notice is given to the guardian or conservator, the spouse (if any) of the ward or conservatee, relatives of the ward or conservatee within the second degree, and the probate referee.<sup>34</sup> Unlike the general notice provisions, no notice is given to a ward over 14 or the conservatee, and notice is given to relatives within the second degree whether or not they have requested special notice or have appeared in the matter.

Notice should be given to a ward over 14 or the conservatee of a hearing on objections to the appraisal, as it is in the case of most other hearings in guardianship and conservatorship proceedings. On the other hand, time and expense may be saved by dispensing with notice to relatives who have shown no interest in receiving the notice.

Notice should be given to the probate referee when the appraisal was made by the probate referee, but there is no need for notice to the probate referee if the probate referee did not make the appraisal.

The Commission recommends that the nonstandard notice of hearing on objections to an appraisal be replaced by the general notice provisions, so that notice will be given to a ward over 14 or the conservatee, and will be

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31. Personal delivery is more expensive and time-consuming than mailed notice. The mailing address of the guardian or conservator is readily accessible since it is part of the court record. See, e.g., Prob. Code §§ 1510(b), 1821(a).

32. Prob. Code § 2614(b).

33. The general notice provisions are in Probate Code Section 1460.

34. Prob. Code § 2614(b).

given only to those relatives who request special notice or appear in the matter. The Commission also recommends that notice to the probate referee be limited so that it need be given only when the appraisal was made by the probate referee.

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The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 2351.5 and 2614 of, and to repeal and add Sections 1862, 1892, and 2652 of, the Probate Code, relating to guardianships and conservatorships.

*The people of the State of California do enact as follows:*

**Probate Code § 1862 (repealed). Notice of hearing to terminate conservatorship**

SECTION 1. Section 1862 of the Probate Code is repealed.

~~1862. (a) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of the hearing shall be mailed to the persons specified in Section 1822.~~

~~(b) If the conservator is not the petitioner and has not joined in the petition, the conservator shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing.~~

~~(c) If the conservatee is not the petitioner and has not joined in the petition, the conservatee shall be served with a copy of the petition and a notice of the time and place of hearing at least 15 days prior to the hearing.~~

~~(d) Service under subdivisions (b) and (c) shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure. If the conservator or conservatee cannot with reasonable~~

~~diligence be served with a copy of the petition and notice of hearing, the court may dispense with such service.~~

**Comment.** Former Section 1862 is superseded by new Section 1862.

**Probate Code § 1862 (added). Notice of hearing to terminate conservatorship**

**SEC. 2.** Section 1862 is added to the Probate Code, to read:

1862. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** Section 1862 supersedes former Section 1862 and incorporates the general notice provisions of Sections 1460-1467 in place of the special provisions of former Section 1862.

**Probate Code § 1892 (repealed). Notice of hearing concerning capacity to consent to medical treatment**

**SEC. 3.** Section 1892 of the Probate Code is repealed.

~~1892. Notice of the hearing on the petition shall be as follows:~~

~~(a) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of the hearing shall be mailed to the spouse and relatives of the conservatee named in the petition (other than the petitioner or persons joining in the petition) at their addresses stated in the petition.~~

~~(b) If the conservator is not the petitioner and has not joined in the petition, the conservator shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing.~~

~~(c) If the conservatee is not the petitioner and has not joined in the petition, the conservatee shall be served with a copy of the petition and a notice of the time and place of hearing at least 15 days prior to the hearing.~~

~~(d) Service under subdivisions (b) and (c) shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside~~

~~this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.~~

**Comment.** Former Section 1892 is superseded by new Section 1892.

**Probate Code § 1892 (added). Notice of hearing concerning capacity to consent to medical treatment**

**SEC. 4.** Section 1892 is added to the Probate Code, to read:

1892. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** Section 1892 supersedes former Section 1892 and incorporates the general notice provisions of Sections 1460-1467 in place of the special provisions of former Section 1892.

**Probate Code § 2351.5 (amended). Powers of limited conservator**

**SEC. 5.** Section 2351.5 of the Probate Code is amended to read:

2351.5. (a) The limited conservator has the care, custody, and control of the limited conservatee, except that a limited conservator shall not have any of the following powers or controls over the limited conservatee unless such powers or controls are specifically requested in the petition for appointment of a limited conservator and granted by the court in its order appointing the limited conservator:

(1) To fix the residence or specific dwelling of the limited conservatee.

(2) Access to the confidential records and papers of the limited conservatee.

(3) To consent or withhold consent to the marriage of the limited conservatee.

(4) The right of the limited conservatee to contract.

(5) The power of the limited conservatee to give or withhold medical consent.

(6) The limited conservatee's right to control his or her own social and sexual contacts and relationships.

(7) Decisions concerning the education of the limited conservatee.

The limited conservator shall secure for the limited conservatee such habilitation or treatment, training, education, medical and psychological services, and social and vocational opportunity as appropriate and as will assist the limited conservatee in the development of maximum self-reliance and independence.

(b) Any limited conservator, the limited conservatee, or any relative or friend of the limited conservatee may apply by ~~verified~~ petition to the superior court of the county in which the proceedings are pending to have the limited conservatorship modified by the elimination or addition of any of the powers which must be specifically granted to the limited conservator pursuant to subdivision (a) above. The petition shall state the facts alleged to establish that the limited conservatorship should be modified. The granting or elimination of such powers shall be discretionary with the court. *Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.*

(c) ~~The petition shall be set for hearing and notice thereof given to the persons in the same manner as is provided in this chapter for a petition for the appointment of a limited conservator. The limited conservator, if he or she is not the petitioner or has not joined in the petition, shall be served with a notice of the time and place of the hearing accompanied by a copy of the petition at least five days prior to the hearing. Such service shall be made in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court. If the limited conservator cannot, with reasonable diligence, be so served with notice, the court may dispense with such notice. The limited conservator or any relative or friend of the limited conservatee may appear and oppose the petition. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil ~~action~~ actions, including trial by jury if demanded. If any such powers are granted or eliminated, new letters of limited conservatorship shall be issued reflecting such change in the limited conservator's powers.~~

**Comment.** Section 2351.5 is amended to substitute the general notice provisions of Sections 1460-1467 in place of the former special provisions in Section 2351.5.

The word “verified” has been deleted preceding “petition” in the first sentence of subdivision (b). This change is nonsubstantive, since Section 1450 requires all petitions filed pursuant to this division to be verified.

### **Probate Code § 2614 (amended). Objections to appraisals**

**SEC. 6.** Section 2614 of the Probate Code is amended to read:

2614. (a) Within 30 days after the inventory and appraisal is filed, the guardian or conservator or any creditor or other interested person may file written objections to any or all appraisals. The clerk shall set the objections for hearing not less than 15 days after their filing.

