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Administration of Estates

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Administration of Estates

Administration of Estates; deeds of trust—substitution

Code of Civil Procedure § 2941.7 (amended).
SB 784 (Calderon); 1995 STAT. Ch. 344

Under existing law, whenever a mortgage\(^1\) or deed of trust\(^2\) has been completely satisfied and the present mortgagee cannot be located after a diligent search, the mortgage or deed of trust will be released when a bond is recorded or the trustee records\(^3\) a reconveyance.\(^4\) Existing law provides that the bond must be acceptable to the trustee and must be issued by an authorized corporation in accord with certain amount requirements.\(^5\)

Chapter 344 creates a process to enable a borrower to obtain a reconveyance from a substituted trustee, if the new trustee is a title insurance company, when the original borrower has paid the loan in full and cannot locate the original trustor to reconvey.\(^6\)

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1. See generally 3 B.E. Witkin, SUMMARY OF CALIFORNIA LAW, Security Transactions in Real Property § 31 (9th ed. 1987) (stating that a mortgage must be in writing and be executed similarly to a deed of real property).

2. See Savings & Loan Soc. v. Burnett, 106 Cal. 514, 523-24, 39 P. 922, 923 (1895) (defining a "deed of trust" as a conveyance in trust to secure a debt against real property with a power of sale vested in the trustee). See generally 5 Herbert Tiffany, THE LAW OF REAL PROPERTY § 1400 (3d ed. 1939) (explaining that a deed of trust is used in some states instead of a mortgage in order to secure the payment of a debt due to another person, and that a deed of trust has the effect of transferring legal title); 3 B.E. Witkin, SUMMARY OF CALIFORNIA LAW, Deed of Trust § 193 (9th ed. 1987) (noting that there is no statutory form for a deed of trust).


4. CAL. CIV. PROC. CODE § 2941.7 (amended by Chapter 344); see id. (declaring that if the present mortgagee or beneficiary of record cannot be located after diligent search or refuses to deliver a proper discharge or reconveyance, the lien of any mortgage will be released when a bond is recorded in the county recorder's office); see also Black's Law Dictionary 1273 (6th ed. 1990) (defining a "reconveyance" as returning of title in real property to a party by whom it was previously held).

5. CAL. CIV. PROC. CODE § 2941.7(a) (amended by Chapter 344); see id. (listing the amount of the bond as two times the amount of the original obligation); see also Huckell v. Matranga, 99 Cal. App. 3d 471, 479, 160 Cal. Rptr. 177, 181 (1979) (holding that in a quiet title action brought by the trustor against the trustee, the trustee did not act inappropriately by requiring a corporate bond to be delivered); Evelyn de Wolfe, Title Matters: The Deed May Not Be Done, L.A. TIMES, Aug. 4, 1991, at K-1 (asserting that the purpose of a bond agreement is to insure against loss by acts or defaults of a third party); cf. 1 Miller & Starr, CURRENT LAW OF CALIFORNIA REAL ESTATE, § 3.76 (1975) (explaining that if a trustee improperly reconveys a trust to the trustor before the loan is paid in full and the trustor then sells the property to a bona fide purchaser, the grantee receives the title free of the lien).

6. CAL. CIV. PROC. CODE § 2941.7(f) (amended by Chapter 344); see id. (listing the following elements which must be met in order to substitute a trustee for a reconveyance: (1) The present trustee and present mortgagee cannot be located; (2) the declaration must state that the obligation has been satisfied; (3) the substituted trustee is a title insurance company; and (4) a corporate bond must be posted); see also Doyle v. Surety Title & Guaranty Co., 261 Cal. App. 2d 525, 528, 68 Cal. Rptr. 177, 179 (1968) (holding that the

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COMMENT

The law prior to Chapter 344 did not authorize an expeditious remedy for settling title on trust deeds where the loan has been paid in full but the trustee could not be found to issue a reconveyance. The previous approach for clearing title was to institute a quiet title action, which was cumbersome and expensive.

Proponents of Chapter 344 concede that while situations where a trustee and lender of a paid-off loan cannot be located to reconvey arises only occasionally in California, the substitution of a trustee will protect trustors from proceeding through a lengthy process.

Gregory T. Flahive
Administration of Estates; durable powers of attorney—health care

Probate Code §§ 4652, 4701, 4702 (amended).
SB 1148 (Watson); 1995 STAT. Ch. 417

Existing law sets forth various provisions governing durable powers of attorney for health care. Chapter 417 limits any general legal authorization to make health care decisions on behalf of another or to provide health care treatment in an emergency situation if a durable power of attorney for health care exists, to only those situations in which the attorney in fact is unavailable, unwilling, or unable to make health care decisions. In addition, Chapter 417 revises the provisions governing witnesses to durable powers of attorney.

