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Administration of Estates

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Administration of Estates

Administration of Estates; deposits—credit unions

Probate Code §§1510, 1513 (amended).

AB 482 (McCarthy); STATS 1973, Ch 233

Support: California Credit Union League

Sections 1510 and 1513 of the Probate Code authorize the court, in its discretion, to order the proceeds of judgments and compromises in favor of minors, incompetents, and insane persons, to be deposited in banks, trust companies, and insured savings and loan associations.

Sections 1510 and 1513 have been amended to include shares of an insured credit union within the exclusive list of depositories. Such credit union must either be federally chartered or state licensed, and must be insured under Title II of the Federal Credit Union Act.

See Generally:

- 1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent and Child* §§43, 44 (7th ed. 1960), (Supp. 1969).
- 2) CONTINUING EDUCATION OF THE BAR, ESTATE ADMINISTRATION §35.57 (1960).

Administration of Estates; minor's guardianship termination

Probate Code §§1430, 1430.5, 1431 (amended).

AB 712 (Kapiloff); STATS 1973, Ch 400

Support: State Bar of California

Permits transfer of up to \$2,000 of minor's money or property to parent even if minor has a guardianship estate; allows court to take jurisdiction over the funds pursuant to parent's petition where minor's estate does not exceed \$20,000, rather than \$10,000; empowers court to terminate a guardianship pursuant to such a petition.

Section 1430 of the Probate Code provides that if a minor's property does not exceed \$2,500 in value, up to \$2,000 may be transferred to a parent entitled to the custody of the minor to be held in trust for him until his majority. Prior to amendment, such a transfer was permitted only if the minor had no guardianship estate. Section 1430 has been amended to allow the transfer of up to \$2,000 to the parent of the minor even though the minor may have a guardianship estate, provided that the guardianship estate does not exceed \$2,000 in value.

Section 1430.5 of the Probate Code provides the method by which the superior court may be petitioned to take jurisdiction over the disposition of a minor's money or property [See 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §322 (Supp. 1969)]. Chapter 400 has made three changes in the provisions of this section. First, prior to amendment, in most instances only the father of the minor could petition the court to take jurisdiction over the minor's property. The mother could petition only if the father was dead, or if the mother and father were separated and the mother had custody of the minor. As amended, any parent entitled to the custody of the minor may petition the court for such relief. Secondly, Section 1430.5 previously applied only to estates with a minimum size of \$2,000 and a maximum of \$10,000. Chapter 400 has amended the section to extend the maximum size to \$20,000. Thirdly, prior to enactment of Chapter 400, a guardianship could be terminated at the insistence of either the ward or the guardian only for the reasons specified in Section 1580 of the Probate Code (for example, the guardian's waste, immorality, misfeasance, or insolvency) [Estate of Davis, 253 Cal. App. 2d 754, 61 Cal. Rptr. 297 (1967)]. A mere change in the circumstances surrounding the guardianship was never grounds in itself for termination of the guardianship [Estate of Denny, 97 Cal. App. 2d 763, 218 P.2d 792 (1950)], and therefore, administrative depletion of a small guardianship was not grounds for such termination. As amended, Section 1430.5 provides that a guardianship may be terminated by petitioning the superior court to take jurisdiction over the disposition of money in the guardianship estate.

Sections 1430.5 and 1431 allow the court, in its discretion, to order the deposit of a minor's funds, over which jurisdiction has been taken, in banks, trust companies, and insured savings and loan institutions. Chapter 400 has added shares of an insured credit union to that list, and requires that the shares be issued by either a state-licensed or federally chartered credit union and that they be insured under Title II of the Federal Credit Union Act.

COMMENT

Small guardianship estates of minors are often seriously depleted by costly administration. Most title companies, for example, require the institution of a guardianship for minor beneficiaries of a deed of trust before reconveyance of the real property may be made. After reconveyance, the guardianship, although perhaps unneeded, remains in force [STATE BAR OF CALIFORNIA, 1972 CONFERENCE RESOLUTION

7-1]. The attorneys' fees and administrative costs can be disproportionately high in relation to the size of the principal of the guardianship. Section 1430.5, as amended, allows termination of such costly and unnecessary guardianships by providing for the superior court to take jurisdiction over the disposition of guardianship money.