(b) ~~At least 10 days before the hearing, the party filing the written objections shall mail a notice of the time and place of the hearing and a copy of the objections to all of the following (other than the person filing the objections):~~

~~(1) The guardian or conservator.~~

~~(2) The spouse and the relatives of the ward or conservatee within the second degree.~~

~~(3) The probate referee. Notice of the hearing, together with a copy of the objections, shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. If the appraisal was made by a probate referee, the person objecting shall also mail notice of the hearing and a copy of the objection to the probate referee at least 15 days before the time set for the hearing.~~

(c) The court shall determine the objections and may fix the true value of any asset to which objection has been filed. For the purpose of this subdivision, the court may cause an independent appraisal or appraisals to be made by at least one additional appraiser at the expense of the estate or, if the objecting party is not the guardian or conservator and the objection is rejected by the court, the court may assess the cost of any such additional appraisal or appraisals against the objecting party.

**Comment.** Subdivision (b) of Section 2614 is amended to apply the general notice provisions of Sections 1460-1467 in place of the former special provisions of subdivision (b), and to require notice to the probate referee only when the appraisal was made by the probate referee.

**Probate Code § 2652 (repealed). Notice of hearing on petition for removal of guardian or conservator**

SEC. 7. Section 2652 of the Probate Code is repealed.

~~2652. (a) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of hearing shall be mailed to the following persons (other than the petitioner):~~

~~(1) In case of a guardianship, to the persons specified in Section 1511.~~

~~(2) In the case of a conservatorship, to the conservatee and to the persons specified in Section 1822.~~

~~(b) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of hearing shall be served on the guardian or conservator in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as the court may order. If the guardian or conservator cannot with reasonable diligence be so served, the court may dispense with service.~~

**Comment.** Section 2652 is superseded by new Section 2652.

**Probate Code § 2652 (added). Notice of hearing on petition for removal of guardian or conservator**

SEC. 8. Section 2652 is added to the Probate Code, to read:

2652. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** Section 2652 supersedes former Section 2652 and incorporates the general notice provisions of Sections 1460-1467 in place of the special provisions of former Section 2652.



APPENDIX 7

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

Preliminary Provisions and Definitions  
of the Probate Code

December 1986

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

#### NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this Recommendation as *Recommendation Relating to Preliminary Provisions and Definitions of the Probate Code*, 18 Cal. L. Revision Comm'n Reports 1807 (1986).

**CALIFORNIA LAW REVISION COMMISSION**

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December 5, 1986

To: The Honorable George Deukmejian  
*Governor of California*  
and  
The Legislature of California

The California Law Revision Commission is devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission's ultimate goal is to submit a new code to replace the existing Probate Code.

Pending preparation of the complete new code, however, the Commission is proposing substantial revisions in the existing Probate Code. This recommendation sets forth the Commission's proposed revisions relating to preliminary provisions and definitions (Probate Code Sections 1-88).

This recommendation has been prepared pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Arthur K. Marshall  
*Chairperson*



# RECOMMENDATION

*relating to*

## PRELIMINARY PROVISIONS AND DEFINITIONS OF THE PROBATE CODE

### Preliminary Provisions

Section 2 of the Probate Code provides that provisions of the code that are the same as the Uniform Probate Code are to be construed to effectuate the general purpose of making the law uniform in states that have enacted the Uniform Probate Code. The proposed legislation expands this section to cover all uniform acts, thus recognizing that provisions from many uniform acts have contributed to the California Probate Code.<sup>1</sup>

As an aid to interpreting the official comments to the sections of the Probate Code, the Comment to Section 2 includes a discussion of the language used to explain the relationship of a new provision to its predecessor. This material is intended to assist attorneys and judges in determining the legislative intent of a new provision.

### Definitions

The proposed legislation makes a number of substantive and technical changes in definitions and also makes the definitions applicable to the new Division 7 (administration of estates of decedents).<sup>2</sup> The more important revisions are the following:

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1. See, e.g., Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (1978), Prob. Code § 260 *et seq.*; Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act (1978), Prob. Code § 260 *et seq.*; Uniform International Wills Act (1977), Prob. Code § 6380 *et seq.*; Revised Uniform Principal and Income Act (1962), Prob. Code § 16300 *et seq.*; Uniform Simultaneous Death Act (1953), Prob. Code § 225; Uniform Testamentary Additions to Trusts Act (1960), Prob. Code § 6300 *et seq.*; Uniform Trustees' Powers Act (1964), see Prob. Code §§ 16200-16249.

2. See Prob. Code § 20.

## Accounts

The existing general provisions contain definitions of “account”<sup>3</sup> and “financial institution.”<sup>4</sup> In order to provide further guidance and detail, the proposed legislation adds definitions of “account in an insured credit union,”<sup>5</sup> “account in an insured savings and loan association,”<sup>6</sup> and “insured account in a financial institution.”<sup>7</sup>

## Annulment of Marriage

The definition of “annulment of marriage” under existing law makes clear that the term includes an adjudication of nullity of marriage.<sup>8</sup> The proposed legislation deletes this term because it is unnecessary.

## Beneficiary

Under existing law, “beneficiary” is defined only for the purpose of trusts.<sup>9</sup> The proposed legislation adds a subdivision defining beneficiary to mean an heir or devisee in the case of a decedent’s estate. This definition permits reference to “beneficiary” in other statutes relating to decedents’ estates where no distinction needs to be made between heirs and devisees.

## Child and Parent

Existing law defines “child” and “parent” in terms of the rules of intestate succession.<sup>10</sup> However, these definitions

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3. Prob. Code § 21.

4. Prob. Code § 40.

5. This provision is drawn from the definition of this term in Probate Code Section 1443 applicable under the guardianship and conservatorship law, but defines “account” rather than “shares.” The reference to the California Credit Union Share Guaranty Corporation and other forms of insurance or guaranty under the Financial Code are omitted from the general definition so that only fully insured shares are included in the definition.

6. This provision is drawn from the definition of this term in Probate Code Section 1406 (as added by 1986 Cal. Stat. ch. 783) applicable under the guardianship and conservatorship law.

7. This definition simplifies references in substantive provisions where, for example, a personal representative is permitted to deposit funds in an account in a bank, insured savings and loan association, or insured credit union, to the extent the account is insured.

8. Prob. Code § 22.

9. Prob. Code § 24.

10. See Prob. Code §§ 26 (“child” defined), 54 (“parent” defined).

use the term “includes” so that there is an implication that the definition is broader than stated. The proposed legislation replaces the word “includes” with “means” in order to limit the scope of these definitions.

### **Letters**

A definition of “letters” is added by the proposed legislation. For the purposes of Division 7 (administration of estates of decedents), unless the context otherwise requires, “letters” means letters testamentary, letters of administration, letters of administration with the will annexed, and letters of special administration. This definition is intended to simplify drafting by avoiding the need to list the various types of letters in other provisions.

### **Personal Property**

The proposed legislation deletes the definition of “personal property.”<sup>11</sup> The only purpose of this definition is to exclude leasehold interests in real property from personal property. However, the section is unnecessary for this purpose, since the definition of “real property” already provides that it includes leasehold interests.<sup>12</sup>

### **Personal Representative**

The proposed legislation adds a definition of “personal representative.” Except where the context otherwise requires, personal representative means the executor, administrator, administrator with the will annexed, special administrator, successor personal representative, or a person who performs substantially the same function under the law of another jurisdiction governing the person’s status. This provision, drawn from the Uniform Probate Code,<sup>13</sup> simplifies drafting by avoiding the need to refer to the list of persons who may be a personal representative.