1. CAL. PROB. CODE §§ 4121(a)-(c), 4652(a), (b), 4700(a) (West Supp. 1995); id. §§ 4701(a)-(e), 4702(a), (b) (amended by Chapter 417); see id. § 4121(a), (c) (West Supp. 1995) (declaring that a power of attorney is legally sufficient if (1) it contains the date of execution, (2) it is signed either by the principal or in the principal's name by another in the principal's presence and at the principal's direction, and (3) the power of attorney is either acknowledged before a notary public or signed by at least two witnesses); id. § 4652(b) (amended by Chapter 417) (noting that nothing in the part affects the right to make health care decisions on behalf of another or in an emergency); id. § 4700(a) (West Supp. 1995) (prohibiting a durable power of attorney from making health care decisions unless it specifically grants authority to the attorney-in-fact to make health care decisions); id. § 4701(a) (amended by Chapter 417) (prohibiting the principal's health care provider or an employee of the principal's health care provider, the operator or an employee of a community care facility or a residential care facility for the elderly from acting as a witness); id. § 4701(b), (d) (amended by Chapter 417) (requiring witnesses to include in their declarations that the principal is of sound mind, the fact of lack of duress or fraud, and that the witness is not related to the principal or a beneficiary to the principal's estate); id. § 4701(c) (amended by Chapter 417) (prohibiting at least one of the witnesses from being a relative of the principal by blood, marriage, or adoption, or a person not entitled to a portion of the principal's estate); id. § 4701(e) (amended by Chapter 417) (providing that if the patient is in a skilled nursing home, one of the witnesses must be a patient advocate or ombudsman); id. § 4702(a), (b) (amended by Chapter 417) (prohibiting the treating health care provider or employee of the health care provider or an operator or employee of a residential care facility for the elderly from exercising authority to make health care decisions under a power of attorney, unless the person is relative of the principal); id. § 4702(d) (amended by Chapter 417) (permitting a conservator to be designated as an attorney-in-fact if the power of attorney is valid, he or she is represented by counsel, and the lawyer signs a certificate); see also id. § 4124 (West Supp. 1995) (defining a "durable power of attorney" as a power of attorney by which a principal designates another person as an attorney-in-fact in writing and contains words showing the intent of the principal that the authority conferred may be exercised notwithstanding the principal's subsequent incapacity); id. § 4606 (West Supp. 1995) (defining a "durable power of attorney for health care" as authorizing an attorney-in-fact to make health care decisions for the principal); id. § 4609 (West Supp. 1995) (defining "health care" as any care or treatment to maintain, diagnose or treat an individual's physical or mental condition and includes decisions affecting the principal after death). See generally Pamela Yip, Making Sure that Loved Ones' Affairs Are in Order, HOUS. CHRON., Aug. 21, 1995, at 1 (explaining that the difference between a living will and a durable power of attorney for health care is that a living will only applies to decisions to withhold or withdraw life support and durable power of attorney covers all medical treatment decisions).

2. CAL. PROB. CODE § 4652 (amended by Chapter 417).

3. Id. § 4701(e) (amended by Chapter 417); see id. (requiring a patient advocate or ombudsman to sign the durable power of attorney form as one of the two witnesses required or in addition to the notarization); cf. ARIZ. REV. STAT. ANN. § 36-3221(A)(3) (1993) (requiring, for a valid health care power of attorney, that the execution of the power be notarized or witnessed by at least one adult witness); IOWA CODE ANN. §
Finally, Chapter 417 amends the provisions limiting who may exercise authority to make health care decisions under a durable power of attorney for health care.  

**COMMENT**

The purpose of Chapter 417 is to clarify durable power of attorney for health care statutes by removing uncertainty about how the existing statutes should be applied. Chapter 417 clarifies the confusion regarding the extent to which third parties retain the authority to make health care decisions for another when a durable power of attorney for health care designates an attorney-in-fact to make health care decisions. Chapter 417 is not intended to allow the attorney-in-fact's authority to supersede the authority of the principal. Nor is Chapter 417 intended to allow the attorney-in-fact's authority to supersede the authority of the principal.

144B.3(b)(1), (2) (West Supp. 1995) (declaring that the power of attorney for health care be witnessed by two persons or notarized within the state); NEV. REV. STAT. ANN. § 449.840(1)(a), (b) (Michie 1991) (mandating that the signature for the power of attorney be acknowledged before a notary public or before two adult witnesses who know the principal personally). See generally Michael N. Schmitt & Steven A. Hatfield, *The Durable Power of Attorney: Applications and Limitations*, 132 MIL. L. REV. 203, 224-25 (1991) (advocating that all durable powers of attorney be notarized and executed in the presence of two unrelated and disinterested witnesses because this formality is similar to a will and thus assures that the threshold for every state will be met).

4. CAL. PROB. CODE § 4702(b)(1) (amended by Chapter 417); see id. (allowing an employee of the treating health care provider or an employee of an operator of a community care facility or an employee of a residential care facility for the elderly to be designated as the attorney-in-fact to make health care decisions under a durable power of attorney for health care if the employee is employed by the same treating health care provider, community care facility, or residential care facility for the elderly that employs the principal); cf. MINN. STAT. ANN. § 145C.03(2) (West Supp. 1995) (declaring that an employee of a health care provider attending to the principal is eligible to act as an agent).