See Generally:

- 1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent and Child* §43 (7th ed. 1960), (Supp. 1969).
- 2) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §322 (Supp. 1969).
- 3) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1965 CODE LEGISLATION 227.
- 4) STATE BAR OF CALIFORNIA, 1972 CONFERENCE RESOLUTIONS 7-1, 7-2.

Administration of Estates; trusts in Cal-Vet property

Military and Veterans Code §987.1 (amended).

SB 288 (Deukmejian); STATS 1973, Ch 212

Support: California Veterans Service Officers Association; American Legion; Disabled American Veterans; Veterans of World War I

Section 987.1 of the Military and Veterans Code prohibits any transfer of real property financed under the Cal-Vet Program until the purchaser has paid in full and complied with all of the contract terms, unless the written consent of the Department of Veterans Affairs is obtained. Pursuant to Section 987.1, Title 12 of the Administrative Code authorizes the department to consent to transfers of Cal-Vet financed property by a married veteran into joint tenancy with his spouse.

Section 987.1 has been amended to allow a veteran, either alone or jointly with his spouse, to transfer his interest in Cal-Vet financed property into a revocable inter vivos trust established for the benefit of the veteran himself, or the veteran and his spouse, *without* the written consent of the Department of Veterans Affairs.

COMMENT

A married spouse may avoid probate of his Cal-Vet financed property by assigning it into joint tenancy with his spouse [CONTINUING EDUCATION OF THE BAR, DRAFTING CALIFORNIA REVOCABLE INTER VIVOS TRUSTS §1.13 (1972)]. Section 987.1, as amended, allows the the veteran the same ability to avoid probate by permitting him to transfer his Cal-Vet financed property into a revocable inter vivos trust.

See Generally:

- 1) CAL. ADMIN. CODE tit. 12, §312.
- 2) CONTINUING EDUCATION OF THE BAR, DRAFTING CALIFORNIA REVOCABLE INTER VIVOS TRUSTS §2.8 (1972).

Administration of Estates; trust termination

Civil Code §2279.1 (new); Probate Code §1120.6 (new); §1138.1 (amended).

SB 864 (Marler); STATS 1973, Ch 506

Support: State Bar of California

Section 2279 of the Civil Code deals with the extinguishing of inter vivos trusts, and Section 1120 of the Probate Code provides for the court's jurisdiction on the closing of testamentary trusts. Section 2279.1 has been added to the Civil Code and Section 1120.6 has been added to the Probate Code to allow the court to deal with trusts whose principal has become so low, in relation to costs of administration, that continuance will defeat or substantially impair accomplishment of the purposes of the trust. Upon such determination, the court may, in a manner which conforms as nearly as possible to the intention of the trustor, order that the trustee be changed, that the terms of the trust be modified, or that the trust be terminated, in whole or in part. If the court orders the termination of the trust, it shall direct the distribution of the principal and any undistributed income of the trust in a manner which conforms as nearly as possible with the intent of the trustor. The court may also make such orders as it deems necessary or appropriate to protect the interests of the beneficiaries of the trust.

The existence of a spendthrift or similar protective provision in the trust does not affect the applicability of this section. In addition, no provisions of this section affect the existing powers of the court to permit modification or termination of any trust.

Section 1120.6 of the Probate Code provides that the court may take the above-indicated action upon petition of either the trustee or any beneficiary of the trust.

Chapter 506 applies to all trusts in existence on the effective date of the act, and to all trusts created thereafter.