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11. Prob. Code § 58.

12. Prob. Code § 68.

13. Uniform Probate Code § 1-201(30) (1982).

## RECOMMENDED LEGISLATION

The Commission's recommendations would be effectuated by enactment of the following legislation:

**Probate Code § 2 (amended). Continuation of existing law; construction of provisions drawn from uniform acts**

SECTION \_\_\_\_\_. Section 2 of the Probate Code is amended to read:

2. (a) ~~The provisions~~ *A provision* of this code, insofar as ~~they are~~ *it is* substantially the same as a previously existing ~~provisions~~ *provision* relating to the same subject matter, shall be construed as ~~restatements and continuations~~ *a restatement and continuation* thereof and not as a new ~~enactments~~ *enactment*.

(b) A provision of this code, insofar as it is the same in substance as a provision of ~~the Uniform Probate Code~~ *a uniform act*, shall be so construed as to effectuate the general purpose to make uniform the law in those states which enact that provision ~~of the Uniform Probate Code~~.

**Comment.** Section 2 is amended to broadened its scope to cover all uniform acts, not just the Uniform Probate Code. See Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (1978), see § 260 *et seq.*; Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act (1978), § 260 *et seq.*; Uniform International Wills Act (1977), § 6380 *et seq.*; Revised Uniform Principal and Income Act (1962), § 16300 *et seq.*; Uniform Simultaneous Death Act (1953), § 225; Uniform Testamentary Additions to Trusts Act (1960), § 6300 *et seq.*; Uniform Trustees' Powers Act (1964), see §§ 16200-16249. The other revisions in this section are nonsubstantive.

A number of terms and phrases are used in the official comments to the sections of this code to indicate the sources of the new statutory provisions and describe how they compare with prior law. The following discussion is intended to provide guidance in interpreting the terminology most commonly used in the official comments.

(1) *Continues without change.* A new provision "continues" a former provision "without change" if the two provisions are identical or nearly so. In some cases, there may be insignificant technical differences, such as where punctuation is changed



without a change in meaning. Some comments may describe the relationship by simply stating that a new provision “continues” or is “the same as” a former provision.

(2) *Restates without substantive change.* A new provision “restates” a former provision “without substantive change” if the substantive law remains the same but the language differs to a significant degree. Some comments may describe the new provision as being the “same in substance.”

(3) *Exceptions, additions, omissions.* If part of a former provision is “continued” or “restated,” the comment may say that the former provision is continued or restated but also note the specific differences as “exceptions to,” “additions to,” or “omissions from” the former provision.

(4) *Generalizes, broadens, restates in general terms.* A new provision may be described as “generalizing,” “broadening,” or “restating in general terms” a provision of prior law. This description means that a limited rule has been expanded to cover a broader class of cases.

(5) *Supersedes, replaces.* A provision “supersedes” or “replaces” a former provision if the new provision deals with the same subject as the former provision but treats it in a significantly different manner.

(6) *New.* A provision is described as “new” where it has no direct source in prior statutes.

(7) *Drawn from, comparable to, similar to, consistent with.* A variety of terms is used to indicate a source for a new provision, typically a source other than California statutes. For example, a provision may be “drawn from” a uniform act, model code, Restatement, or the statutes of another state. In such cases, it may be useful to consult any available commentary or interpretation of the source from which the new provision is drawn for background information.

(8) *Codifies.* A comment may state that a new provision “codifies” a case-law rule that has not previously been enacted into statutory law. A provision may also be described as codifying a Restatement rule, which may or may not represent existing common law in California.

(9) *Makes clear, clarifies.* A new provision may be described as “making clear” a particular rule or “clarifying” a rule as a way of emphasizing the rule, particularly if the situation under prior law was doubtful or contradictory.

**Probate Code § 8 (amended). Reference to division, part, chapter, article, section, or part of section**

SEC. \_\_\_\_\_. Section 8 of the Probate Code is amended to read:

8. Unless otherwise expressly stated:

(a) “Division” means a division of this code.

(b) “Part” means a part of the division in which that term occurs.

(c) “Chapter” means a chapter of the division or part, as the case may be, in which that term occurs.

(d) “Article” means an article of the chapter in which that term occurs.

(e) “Section” means a section of this code.

(f) “Subdivision” means a subdivision of the section in which that term occurs.

(g) “Paragraph” means a paragraph of the subdivision in which that term occurs.

(h) “*Subparagraph*” means a *subparagraph* of the paragraph in which that term occurs.

**Comment.** Section 8 is amended to add subdivision (h) defining “subparagraph.”

**Heading of Part 2 of Division 1 (amended). Definitions**

SEC. \_\_\_\_\_. The heading of Part 2 (commencing with Section 20) of Division 1 of the Probate Code is amended to read:

**PART 2. ~~WORDS AND PHRASES DEFINED~~  
DEFINITIONS**

**Probate Code § 20 (amended). Application of definitions**

SEC. \_\_\_\_\_. Section 20 of the Probate Code is amended to read:

20. Unless the provision or context otherwise requires, the ~~words and phrases defined~~ *definitions* in this part govern the construction of Division 1 (commencing with Section 1), Division 2 (commencing with Section 100), Division 6 (commencing with Section 6100), *Division 7 (commencing with Section 7000)*, Division 8 (commencing with Section 13000), Division 9 (commencing with Section 15000), and Division 10 (commencing with Section 20100).

**Comment.** Section 20 is amended to include a reference to Division 7 (commencing with Section 7000) relating to administration of decedents' estates. The other change is nonsubstantive.

**Probate Code § 21 (amended). Account**

SEC. \_\_\_\_\_. Section 21 of the Probate Code is amended to read:

21. ~~“Account” means~~ *“Account,” when used to mean a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, mutual capital certificate, and other like arrangement arrangements.*

**Comment.** Section 21 is amended to add a reference to a mutual capital certificate and to make clear that the definition of “account” applies only to a contract of deposit of funds between a depositor and a financial institution. The term “account” is not used in the defined sense when it is used to refer to an accounting to the court. See, e.g., Sections 16062-16064 (trustee's duty to account).

CROSS-REFERENCES

Definitions

Financial institution § 40

Insured account in a financial institution § 46

Mutual capital certificate § 23

Savings account § 23

Share account § 22

**Probate Code § 22 (repealed). Annulment of marriage**

SEC. \_\_\_\_\_. Section 22 of the Probate Code is repealed.

~~22. “Annulment of marriage” includes adjudication of nullity of marriage.~~

**Comment.** Former Section 22 is omitted because it is unnecessary, it being clear that an annulment includes an adjudication of nullity of marriage.