5. ASSEMBLY JUDICARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1148, at 3 (July 5, 1995); see id. (providing the California Medical Association's (CMA) assertion that Chapter 417 is necessary to "clean-up" current statutes because the CMA responds to hundreds of inquiries about durable power of attorney for health care forms).


7. ASSEMBLY JUDICARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1148, at 3 (July 5, 1995); see id. (stating that third parties may make decisions for health care only if the attorney-in-fact is unavailable, unwilling, or unable to make such decisions).

8. SENATE JUDICARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1148, at 4 (May 16, 1995); see CAL. PROB. CODE § 4652(a) (amended by Chapter 417) (stating that this section is subject to California Probate Code § 4720); id. § 4720(a) (West Supp. 1995) (providing that the principal's authority to make health care decisions will supersede the attorney in fact's authority); see also id. § 4026 (West Supp. 1995) (defining "principal" as a natural person who executes a power of attorney); cf. D.C. CODE ANN. § 21-2205(b)(2) (Supp. 1995) (requiring the durable power of attorney to include language specifying that the power of attorney becomes effective upon incapacity of the principal); GA. CODE ANN. § 31-36-5(c) (Michie 1991) (declaring that an agent under health care does not have the authority to make health care decisions contrary to the patient's decision if the patient is able to understand the general nature of the health care procedure); HAW. REV. STAT. § 551D-2.5(d) (Supp. 1992) (providing that a durable power of attorney for health care decisions will become effective when the principal becomes incapacitated). See generally Dan W. Brock, *Good Decisionmaking for Incompetent Patients*, 24 HASTINGS CENTER REP. S8, S8-S9 (1994) (noting the policy consensus is supported by the value for the principals' self-determination or autonomy to make significant decisions about their lives and according to their values and conceptions regarding life, and thus a principal can further one's self-
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to interfere with the court’s authority to prescribe health care for a durable power of attorney for health care principal or to appoint a conservator to carry out the court’s order.9

In addition, Chapter 417 clarifies the confusion over whether a resident of a skilled nursing facility may utilize the notary public acknowledgement process rather than the two witnesses requirement.10 Furthermore, Chapter 417 provides greater protection to skilled nursing facilities residents by requiring that the durable power of attorney for health care also be witnessed by the patient advocate or ombudsman when the notarization alternative is used.11

Chad D. Bernard

9. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1148, at 3 (July 5, 1995); see id. (providing CMA’s assertion that SB 1148 is not to interfere with the court’s authority under California Probate Code § 4946); see also CAL. PROB. CODE § 4946 (West Supp. 1995) (stating that the attorney-in-fact is subsidiary to a court order authorizing a conservator to make health care decisions). See generally Cynthia M. Garraty, Note, Durable Power of Attorney for Health Care: A Better Choice, 7 CONN. PROB. L. J. 115, 132 (1992) (noting that an inconsistent decision with the patient’s wishes or a decision that unnecessarily endangers the patient is subject to judicial review, and the court could decide not to enforce the decision); Richard Z. Kabaker, Durable Powers of Attorney, Health Care Proxies, and Medicaid, C854 ALI-ABA 591 (1993) (indicating that the Uniform Durable Power of Attorney Act does not prevent an interested party from attempting to have a court appoint a guardian or conservator for an incapacitated individual, and the conservator would supersede the authority of the designated agent).

10. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1148, at 3 (July 5, 1995); see SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1148, at 4 (May 16, 1995) (setting forth the CMA’s contention that if a resident of a skilled nursing facility was required to have two witnesses, there would be a problem created for those residents who do not have family members or friends to serve as witnesses).

11. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1148, at 3 (July 5, 1995); see Sherry Angel, For Elderly in Crisis, Ombudsmen Can Be Lifeline, L.A. TIMES, Oct. 2, 1991, at E3 (illustrating how ombudsmen are used to witness a signing of a durable power of attorney and to testify that the patient was fully aware of what he or she was doing); Denise Nelesen, Ombudsmen Serve Nursing-Home Seniors, SAN DIEGO UNION-TRIB., Feb. 4, 1995, at E-2 (explaining that an ombudsman is to witness the signing of a durable power of attorney for health care for residents in a skilled nursing facility in order to assure that the resident understands what he or she is signing and is not being coerced into signing); see also Angel, supra (explaining that an ombudsman can reassure the family knew what the patient knew what she was doing, which makes the family feel better about the patient’s decision).