COMMENT

Most banks in California have a minimum fee for the handling of small trusts, and the minimum fee, in many instances, is disproportionate to the income of the trust [STATE BAR OF CALIFORNIA, 1972 CONFERENCE RESOLUTION 7-9]. Chapter 506 has revised the law governing judicial disposition of trusts to allow a court of equity to consider relative monetary size in determining whether a trust should be terminated or modified, or a new trustee appointed. A court of

equity may now take the steps necessary to terminate a trust which is uneconomically small in relation to its administrative costs, regardless of the type of trust, the competency or presence before the court of the beneficiaries, or any outstanding contingent interests therein.

See Generally:

- 1) *Fletcher v. Los Angeles Trust & Sav. Bank*, 182 Cal. 177, 187 P. 425 (1920) (instances in which a trust may or may not be terminated by the court).
- 2) CONTINUING EDUCATION OF THE BAR, DRAFTING CALIFORNIA REVOCABLE INTER VIVOS TRUSTS §6.30 (1972) (trust termination).
- 3) STATE BAR OF CALIFORNIA, 1972 CONFERENCE RESOLUTION 7-9, 7-10.

Administration of Estates; Uniform Management of Institutional Funds Act

Civil Code Chapter 3 (commencing with §2290.1) (new).
SB 1140 (Biddle); STATS 1973, Ch 950

Creates Uniform Management of Institutional Funds Act; empowers governing board of specified institutions to appropriate as much of the net appreciation of an endowment fund as is prudent; establishes standard of care for such instances; indicates guidelines for implying restrictions on the use and investment of institutional funds; allows board to invest or reinvest institutional funds, retain contributed property, or include funds in organizations in which funds are commingled and invested; permits board to delegate power to invest funds, contract with, and authorize compensation for investment services; provides methods by which restrictions on use or investment of funds may be released, with or without consent of donor.

Chapter 3 (commencing with §2290.1) has been added to the Civil Code as the Uniform Management of Institutional Funds Act. The Act, effective until January 1, 1979, is designed as a pilot study in expanded investment and expenditure policies of educational endowment funds [S.B. 1140, CAL. STATS. 1973, c. 950, §4].

Section 2290.1 of this Act provides the definitions for terms and phrases used in this chapter: (1) "institution" means a private incorporated or unincorporated organization, organized and operated exclusively for educational purposes and accredited by the Association of Western Colleges and Universities to the extent that it holds funds exclusively for any of such purposes; (2) "institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include either a fund held for an institution by a trustee that is not an institution, or a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could

arise upon a violation or failure of the purposes of the fund; (3) "endowment fund" means an institutional fund, or a part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument; (4) "governing board" means the body responsible for the management of an institution or an institutional fund; (5) "historic dollar value" means the aggregate fair value in dollars of (a) an endowment fund at the time it became an endowment fund, (b) each subsequent donation to the fund at the time it is made, and (c) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund (the determination of historic dollar value made in good faith by the institution is conclusive); and (6) "gift instrument" means any governing document, including the terms of an institutional solicitation from which an institutional fund resulted, under which property is transferred to or held by an institution as an institutional fund.

Section 2290.2 allows the governing board to appropriate for expenditure so much of the endowment fund's net appreciation, realized and unrealized, as is prudent under the standards set forth in Section 2290.6 (discussed *infra*). The expenditure must be for the purposes for which the endowment fund was established. Such appropriations must be based upon an average fair value covering a period of up to the five preceding fiscal years of the institution and shall be set at any reasonable date prior to each fiscal year. This section also indicates that its provisions do not limit the authority of the governing board to expend funds as permitted under other provisions of law, the terms of the applicable gift instrument, or the charter of the institution.

Under Section 2290.6, the members of the governing board are required to exercise the judgment, care, and prudence under the circumstances then prevailing which men of discretion and intelligence exercise in the management of their affairs in investing, appropriating appreciation, and delegating investment management for the benefit of an institution. In exercising judgment under this section, the members of the governing board shall consider the long- and short-term needs of the institution in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, general economic conditions, the appropriateness of a reasonable proportion of higher risk investment with respect to institutional funds as a whole, income, growth, and long-term net appreciation, as well as the probable safety of the funds.