**Probate Code § 22 (added). Account in an insured credit union**

SEC. \_\_\_\_\_. Section 22 is added to the Probate Code, to read:

22. “Account in an insured credit union” means a share account in a credit union, either federally chartered or state

licensed, that is insured under Title II of the Federal Credit Union Act.

**Comment.** Section 22 is new. Unlike Section 1443 (guardianship and conservatorship law), Section 22 does not include shares guaranteed by the California Credit Union Share Guaranty Corporation or comparable insurance or guaranty under Financial Code Section 14858. Section 22 refers to a share account in a credit union, rather than shares issued by a credit union, and thus is consistent with Section 21 (“account” defined). See also Fin. Code § 14865 (shares owned by member of credit union may be referred to as a share account).

**Probate Code § 23 (added). Account in an insured savings and loan association**

SEC. \_\_\_\_\_. Section 23 is added to the Probate Code, to read:

23. (a) “Account in an insured savings and loan association” means a savings account or mutual capital certificate of either of the following:

(1) A federal association.

(2) A savings association doing business in this state which is an “insured institution” as defined in Title IV of the National Housing Act (12 U.S.C. Sec. 1724, et seq.).

(b) As used in this section:

(1) “Federal association” has the meaning given that term in subdivision (b) of Section 5102 of the Financial Code.

(2) “Mutual capital certificate” has the meaning given that term in Section 5111 of the Financial Code.

(3) “Savings account” has the meaning given that term in Section 5116 of the Financial Code.

(4) “Savings association” has the meaning given that term in subdivision (a) of Section 5102 of the Financial Code.

**Comment.** Section 23 is new and is drawn from Section 1406.

**Probate Code § 24 (amended). Beneficiary**

SEC. \_\_\_\_\_. Section 24 of the Probate Code is amended to read:

24. ~~“Beneficiary,” as it relates to trust beneficiaries, includes a person “Beneficiary”:~~

(a) *As it relates to the estate of a decedent who died intestate, means an heir and, as it relates to the estate of a decedent who died testate, means a devisee.*

(b) *As it relates to a trust, means a person who has any present or future interest, vested or contingent, and ~~also~~ includes ~~the~~ an owner of an interest by assignment or by other transfer ~~and as~~.*

(c) *As it relates to a charitable trust, includes any person entitled to enforce the trust.*

**Comment.** Section 24 is divided into subdivisions and amended to add subdivision (a), which is intended for drafting convenience. The revision of subdivision (b) is nonsubstantive.

Subdivision (a) defines “beneficiary” for the purposes of estate administration. If a decedent’s estate is partly testate and partly intestate, “beneficiary” refers to a devisee as to property passing by will and to an heir as to property passing by intestate succession. Trust beneficiaries are not included within the term as used in subdivision (a). See Section 34 (“devisee” in the case of a devise to a trust or trustee does not include trust beneficiaries). However, a particular section may refer specifically to trust beneficiaries.

Subdivisions (b) and (c) define “beneficiary” for the purposes of the Trust Law. See Sections 15000-18201.

#### CROSS-REFERENCES

##### Definitions

Devisee § 34

Heirs § 44

Trust § 82

### Probate Code § 26 (amended). Child

SEC. \_\_\_\_\_. Section 26 of the Probate Code is amended to read:

26. “Child” ~~includes~~ *means* any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved.

**Comment.** Section 26 is amended to replace “includes” with “means.” This makes clear that “child” is limited to the persons who are entitled to take as a child by intestate succession.

#### CROSS-REFERENCES

##### Definitions

Parent § 54

Intestate succession §§ 6408, 6408.5

**Probate Code § 46 (added). Insured account in a financial institution**

SEC. \_\_\_\_\_. Section 46 is added to the Probate Code, to read:

46. “Insured account in a financial institution” means an account in a bank, an account in an insured credit union, and an account in an insured savings and loan association, to the extent that the account is insured.

**Comment.** Section 46 is new and is intended to simplify references in other sections. The final clause of this section makes clear that the definition applies only to that part of an account that is insured. Thus, if a deposit in an insured account exceeds the limits of the insurance, the excess does not fall within this definition.

CROSS-REFERENCES

Definitions

Account § 21

Account in an insured credit union § 22

Account in an insured savings and loan association § 23

Trustee’s power to deposit trust funds in insured account § 16225

**Probate Code § 52 (added). Letters**

SEC. \_\_\_\_\_. Section 52 is added to the Probate Code, to read:

52. “Letters,” as used in Division 7 (commencing with Section 7000), means letters testamentary, letters of administration, letters of administration with the will annexed, or letters of special administration.

**Comment.** Section 52 is new and is intended to simplify drafting. This section is drawn in part from Section 1-201 (23) of the Uniform Probate Code (1977). The context of a particular section determines the types of letters included within the term. For example, in a provision relating to exercise of a power that is not available to a special administrator, “letters” would not include letters of special administration.

**Probate Code § 54 (technical amendment). Parent**

SEC. \_\_\_\_\_. Section 54 of the Probate Code is amended to read:

54. “Parent” ~~includes~~ *means* any individual entitled to take as a parent under this code by intestate succession from the child whose relationship is involved.

**Comment.** Section 54 is amended to replace “includes” with “means.” This makes clear that “parent” is limited to the persons who are entitled to take as a parent by intestate succession.

## CROSS-REFERENCES

Definitions  
Child § 26

**Probate Code § 58 (repealed). Personal property**

SEC. \_\_\_\_\_. Section 58 of the Probate Code is repealed:

~~58. “Personal property” does not include a leasehold interest in real property.~~

**Comment.** Section 58 is repealed as unnecessary since its only purpose was to make clear that a leasehold interest in real property was not personal property. See Section 68 (“real property” includes leasehold interest in real property).

**Probate Code § 58 (added). Personal representative**

SEC. \_\_\_\_\_. Section 58 is added to the Probate Code, to read:

58. “Personal representative” means executor, administrator, administrator with the will annexed, special administrator, successor personal representative, or a person who performs substantially the same function under the law of another jurisdiction governing the person’s status.

**Comment.** Section 58 is new and is drawn from the first sentence of Section 1-201(30) of the Uniform Probate Code. Where the context otherwise requires, personal representative should not be considered to include a special administrator. See Section 20. Unless the court grants broader powers, a special administrator appointed pursuant to Section 463 has limited powers. Thus, the use of “personal representative” in a section relating to a power that is beyond the authority of a special administrator does not include a special administrator.

**Probate Code § 62 (technical amendment). Property**

SEC. \_\_\_\_\_. Section 62 of the Probate Code is amended to read:

62. “Property” ~~includes both real and personal property or any interest therein and~~ means anything that may be the subject of ownership *and includes both real and personal property and any interest therein.*

**Comment.** Section 62 is revised to improve its wording. These revisions are nonsubstantive.

## CROSS-REFERENCES

## Definitions

Real property § 68



APPENDIX 8

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

Technical Revisions in the  
Trust Law

December 1986

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

#### NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this Recommendation as *Recommendation Relating to Technical Revisions in the Trust Law*, 18 Cal. L. Revision Comm'n Reports 1823 (1986).