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Administration of Estates; trusts and wills

Business and Professions Code § 6103.6 (amended); Probate Code §§ 2640.1, 2646, 21350.5, 21356 (new); §§ 1208, 2250, 2580, 6100, 6100.5, 15642, 15687, 21306, 21350, 21351, 21353, 21355 (amended). AB 1466 (Kaloogian); 1995 STAT. Ch. 730

Under existing law, violations of certain State probate code provisions regarding dual compensation and donative transfers are grounds for attorney discipline if the violation occurs on or after January 1, 1994. Chapter 730 makes a violation of these provisions grounds for attorney discipline only if the attorney knew or should have known of the facts leading to the violation.

Existing law also provides for numerous grounds on which a trustee may be removed. However, while prior law provided for the presumption for the

1. CAL. BUS. & PROF. CODE § 6103.6 (amended by Chapter 730); see id. (declaring that a violation of California Probate Code § 15687 or §§ 21350-21355 is grounds for attorney discipline); see also CAL. PROB. CODE § 15687 (amended by Chapter 730) (restricting dual compensation); id. § 15687(d) (amended by Chapter 730) (allowing the trustee, after disclosure of the nature of the compensation and relationship of the trustee to those receiving compensation, to obtain approval for dual compensation by either of the following: (1) an order pursuant to California Probate Code § 17200(b)(21), or (2) giving in advance 30 days' written notice to the persons entitled to such under California Probate Code § 17203; furthermore, within that 30-day period, persons entitled to notice may object to the proposed action by giving the trustee written notice or by filing a petition, and if the trustee receives such an objection during that 30-day period and wishes dual compensation, the trustee must then file a petition for approval); id. § 17200(b)(21) (West Supp. 1995) (noting that determining petitions filed pursuant to California Probate Code § 15687 and reviewing the reasonableness of compensation for legal services are considered proceedings concerning the internal affairs of a trust; moreover, in determining the reasonableness of compensation, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to California Probate Code § 15687); id. § 17203 (West Supp. 1995) (instructing that at least 30 days prior to the time set for hearing on the petition, the petitioner must mail the time and place of the hearing to all of the following persons: (1) all trustees; (2) all beneficiaries; and (3) the Attorney General, if the petition relates to a charitable trust subject to the Attorney General's jurisdiction—provided the Attorney General has not waived notice).

2. CAL. BUS. & PROF. CODE § 6103.6 (amended by Chapter 730).

3. See CAL. PROB. CODE § 84 (West 1991) (noting that "trustee" includes an original, additional, or successor "trustee," whether or not appointed or confirmed by a court).

4. Id. § 15642 (amended by Chapter 730); see, e.g., In re Gilmaker's Estate, 57 Cal. 2d 627, 632, 371 P.2d 321, 324, 21 Cal. Rptr. 585, 588 (1962) (stating that hostility between the beneficiary and the trustee is a ground for the removal of the trustee when the hostility impairs the proper administration of the trust); id. at 633, 371 P.2d at 325, 21 Cal. Rptr. at 589 (noting that the removal and substitution of a trustee is largely within the discretion of the trial court); Moore v. Bowes, 8 Cal. 2d 162, 165, 64 P.2d 425, 424 (1937) (holding that trustees are subject to removal whenever it appears that their private interests conflict with their trust duties and when it also appears that trust property has been appropriated to their own use; furthermore, the purpose of removal is not the infliction of a penalty for past behavior, but rather the preservation of the trust property); cf. FLA. STAT. ANN. § 130.14 (West 1990) (permitting any number of trustees to be removed for cause by the judge of the circuit court of the circuit in which the county is situated, upon petition signed by any bondholder or taxpayer, setting forth the cause of complaint; however, no trustee shall be removed without notice and an opportunity to be publicly heard, unless it appears that the accused trustee has voluntarily disappeared so that notice could not be provided); GA. CODE ANN. § 53-12-176(a) (1995) (specifying that a trustee may be removed in accordance with the terms of the trust instrument or upon application to the superior court by any
removal of a trustee if the trustee was a disqualified person, Chapter 730 deletes this presumption. In addition, if a court finds that the designation of the trustee was not consistent with the intent of the settlor or was the product of fraud, menace, duress, or undue influence, the person being removed as trustee must bear all costs of the proceeding, including reasonable attorney’s fees. Moreover, Chapter 730 specifies that the removal provision does not apply to instruments that became irrevocable on or before January 1, 1994, where an independent attorney has advised the trustor and signed a certificate to that effect, or where the