Section 2290.3 provides that Section 2290.2 does not apply if the

applicable gift instrument indicates the donor's intention that the net appreciation shall not be expended. If the gift instrument was in effect *prior to* the effective date of this section, a restriction upon the expenditure of appreciation need not be implied solely from a designation of the gift as an endowment, or from the presence in the instrument of directions or authorizations to use only "income," "dividends," or "rents, issues, and profits," or "to preserve the principal intact," or words of similar import. Section 2290.3 further provides that a restriction upon the expenditure of net appreciation *may not* be implied from such designations, directions, or authorizations contained in the gift instrument if the gift instrument was executed or became effective after the effective date of this section.

Section 2290.4 provides that in addition to an investment otherwise authorized by law or by the applicable gift instrument, the governing board, subject to any specific limitations contained in the gift instrument, may do any of the following: (1) invest and reinvest an institutional fund in any real or personal property, including mortgages, stocks, bonds, debentures, securities of any profit or nonprofit corporations, shares in or obligations of associations or partnerships, and obligations of any government or subdivision, whether or not it produces a current return; (2) retain property contributed by a donor to an institutional fund for as long as it deems advisable; (3) include all or any part of an institutional fund in any pooled or common fund maintained by the institution; or (4) invest all or any part of an institutional fund in any other pooled or common fund in which funds are commingled and investment determinations are made by persons other than the governing board. In addition to the above, the governing board may make investments otherwise authorized by law or by the applicable gift instrument.

Section 2290.5 empowers the governing board, except as provided by the applicable gift instrument or by provisions of law relating to governmental institutions or funds, to do the following: (1) delegate to its committees, employees, officers, or agents, including investment counsel, the authority to act in place of the board in the investment and reinvestment of institutional funds; (2) contract with independent investment advisors, investment counsel or managers, banks, or trust companies to implement such investments; and (3) authorize the payment of compensation for investment advisory or management services.

Section 2290.7 provides that with the written consent of the donor the governing board may release, in whole or in part, a restriction imposed upon the investment or use of an institutional fund. However,

if the written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the superior court or other court of competent jurisdiction for release of the use or investment restriction imposed by the gift instrument. If the court should find the restriction obsolete or impracticable, it may order its release in whole or part. The section further provides that the Attorney General shall be notified of the pendency of such action and given an opportunity to be heard on the issues presented. In addition, a release may not change an endowment fund to other than an endowment fund, and may not allow a fund to be used for purposes other than the eleemosynary purposes for which it was created. Subdivision (d) of Section 2290.7 provides that the doctrine of *cy-pres* [CAL. CIV. CODE §715.5] is unaffected by the enactment of this section.

Section 2290.10 requires that any institution electing to avail itself of the powers granted under this chapter must periodically file with the Registrar of Charitable Trusts any reports which are required by the Attorney General. Such reports are confidential and shall be limited to information relating to the assets of the institution covered by this chapter and the results of the use of the powers granted by this chapter with respect to such assets. Any institution electing not to avail itself of the powers conferred by this chapter must file a written statement to this effect with the registrar. Section 2290.8 provides that the provisions of Chapter 3 are severable and that no provision shall fail as a result of another section's invalidity.

Section 2 of Chapter 950 indicates that the provisions of this Act shall not be construed as affecting the applications of Section 2271 of the Civil Code, Section 1025.1 of the Corporations Code (limitations upon the scope of a trustee's powers to deal with charitable or education trust funds), or Section 2271.2 of the Civil Code (the jurisdiction of the superior court in trust matters).

This Act shall remain in effect only until January 1, 1979.

See Generally:

- 1) CAL. CIV. CODE §§723, 724, 725 (provisions governing dispositions of trust funds by trustees).
- 2) BOGERT, *THE LAW OF TRUSTS, Charitable Trusts* §54 (4th ed. 1963).
- 3) 14 C.J.S., *Charities* §§47-57, 62b (1939).