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**CALIFORNIA LAW REVISION COMMISSION**

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December 5, 1986

To: The Honorable George Deukmejian  
*Governor of California*  
and  
The Legislature of California

The new Trust Law was enacted by Chapter 820 of the Statutes of 1986 upon recommendation of the Law Revision Commission. See *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1986). The Commission has continued to review the law relating to trusts to determine whether any corrections need to be made in the comprehensive trust legislation before it becomes operative on July 1, 1987. As a result of this review, the Commission recommends an amendment to make clear that the Trust Law may, where appropriate, be applied to entities that are not express trusts. The Commission also recommends several amendments to make technical changes.

This recommendation is submitted as part of the Commission's project to revise the Probate Code and is made pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Arthur K. Marshall  
*Chairperson*



# RECOMMENDATION

*relating to*

## TECHNICAL REVISIONS IN THE TRUST LAW

### Introduction

The 1986 session of the California Legislature enacted a new Trust Law<sup>1</sup> on recommendation of the Law Revision Commission.<sup>2</sup> The present recommendation proposes substantive and technical revisions in the Trust Law, to become operative on July 1, 1987, at the same time as the new law. The substantive revisions are discussed below; recommended technical changes are explained in the comments to the provisions in the proposed legislation following.

### Application of Trust Law to Entities and Relationships Excluded from Definition of "Trust"

The Trust Law is designed to govern express trusts, both private and charitable, but it may also be applied to a trust that a court has determined should be administered in the manner of an express trust.<sup>3</sup> Various types of entities and relationships are specifically excluded from the definition of trust, such as certain business and investment trusts, voting trusts, security arrangements, liquidation trusts, and pension trusts.<sup>4</sup>

1. 1986 Cal. Stat. ch. 820 (operative July 1, 1987), enacting Prob. Code §§ 15000-18201.

2. See *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1986).

3. See Prob. Code § 82(a)-(b) (as amended by 1986 Cal. Stat. ch. 820, § 28) ("trust" defined).

4. Prob. Code § 82(c) (as amended by 1986 Cal. Stat. ch. 820, § 28). This provision reads in full as follows:

(c) "Trust" excludes other constructive trusts, and it excludes resulting trusts, guardianships, conservatorships, personal representatives, Totten trust accounts, custodial arrangements pursuant to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state, business trusts that are taxed as partnerships or corporations, investment trusts subject to regulation under the

The parties or a court may find it useful to be able to borrow principles and procedures from the Trust Law and, where appropriate, apply them in circumstances that otherwise would be excluded by the definition of trust. Where a matter is not covered by the relevant law, it is beneficial to be able to adopt statutory principles that apply in analogous situations under the Trust Law. In the case of a fiduciary relationship that is not specifically excluded by the definition of trust, the power of the courts under the common law to apply relevant principles is recognized in the new law.<sup>5</sup> However, the specific exclusion of an entity from the definition of trust would appear to preclude the application of the Trust Law.

The Commission has concluded that the Trust Law should be neutral on the issue of whether it may be borrowed and applied to excluded entities and relationships. Thus, while the Trust Law itself applies only to express trusts, the new law should be revised to make clear that its principles and procedures may be applied to excluded entities and relationships pursuant to statutory or common law principles, by court order or rule, or by contract.

### **Proposed Legislation**

The Commission's recommendations would be effectuated by enactment of the following measure:

An act to amend Sections 5110, 5125, and 5127 of the Civil Code, to amend Sections 104, 13504, 15003, 16062, 16063, and 16303 of, and to repeal and add Section 82 of the Probate

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laws of this state or any other jurisdiction, common trust funds, voting trusts, security arrangements, transfers in trust or purpose of suit or enforcement of a claim or right, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

5. See Prob. Code §§ 82(b) (as amended by 1986 Cal. Stat. ch. 820, § 28) (trust administered in manner of express trust on court order), 15002 (as added by 1986 Cal. Stat. ch. 820, § 40) (common law as law of state), 15003(b) (as added by 1986 Cal. Stat. ch. 820, § 40) (repeal of Civil Code trust provisions not intended to affect general fiduciary principles applicable to confidential relationships).

Code, relating to trusts, and declaring the urgency thereof, to take effect immediately.

*The people of the State of California do enact as follows:*

**Civil Code § 5110 (technical amendment). Community property presumptions**

SECTION 1. Section 5110 of the Civil Code is amended to read:

5110. Except as provided in Sections 5107, 5108, and 5126, all real property situated in this state and all personal property wherever situated acquired during the marriage by a married person while domiciled in this state, and property held in trust pursuant to Section ~~5113.5~~ 5110.150, is community property; but whenever any real or personal property, or any interest therein or encumbrance thereon, is acquired prior to January 1, 1975, by a married woman by an instrument in writing, the presumption is that the same is her separate property, and if so acquired by the married woman and any other person the presumption is that she takes the part acquired by her, as tenant in common, unless a different intention is expressed in the instrument; except, that when any of the property is acquired by husband and wife by an instrument in which they are described as husband and wife, unless a different intention is expressed in the instrument, the presumption is that the property is the community property of the husband and wife. The presumptions in this section mentioned are conclusive in favor of any person dealing in good faith and for a valuable consideration with a married woman or her legal representatives or successors in interest, and regardless of any change in her marital status after acquisition of the property.

In cases where a married woman has conveyed, or shall hereafter convey, real property which she acquired prior to May 19, 1889, the husband, or his heirs or assigns, of the married woman, shall be barred from commencing or maintaining any action to show that the real property was community property, or to recover the real property from and after one year from the filing for record in the recorder's office of the conveyances, respectively.

As used in this section, personal property does not include and real property does include leasehold interests in real property.

**Comment.** Section 5110 is amended to correct a cross-reference.

**Civil Code § 5125 (technical amendment). Management and control of community personal property**

SEC. 2. Section 5125 of the Civil Code, as amended by Chapter 1091 of the Statutes of 1986, is amended to read:

5125. (a) Except as provided in subdivisions (b), (c), and (d) and Sections ~~5113-5~~ 5110.150 and 5128, either spouse has the management and control of the community personal property, whether acquired prior to or on or after January 1, 1975, with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse.

(b) A spouse may not make a gift of community personal property, or dispose of community personal property without a valuable consideration, without the written consent of the other spouse.

(c) A spouse may not sell, convey, or encumber community personal property used as the family dwelling, or the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the other spouse or minor children which is community personal property, without the written consent of the other spouse.

(d) Except as provided in subdivisions (b) and (c), and in Section 5127, a spouse who is operating or managing a business or an interest in a business that is all or substantially all community personal property has the primary management and control of the business or interest. Primary management and control means that the managing spouse may act alone in all transactions but shall give prior written notice to the other spouse of any sale, lease, exchange, encumbrance or other disposition of all or substantially all of the personal property used in the operation of the business (including personal property used for agricultural purposes), whether or not title to that property is held in the name of only one spouse. Written



notice is not, however, required when prohibited by the law otherwise applicable to the transaction.