interested person showing good cause); HAW. REV. STAT. § 87-12 (1985) (allowing a trustee to be removed by the governor for good cause); IND. CODE ANN. § 8-18-20-18(a) (West Supp. 1994) (noting that a person seeking the removal of a trustee for neglect of duty, incompetence, inability to perform the trustee’s duties, or any other good cause may file a complaint in the circuit or superior court for the county in which the toll road authority is located); KAN. STAT. ANN. § 58-2412 (1994) (stating that trustees who have violated or attempted to violate any express trust, or have become insolvent, or for whose solvency there is reasonable doubt, or for other cause, in the discretion of the court having jurisdiction, may, on petition of any person interested, after hearing, be removed by the court with all vacancies in express trusteeships being filled); LA. REV. STAT. ANN. § 9:1789 (West 1991) (declaring that a trustee may be removed in accordance with the provisions of the trust instrument or by the proper court if sufficient cause has been shown); MISS. CODE ANN. § 91-9-303 (1994) (stating that when a majority of the local beneficiaries of any educational, charitable, or religious trust concludes that there exists irreconcilable hostility or tension between them and any or all of the trustees or others exercising authority over the administration of such trust, the majority of the local beneficiaries may file a bill of complaint in the chancery court of the county in which any part of the corpus of the trust is situated, declaring the grounds for relief and requesting a decree discharging the existing trustees and all others exercising control over the trust’s administration). See generally L.S. Tellier, Annotation, Grounds for Removal of Trustee of Charitable Trust, 75 A.L.R. 2d 449 (1961) (discussing the grounds upon which a trustee of a charitable trust may be removed); E. LeFevre, Annotation, Removal of Trustee of Voting Trust, 34 A.L.R. 2d 1136 (1954) (discussing the grounds upon which a trustee of a voting trust may be removed).

5. See 1993 Cal. Legis. Serv. ch. 293, sec. 6, at 1666-1667 (amending CAL. PROB. CODE § 15642) (declaring that if the sole trustee is a disqualified person, it is presumed that the trustee will be removed provided the court does not find that it is fair and equitable that the trustee continue to serve).

6. CAL. PROB. CODE § 15642 (amended by Chapter 730); see id. § 15642(a) (amended by Chapter 730) (authorizing a trustee to be removed in accordance with the trust instrument, by the court on its own motion, or on petition of a settlor, cotrustee, or beneficiary under California Probate Code § 17200); id. § 15642(b) (amended by Chapter 730) (listing the grounds for court removal of a trustee as follows: (1) where a breach of the trust has been committed by the trustee; (2) where the trustee is found to be insolvent or unfit to administer the trust; (3) where hostility or lack of cooperation among co-trustees hinders administration of the trust; (4) where the trustee fails or declines to act; (5) where the trustee's compensation is excessive under the trust; (6) where the sole trustee is a person described in California Probate Code § 21350(a), whether or not the person is the recipient of a donative transfer by the transferor, unless, based upon any evidence of the intent of the settlor and all other facts and circumstances, having been made known to the court, the court determines that it is consistent with the intent of the settlor that the trustee continue to serve and that this intent was not produced through fraud, menace, duress, or undue influence; moreover, any waiver by the settlor of the provision is void as against public policy; or (7) for other good cause); id. § 17200 (West Supp. 1995) (setting forth who may petition the court concerning the internal affairs of a trust, and the grounds that need to exist in order to petition); see also id. § 15642(e) (amended by Chapter 730) (noting that if it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee; moreover, the court may also suspend the powers of the trustee to the extent the court deems necessary).

7. Id. § 15642(c) (amended by Chapter 730).
trustor is related by blood or marriage\textsuperscript{8} to, or cohabits with, any one or more of the trustees, the person who drafted or transcribed the instrument, or the person who caused the instrument to be transcribed.\textsuperscript{9} Chapter 730 also provides that a court may order a person seeking the removal of a trustee to bear all or any part of the costs, including reasonable attorney's fees, if the court determines that the petition was made in bad faith and that removal would be contrary to the settlor's intent.\textsuperscript{10}

Before Chapter 730 was enacted, California law did not provide the specific time-frames for setting aside a donative transfer made as a result of fiduciary\textsuperscript{11} self-dealing.\textsuperscript{12} However, California law did provide that the statute of limitations for fraud is three years from the date the person discovered, or should have discovered, the facts constituting the fraud.\textsuperscript{13} Chapter 730 incorporates the statute of limitations for fraud into the provisions for transfer by an instrument other than a will\textsuperscript{14} where there is an allegation of fiduciary self-dealing.\textsuperscript{15} If the transfer is made by a will, the action must be commenced at any time after letters are first issued to a general representative and prior to an order for final distribution.\textsuperscript{16}

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\textsuperscript{8} See id. § 15642(f) (amended by Chapter 730) (defining the phrase "related by blood or marriage" as including persons within the seventh degree); see also BLACK'S LAW DICTIONARY 424 (6th ed. 1990) (defining "degree" as the grade or distance one thing may be removed for another; i.e., the distance, or number of removes, which separates two persons who are related by consanguinity); id. (stating that a brother is in the second degree of kindred).

\textsuperscript{9} CAL. PROB. CODE § 15642(b) (amended by Chapter 730); see id. (declaring that California Probate Code § 15642(b)(6) regarding the removal of a trustee does not apply should any of the following conditions be met: (1) the settlor is related by blood or marriage to, or is a cohabitant with, any one or more of the trustees, the person who drafted or transcribed the instrument, or the person who had the instrument transcribed; (2) the instrument is reviewed by an independent attorney who counsels the settlor about the nature of his or her intended trustee designation, and that attorney signs and delivers to the settlor and the designated trustee a specified form of certificate; and (3) after full disclosure of the relationships of those involved, the instrument is approved pursuant to an order under California Probate Code §§ 2580-2586). See generally id. §§ 2580-2586 (West 1991 & Supp. 1995) (setting forth the law on substituted judgments).