Any change of the form of a business is not subject to the requirement of written notice.

Remedies for the failure by a managing spouse to give prior written notice as required by this subdivision are only as specified in Section 5125.1. A failure to give prior written notice shall not adversely affect the validity of a transaction nor of any interest transferred.

(e) Each spouse shall act in good faith with respect to the other spouse in the management and control of the community property in accordance with the general rules which control the actions of persons having relationships of personal confidence as specified in Section 5103, until such time as the property has been divided by the parties or by a court. This duty includes the obligation to make full disclosure to the other spouse of the existence of assets in which the community has an interest and debts for which the community may be liable, upon request. The case law defining the standard of care applicable to Section 5103, but not the case law applicable to Title 8 (commencing with Section 2215) of Part 4 of Division 3, applies to this section. In no event shall this standard be interpreted to be less than that of good faith in confidential relations nor as high as that established by Title 8 (commencing with Section 2215) of Part 4 of Division 3.

**Comment.** Subdivision (a) of Section 5125 is amended to correct a cross-reference.

### **Civil Code § 5127 (technical amendment). Management and control of community real property**

**SEC. 3.** Section 5127 of the Civil Code is amended to read:

**5127.** Except as provided in Sections ~~5112.5~~ *5110.150* and 5128, either spouse has the management and control of the community real property, whether acquired prior to or on or after January 1, 1975, but both spouses either personally or by duly authorized agent, must join in executing any instrument by which such community real property or any

interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered; provided, however, that nothing herein contained shall be construed to apply to a lease, mortgage, conveyance, or transfer of real property or of any interest in real property between the husband and wife; provided, also, however, that the sole lease, contract, mortgage or deed of the husband, holding the record title to community real property, to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed prior to January 1, 1975, and that the sole lease, contract, mortgage, or deed of either spouse, holding the record title to community real property to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed on or after January 1, 1975. No action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of either spouse alone, executed by the spouse alone, shall be commenced after the expiration of one year from the filing for record of such instrument in the recorder's office in the county in which the land is situate, and no action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of the husband alone, which was executed by the husband alone and filed for record prior to the time this act takes effect, in the recorder's office in the county in which the land is situate, shall be commenced after the expiration of one year from the date on which this act takes effect.

**Comment.** Section 5127 is amended to correct a cross-reference.

### **Probate Code § 82 (repealed). "Trust" defined**

**SEC. 4.** Section 82 of the Probate Code, as amended by Chapter 820 of the Statutes of 1986, is repealed.

~~82. (a) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created, but does not include a charitable trust that is not subject to the jurisdiction of the Attorney General.~~

(b) "Trust" includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.

(c) "Trust" excludes other constructive trusts, and it excludes resulting trusts, guardianships, conservatorships, personal representatives, Totten trust accounts, custodial arrangements pursuant to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state, business trusts that are taxed as partnerships or corporations, investment trusts subject to regulation under the laws of this state or any other jurisdiction, common trust funds, voting trusts, security arrangements, transfers in trust for purpose of suit or enforcement of a claim or right, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

**Comment.** Former Section 82 is superseded by a new Section 82 which reorganizes the provisions of the former section and makes some substantive changes as noted in the Comment to new Section 82.

### **Probate Code § 82 (added). "Trust" defined**

SEC. 5. Section 82 is added to the Probate Code, to read:

82. (a) "Trust" includes the following:

(1) An express trust, private or charitable, with additions thereto, wherever and however created.

(2) A trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust.

(b) "Trust" excludes the following:

(1) Constructive trusts, other than those described in paragraph (2) of subdivision (a), and resulting trusts.

(2) Guardianships and conservatorships.

(3) Personal representatives.

(4) Totten trust accounts.

(5) Custodial arrangements pursuant to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state.

(6) Business trusts that are taxed as partnerships or corporations.

(7) Investment trusts subject to regulation under the laws of this state or any other jurisdiction.

(8) Common trust funds.

(9) Voting trusts.

(10) Security arrangements.

(11) Transfers in trust for purpose of suit or enforcement of a claim or right.

(12) Liquidation trusts.

(13) Trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind.

(14) Any arrangement under which a person is nominee or escrowee for another.

**Comment.** Section 82 restates and reorganizes the provisions of former Section 82. Subdivision (a) (1) of Section 82 restates the first part of subdivision (a) of former Section 82 without substantive change. The last part of subdivision (a) of former Section 82 relating to charitable trusts that are not subject to the jurisdiction of the Attorney General is omitted. For a provision concerning the application of Trust Law to charitable trusts, see Section 15004. Subdivision (a) (2) restates subdivision (b) of former Section 82 without substantive change.

Subdivision (b) restates subdivision (c) of former Section 82 without substantive change. This subdivision, like its predecessor, is drawn in part from Section 1-201(45) of the Uniform Probate Code (1977), but also includes references to various entities that were listed in former Probate Code Section 1138. See also Section 15003(c) (application of the Trust Law to entities and relationships that are excluded from the definition of “trust” in this section).

### **Probate Code § 104 (technical amendment). Community property held in revocable trust**

**SEC. 6.** Section 104 of the Probate Code is amended to read:

104. Notwithstanding Section 100, community property held in a revocable trust described in Section ~~5113.5~~ *5110.150* of the Civil Code is governed by the provisions, if any, in the trust for disposition in the event of death.

**Comment.** Section 104 is amended to correct a cross-reference.

**Probate Code § 13504 (technical amendment). Property held in revocable trust**

SEC. 7. Section 13504 of the Probate Code is amended to read:

13504. Notwithstanding the provisions of this part, community property held in a revocable trust described in Section ~~5113.5~~ 5110.150 of the Civil Code is governed by the provisions, if any, in the trust for disposition in the event of death.

**Comment.** Section 13504 is amended to correct a cross-reference.

**Probate Code § 15003 (amended). Effect of division on constructive and resulting trusts, fiduciary relationships, and entities and relationships not included in definition of “trust”**

SEC. 8. Section 15003 of the Probate Code is amended to read:

15003. (a) Nothing in this division affects the law relating to constructive or resulting trusts.

(b) The repeal of Title 8 (commencing with Section 2215) of Part 4 of Division 3 of the Civil Code as provided in the act that added this division to the Probate Code is not intended to alter the rules applied by the courts to fiduciary and confidential relationships, except as to express trusts governed by this division.

*(c) Nothing in this division or in Section 82 is intended to prevent the application of all or part of the principles or procedures of this division to an entity or relationship that is excluded from the definition of “trust” provided by Section 82 where these principles or procedures are applied pursuant to statutory or common law principles, by court order or rule, or by contract.*

**Comment.** Subdivision (c) is added to Section 15003 to avoid the implication that the provisions of the Trust Law cannot be applied to entities and relationships that are excluded from the definition of “trust” as it is used in this division. The Trust Law, by its terms, governs trusts as defined in Section 82. See Section 15001. Under Section 15003, the Trust Law is neutral on the question of whether it may be applied to other types of entities

and relationships, such as those excluded from the definition of "trust" by subdivision (b) of Section 82. The Trust Law is thus made available when it may appropriately be applied by statute, common law, court order or rule, or contract. See also Sections 15002 (common law as law of state).