\textsuperscript{10} Id. § 15642(d) (amended by Chapter 730).

\textsuperscript{11} See id. § 39 (West 1991) (defining "fiduciary" as a personal representative, trustee, guardian, conservator, or other legal representative).

\textsuperscript{12} SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 6 (July 11, 1995). See generally Tamar Frankel, Fiduciary Law, 71 CAL. L. REV. 795 (1983) (discussing the nature of fiduciary relations and the policies, principles, and rules that govern fiduciaries).

\textsuperscript{13} CAL. CIV. PROC. CODE § 338(d) (West Supp. 1995).

\textsuperscript{14} See CAL. PROB. CODE § 88 (West 1991) (defining a will as including a codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will).

\textsuperscript{15} Id. § 21356(b) (enacted by Chapter 730); see id. (stating that an action to establish the invalidity of any transfer may only be commenced within certain periods; for instance, the time period in the case of any transfer other than a will, is within the later of three years after the transfer becomes irrevocable or is three years from the date the individual bringing the action discovers, or reasonably should have discovered, the facts material to the transfer).

\textsuperscript{16} Id. § 21356(a) (enacted by Chapter 730).
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Existing law requires notice to be given to beneficiaries who would presently be entitled to any payment under the terms of a trust. Chapter 730 further requires notice to be given to each person to whom income or principal would be required or authorized in the trustee's discretion to be currently distributed if the trust were in effect.

Existing law also provides that an ex parte temporary guardianship may be granted upon the filing of a petition. Furthermore, when a hearing on the permanent guardianship is scheduled for more than thirty days past the date the ex parte temporary guardianship was granted, the court must set a hearing to reconsider the temporary guardianship within thirty days. Notice of the hearing for reconsideration of the temporary guardianship must be given at least fifteen days prior to the date set for the hearing. Chapter 730 provides that the court

17. See id. § 24 (West 1991) (defining "beneficiary" as a person to whom a donative transfer of property is made or that person's successor in interest, and as a person in the following contexts: (1) as it relates to the decedent's intestate estate, "beneficiary" means an "heir"; (2) as it relates to the decedent's testate estate, "beneficiary" means a "devisee"; (3) as it relates to a trust, "beneficiary" describes one who has any present or future interest, either vested or contingent; and (4) as it relates to a charitable trust, "beneficiary" includes those entitled to enforce the trust).

18. Id. § 1208(b) (amended by Chapter 730); see id. § 82(a) (West 1991) (noting that "trust" includes both (1) a private or charitable express trust, wherever and however created and with additions thereto; and (2) a trust formed by judgment or decree under which the trust shall be administered in the same manner as an express trust); id. § 82(b) (West 1991) (noting that "trust" does not include any of the following: (1) constructive trusts and resulting trusts; (2) guardianships and conservatorships; (3) personal representatives; (4) totten trust accounts; (5) custodial arrangements according to the Uniform Gifts to Minors Act of the Uniform Transfers to Minors Act of any state; (6) business trusts taxed as corporations or partnerships; (7) investment trusts subject to regulation under the California law or other jurisdictions; (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 intended for the payment of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and (14) any arrangement under which an individual is nominee or escrowee for another).

19. Id. § 1208(b) (amended by Chapter 730); see id. (requiring that where there are no persons as described, notice must be given to each person who, according to the terms of the trust, would be entitled to any distribution if the trust were terminated at the time the notice is supposed to be given).

20. Id. § 2250(a), (b) (amended by Chapter 730).

21. Id. § 2250(d) (amended by Chapter 730).

22. Id. § 1511(a) (West Supp. 1995); id. § 2250(d) (amended by Chapter 730); see id. § 1511(b) (West Supp. 1995) (requiring notice to be served in a specified manner, or as authorized by the court, on all of the following persons: (1) the proposed ward if 12 years of age or older; (2) the person with legal custody of the proposed ward; (3) the parents of the proposed ward; and (4) any person nominated as a guardian for the proposed ward); id. § 1511(e) (West Supp. 1995) (requiring notice to be mailed, or as authorized by the court, to all of the following: (1) the spouse named in the petition; (2) the relatives named in the petition, except that if the petition is for the appointment of a guardian of the state, only the court may dispense with the notice requirement to any one or more of all of the relatives; and (3) the person caring for the proposed ward, if other than the person with legal custody); id. § 1511(f) (West Supp. 1995) (instructing that unless the court orders otherwise, notice shall not be given to any of the following: (1) the parents or other relatives of a proposed ward who has been placed with a licensed adoption agency; and (2) the parents of a proposed ward who has been declared free from their custody and control by judicial order); id. § 1511(g) (West Supp. 1995) (declaring that notice need not be given to any person if the court so orders upon a finding of either of the following: (1) The person cannot be given the notice, even with reasonable diligence; or (2) it would be contrary to the interest of justice to give notice).
may, for good cause, schedule the hearing for reconsideration of the temporary guardianship with less than fifteen days notice.\textsuperscript{23}

Prior to Chapter 730, California law did not provide for compensation to anyone other than the guardian or conservator\textsuperscript{24} who was actually appointed, and his or her counsel.\textsuperscript{25} Chapter 730 provides that when a person petitions the court for the appointment of a conservatorship, but another conservator is appointed while the petition is pending, the petitioning person may request that the court allow compensation and reimbursement of costs to the petitioner and attorney.\textsuperscript{26} However, the petition for compensation and reimbursement must be filed within ninety days after issuance of letters of conservatorship.\textsuperscript{27} After a noticed hearing, compensation and reimbursement which the court deems just and reasonable may be awarded to the petitioner and attorney.\textsuperscript{28} Chapter 730 makes this section retroactive.\textsuperscript{29}

Under existing law, after the filing of the inventory and appraisal, but not before the expiration of ninety days from the issuance of letters, a conservator may petition the court for an order allowing compensation to the conservator of the person or estate and/or to the attorney for the conservator.\textsuperscript{30} The compensation is charged to the estate of the conservatee.\textsuperscript{31} Chapter 730 clarifies that the court must determine only the fees that are payable from the estate and must not limit the fees payable from other sources.\textsuperscript{32}

Under current California law, a conservator is permitted to petition a court for an order of the court authorizing or requiring the conservator to take certain

\begin{itemize}
\item \textsuperscript{23}Id. § 2250(d) (amended by Chapter 730).
\item \textsuperscript{24}See id. § 2400(a) (West 1991) (defining “conservator” as the conservator of the estate, or the limited conservator of the estate to the extent that the individual’s powers and duties are specifically and expressly established by the order appointing the limited conservatorship); see also id. § 353 (West 1991) (defining “estate” as a trust estate, a decedent’s estate, a guardianship or conservatorship estate, or other property described within a donative transfer).
\item \textsuperscript{25}Id. § 2640(a) (West Supp. 1995).
\item \textsuperscript{26}Id. § 2640.1(a) (enacted by Chapter 730).
\item \textsuperscript{27}Id.; see id. § 2640.1(b) (enacted by Chapter 730) (declaring that notice of the hearing must be given for the period and in the manner provided in California Probate Code §§ 1460-1469). See generally id. §§ 1460-1469 (West 1991 & Supp. 1995) (discussing notices).
\item \textsuperscript{28}Id. § 2640.1(c) (enacted by Chapter 730); see id. (stating that upon the hearing, the court must make an order to allow the following: (1) any compensation or costs requested in the petition that the court finds just and reasonable to the person petitioning for the appointment of a conservator but not appointed, for his or her services rendered in connection with and to facilitate appointing a conservator, and costs incurred accordingly; and (2) any compensation or costs sought in the petition the court determines to be just and reasonable to the attorney for that person, for services rendered in connection with and to facilitate the conservator’s appointment, and costs incurred in connection therewith; moreover, the compensation and costs permitted must then be charged to the estate of the conservatee); id. (noting that if a conservator of the estate is not appointed, but a conservator of the person is appointed, the compensation and costs granted must be ordered by the court to be satisfied from the conservatee’s property, whether held outright, in trust, or otherwise).
\item \textsuperscript{29}Id. § 2640.1(d) (enacted by Chapter 730).
\item \textsuperscript{30}Id. § 2640(a) (West Supp. 1995).
\item \textsuperscript{31}Id. § 2640(c) (West Supp. 1995).
\item \textsuperscript{32}Id. § 2646 (enacted by Chapter 730).
\end{itemize}
proposed actions on behalf of a conservatee.\textsuperscript{33} These actions include, among others, minimizing current or prospective taxes or expenses of administration of the conservatorship estate, or of the estate upon the death of the conservatee.\textsuperscript{34} Chapter 730 allows the conservator to seek court permission to make a will on behalf of the conservatee.\textsuperscript{35}

\textsuperscript{33} Id. § 2580(a) (amended by Chapter 730).

\textsuperscript{34} Id. § 2580 (amended by Chapter 730); see id. § 2580(a) (amended by Chapter 730) (allowing the conservator or other interested person to file a petition for a court order authorizing or requiring the conservator to take action for any one or more of the following purposes: (1) benefiting the estate or the conservatee; (2) minimizing current or prospective taxes or expenses due to administering the conservatorship estate or the estate upon the conservatee’s death; or (3) providing gifts for any purposes, and to any charities, relatives, friends, or other persons or causes likely to receive gifts from the conservatee); id. § 2580(b) (amended by Chapter 730) (declaring that an action proposed in the petition may include, but is not limited to, the following: (1) making gifts from the estate of principal or income, or both, either outright or in trust; (2) conveying or releasing the powers of the conservatee as donee of a power of appointment; (3) creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the estate’s property, which may extend beyond the disability or life of the conservatee; (4) transferring to a trust created by the conservator or conservatee any property omitted from the trust unintentionally; (7) exercising conservatee options to purchase or exchange securities or other property; (8) exercising the conservatee rights to elect payment or benefit options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under certain plans and policies; (9) exercising the conservatee’s right to elect to take under or against a will; (10) exercising the conservatee’s right to disclaim any interest that may be disclaimed; (11) exercising the conservatee’s right to revoke a revocable trust or to surrender the right of revocation for such a trust; or (12) making certain elections).