**Probate Code § 16062 (amended). Duty to account to beneficiaries**

SEC. 9. Section 16062 of the Probate Code is amended to read:

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, ~~or of a~~ *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 in this section, but the requirement of an 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.*

**Comment.** Section 16062 is amended to clarify the application of the annual accounting requirements under subdivision (a) and under former Probate Code Section 1120.1(a) to testamentary trusts created before July 1, 1987. The rule in subdivision (b) relating to living trusts executed before July 1, 1987, remains unchanged.

Subdivision (c) provides as a general rule that testamentary trusts that were not subject to continuing court jurisdiction under prior 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 annual accounting requirement of subdivision (a). However, subdivision (c) does apply the annual accounting requirement of subdivision (a) to testamentary trusts that are removed from continuing jurisdiction under new 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) 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 an account.

### **Probate Code § 16063 (technical amendment). Contents of account**

SEC. 10. Section 16063 of the Probate Code is amended to read:

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 ~~since the last~~ *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.** Subdivision (b) of Section 16063 is revised for clarity.

**Probate Code § 16303 (technical amendment). Income and principal**

**SEC. 11.** Section 16303 of the Probate Code is amended to read:

**16303.** (a) Income is the return in money or property derived from the use of principal, including return received as any of the following:

(1) Rent of real or personal property, including sums received for cancellation or renewal of a lease.

(2) Interest on money lent, including sums received as consideration for the prepayment of principal except as provided in Section 16307 on bond premium and bond discount.

(3) Receipts allocated to income as provided in Section 16304.

(4) Income earned during administration of a decedent's estate as provided in Section 16305.

(5) Corporate distributions as provided in Section 16306.

(6) Accrued increment on bonds or other obligations issued at discount as provided in Section 16307.

(7) Receipts from business and farming operations as provided in Section 16308.

(8) Receipts from disposition of natural resources as provided in Section 16309.

(9) Receipts from other principal subject to depletion as provided in Section 16310.

(10) Receipts from disposition of underproductive property as provided in Section 16311.

(b) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainder beneficiary while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes the following:



(1) Consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal.

(2) Proceeds of property taken on eminent domain proceedings.

(3) Proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary.

(4) Receipts allocated to principal as provided in Section 16304.

(5) Stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in Section 16306.

(6) ~~Receipts~~ *Proceeds* from the disposition of ~~corporate securities~~ *bonds and other obligations for the payment of money* as provided in Section 16307.

(7) Royalties and other receipts from disposition of natural resources as provided in Section 16309.

(8) Receipts from other principal subject to depletion as provided in Section 16310.

(9) Any profit resulting from any change in the form of principal except as provided in Section 16311 on underproductive property.

(10) Receipts from disposition of underproductive property as provided in Section 16311.

(11) Any allowances for depreciation established under Section 16308 and paragraph (2) of subdivision (b) of Section 16312.

**Comment.** Subdivision (b) (6) of Section 16303 is revised to correct a defect in the description of the type of property designated as principal in Section 16307. This revision is technical and makes no substantive change.

### **Operative Date**

SEC. 12. Sections 1 to 11, inclusive, of this act shall become operative on July 1, 1987.

**Urgency Declaration**

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to facilitate and coordinate the implementation of the Trust Law, which will become operative July 1, 1987, it is necessary that this act go into immediate effect.

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 (unnumbered) in Volume 3 also deal with the subject of condemnation  
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Recommendations Relating to Sovereign Immunity:

Number 1—Tort Liability of Public Entities and Public Employees

Number 2—Claims, Actions and Judgments Against Public Entities and Public  
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  - Article VI (Extrinsic Policies Affecting Admissibility)
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  - Article VIII (Hearsay Evidence) [same as publication in Volume 4] [out of print]
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- 1965 Annual Report
- 1966 Annual Report
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- Recommendation Proposing an Evidence Code [out of print]
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  - Additur

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  - Additur and Remittitur
  - Fictitious Business Names
- Annual Report (December 1969) includes the following recommendations:
  - Quasi-Community Property
  - Arbitration of Just Compensation
  - The Evidence Code: Number 5—Revisions of the Evidence Code
  - Real Property Leases
  - Statute of Limitations in Actions Against Public Entities and Public Employees
- Recommendation and Study Relating to:
  - Mutuality of Remedies in Suits for Specific Performance
  - Powers of Appointment
  - Fictitious Business Names
  - Representations as to the Credit of Third Persons and the Statute of Frauds
  - The “Vesting” of Interests Under the Rule Against Perpetuities
- Recommendation Relating to:
  - Real Property Leases
  - The Evidence Code: Number 4—Revision of the Privileges Article
  - Sovereign Immunity: Number 10—Revisions of the Governmental Liability Act

## VOLUME 10 (1971)

[Out of Print]

- Annual Report (December 1970) includes the following recommendation:
  - Inverse Condemnation: Insurance Coverage
- Annual Report (December 1971) includes the following recommendation:
  - Attachment, Garnishment, and Exemptions From Execution: Discharge From Employment
- California Inverse Condemnation Law [out of print]
- Recommendation and Study Relating to Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions
- Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Employees’ Earnings Protection Law [out of print]

## VOLUME 11 (1973)

[Out of Print]

- Annual Report (December 1972)
- Annual Report (December 1973) includes the following recommendations:
  - Evidence Code Section 999—The “Criminal Conduct” Exception to the Physician-Patient Privilege
  - Erroneously Ordered Disclosure of Privileged Information

## Recommendation and Study Relating to:

- Civil Arrest
- Inheritance Rights of Nonresident Aliens
- Liquidated Damages

## Recommendation Relating to:

- Wage Garnishment and Related Matters
- The Claim and Delivery Statute
- Unclaimed Property
- Enforcement of Sister State Money Judgments
- Prejudgment Attachment
- Landlord-Tenant Relations

## Tentative Recommendation Relating to Prejudgment Attachment

**VOLUME 12 (1974)**

[Out of Print]

## Annual Report (December 1974) includes the following recommendations:

- Payment of Judgments Against Local Public Entities
- View by Trier of Fact in a Civil Case
- The Good Cause Exception to the Physician-Patient Privilege
- Escheat of Amounts Payable on Travelers Checks, Money Orders and Similar Instruments

## Recommendation Proposing the Eminent Domain Law

## Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts

## Recommendation Relating to Wage Garnishment Exemptions

## Tentative Recommendations Relating to Condemnation Law and Procedure:

- The Eminent Domain Law
- Condemnation Authority of State Agencies
- Conforming Changes in Special District Statutes

**VOLUME 13 (1976)**

[Out of Print]

## Annual Report (December 1975) includes the following recommendations:

- Admissibility of Copies of Business Records in Evidence
- Turnover Orders Under the Claim and Delivery Law
- Relocation Assistance by Private Condemnors
- Condemnation for Byroads and Utility Easements
- Transfer of Out-of-State Trusts to California
- Admissibility of Duplicates in Evidence
- Oral Modification of Contracts
- Liquidated Damages

## Annual Report (December 1976) includes the following recommendations:

- Service of Process on Unincorporated Associations
- Sister State Money Judgments
- Damages in Action for Breach of Lease
- Wage Garnishment
- Liquidated Damages

## Selected Legislation Relating to Creditors' Remedies [out of print]

## Eminent Domain Law with Conforming Changes in Codified Sections and Official Comments [out of print]

## Recommendation and Study Relating to Oral Modification of Written Contracts

## Recommendation Relating to:

- Partition of Real and Personal Property
- Wage Garnishment Procedure
- Revision of the Attachment Law
- Undertakings for Costs
- Nonprofit Corporation Law

**VOLUME 14 (1978)**

[Out of Print]

Annual Report (December 1977) includes the following recommendations:

- Use of Keepers Pursuant to Writs of Execution
- Attachment Law: Effect of Bankruptcy Proceedings; Effect of General Assignments for Benefit of Creditors
- Review of Resolution of Necessity by Writ of Mandate
- Use of Court Commissioners Under the Attachment Law
- Evidence of Market Value of Property
- Psychotherapist-Patient Privilege
- Parol Evidence Rule

Annual Report (December 1978) includes the following recommendations:

- Technical Revisions in the Attachment Law: Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of "Chose in Action"
- Ad Valorem Property Taxes in Eminent Domain Proceedings
- Security for Costs

Recommendation Relating to Guardianship-Conservatorship Law

**VOLUME 15 (1980)**

[Out of Print]

**Part I**

Annual Report (December 1979) includes the following recommendations:

- Effect of New Bankruptcy Law on the Attachment Law
- Confessions of Judgment
- Special Assessment Liens on Property Taken for Public Use
- Assignments for the Benefit of Creditors
- Vacation of Public Streets, Highways, and Service Easements
- Quiet Title Actions
- Agreements for Entry of Paternity and Support Judgments
- Enforcement of Claims and Judgments Against Public Entities
- Uniform Veterans Guardianship Act
- Psychotherapist-Patient Privilege
- Enforcement of Obligations After Death

Guardianship-Conservatorship Law with Official Comments [out of print]

Recommendation Relating to:

- Enforcement of Judgments: Interest Rate on Judgments; Married Women as Sole Traders; State Tax Liens
- Application of Evidence Code Property Valuation Rules in Noncondemnation Cases
- Uniform Durable Power of Attorney Act
- Probate Homestead

**Part II**

Annual Report (December 1980) includes the following recommendation:

- Revision of the Guardianship-Conservatorship Law: Appointment of Successor Guardian or Conservator; Support of Conservatee Spouse from Community Property; Appealable Orders

Recommendations Relating to Probate and Estate Planning:

- Non-Probate Transfers; Revision of the Powers of Appointment Statute

Tentative Recommendation Proposing the Enforcement of Judgments Law



**VOLUME 16 (1982)**

- Annual Report (December 1981) includes the following recommendation:  
 Federal Military and Other Federal Pensions as Community Property
- Annual Report (December 1982) includes the following recommendations:  
 Division of Joint Tenancy and Tenancy in Common Property at Dissolution of  
 Marriage  
 Creditors' Remedies: Amount Secured by Attachment; Execution of Writs by  
 Registered Process Servers; Technical Amendments  
 Dismissal for Lack of Prosecution  
 Conforming Changes to the Bond and Undertaking Law  
 Notice of Rejection of Late Claim Against Public Entity
- Recommendation Relating to:  
 Holographic and Nuncupative Wills  
 Marketable Title of Real Property  
 Statutory Bonds and Undertakings  
 Attachment  
 Probate Law and Procedure: Missing Persons; Nonprobate Transfers; Emancipated  
 Minors; Notice in Limited Conservatorship Proceedings; Disclaimer of  
 Testamentary and Other Interests
- 1982 Creditors' Remedies Legislation [out of print]  
 Tentative Recommendation Relating to Wills and Intestate Succession

**VOLUME 17 (1984)**

- Annual Report (December 1983) includes the following recommendations:  
 Effect of Death of Support Obligor  
 Dismissal for Lack of Prosecution  
 Severance of Joint Tenancy  
 Effect of Quiet Title and Partition Judgments  
 Dormant Mineral Rights  
 Creditors' Remedies: Levy on Joint Deposit Accounts; Issuance of Earnings  
 Withholding Orders by Registered Process Servers; Protection of Declared  
 Homestead After Owner's Death; Jurisdiction of Condominium Assessment  
 Lien Enforcement; Technical Amendments  
 Rights Among Cotenants in Possession and Out of Possession of Real Property
- Recommendation Relating to:  
 Liability of Marital Property for Debts  
 Durable Power of Attorney for Health Care Decisions  
 Statutory Forms For Durable Powers of Attorney  
 Family Law: Marital Property Presumptions and Transmutations; Disposition of  
 Community Property; Reimbursement of Educational Expenses; Special  
 Appearance in Family Law Proceedings; Liability of Stepparent for Child  
 Support; Awarding Temporary Use of Family Home  
 Probate Law: Independent Administration of Decedent's Estates; Distribution of  
 Estates Without Administration; Execution of Witnessed Wills; Simultaneous  
 Deaths; Notice of Will; Garnishment of Amounts Payable to Trust Beneficiary;  
 Bonds for Personal Representatives; Revision of Wills and Intestate Succession  
 Law; Recording Affidavit of Death  
 Statutes of Limitation for Felonies  
 Uniform Transfers to Minors Act

**VOLUME 18 (1986)**

[Volume expected to be available September 1987]

Annual Report (March 1985) includes the following recommendations:

- Provision for Support if Support Obligor Dies
- Transfer Without Probate of Certain Property Registered by the State
- Dividing Jointly Owned Property Upon Marriage Dissolution

Annual Report (December 1985) includes the following recommendations:

- Protection of Mediation Communications
- Recording Severance of Joint Tenancy
- Abandoned Easements
- Distribution Under a Will or Trust
- Effect of Adoption or Out of Wedlock Birth on Rights at Death
- Durable Powers of Attorney
- Litigation Expenses in Family Law Proceedings
- Civil Code Sections 4800.1 and 4800.2

Annual Report (December 1986) includes the following recommendations:

- Notice in Guardianship and Conservatorship Proceedings
- Preliminary Provisions and Definitions of the Probate Code
- Technical Revisions in the Trust Law

Recommendation Proposing the Trust Law

Recommendations Relating to Probate Law: Disposition of Estates Without Administration; Small Estate Set-Aside; Proration of Estate Taxes

Selected 1986 Trust and Probate Legislation With Official Comments [out of print]

**VOLUME 19 (1988)**

[Volume expected to be available in September 1989]

Recommendation Relating to Probate Law: Supervised Administration of Decedent's Estate; Independent Administration of Estates Act; Creditor Claims Against Decedent's Estate; Notice in Probate Proceedings