\textsuperscript{35} Id. § 2580(b)(13) (amended by Chapter 730); see id. § 6100(b) (amended by Chapter 730) (authorizing a conservator to create a will for a conservatee after having been so authorized by a court order under California Probate Code § 2580; however, nothing in this section will prevent a conservatee who is mentally competent to make a will from revoking or amending a will created by the conservator or from producing a new will which is inconsistent with that of the conservator); id. § 6100.5(a) (amended by Chapter 730) (stating that an individual is mentally incompetent to make a will if at the time of creating the will either of the following is true: (1) The individual has insufficient mental capacity to understand the nature of the testamentary act, understand and remember the nature and situation of the person’s property, or recollect and comprehend the individual’s relations to living descendants, spouse, and parents, and those whose interests are affected by the will; or (2) the person suffers from a mental disorder with symptoms including hallucinations or delusions which result in the individual’s devising property in a manner which, but for the existence of the delusions or hallucinations, he or she would not have done); id. § 6100.5(c) (amended by Chapter 730) (noting that a conservator may create a will on behalf of a conservatee if he or she has been so authorized by a court order under California Probate Code § 2580); see also In re White’s Estate, 128 Cal. App. 2d 659, 665-66, 276 P.2d 11, 15 (1954) (holding that in a contest of a will on ground of unsoundness of mind, it was presumed that the testator was sane and competent to make the instrument, and the burden rested on the contestant to prove affirmatively, and by a preponderance of the evidence, that the testator was of unsound mind at the time of the execution of the will); id. at 666, 276 P.2d at 15-16 (stating that a testator is of sound and disposing mind and memory if at the time of making his will he has sufficient mental capacity to be able to understand the nature of the act, to understand and recollect the nature and situation of his property, and to understand and recollect his relations to the natural objects of his bounty); id. (noting that physical conditions and eccentricities of testators do not alone, as a matter of law, compel a conclusion of unsoundness of mind; moreover, neither do the infirmities of age and lapse of memory alone compel a conclusion of unsoundness of mind).
Lastly, Chapter 730 makes several technical changes.\textsuperscript{36} For example, Chapter 730 clarifies that proceedings to determine the invalidity of transfers or to remove trustees do not constitute a contest\textsuperscript{37} of the instrument.\textsuperscript{38} Additionally, Chapter 730 clarifies the different categories of "disqualified persons."\textsuperscript{39} Finally, Chapter 730 clarifies the date when an otherwise revocable probate instrument becomes irrevocable by reason of incapacity and subsequent death.\textsuperscript{40}

36. Senate Judiciary Committee, Committee Analysis of AB 1466, at 1 (July 11, 1995).

37. See Black's Law Dictionary 320 (6th ed. 1990) (noting that "contest," as used in a no-contest clause in a will, means any legal proceedings designed to thwart the testator's wishes).

38. Cal. Prob. Code § 21306(e), (d) (amended by Chapter 730); see id. § 21306(a), (b) (amended by Chapter 730) (noting that a "no-contest clause" is unenforceable against a beneficiary with probable cause who brings a contest that includes forgery or revocation).

39. Id. § 21350.5 (enacted by Chapter 730); see id. (stating that "disqualified person" means a person specified in California Probate Code § 21350(a), but only in cases where California Probate Code § 21351 does not apply); see also id. § 21350(a) (amended by Chapter 730) (declaring that except as provided in California Probate Code § 21351, no provision, or provisions, of any instrument will be valid with respect to a donative transfer to any of the following persons: (1) the drafter of the instrument; (2) a person related by blood or marriage to, who cohabitates with, or is employed by, the drafter of the instrument; (3) any partner or shareholder of any law partnership or law corporation in which the person described in paragraph one has an ownership interest, and any employee of any such law partnership or law corporation; (4) any person who is a fiduciary to the transferor, including, but not limited to, a conservator or trustee, who either transcribes or causes to be transcribed the instrument; and (5) an individual related by blood or marriage who cohabitates with, or is employed by a person described in California Probate Code § 21350(a)(1)); id. § 21350(b) (amended by Chapter 730) (explaining that "a person who is related by blood or marriage" to a person means all of the following: (1) the person's spouse or predeceased spouse; (2) those relatives within the third degree of the person and the spouse of the person; or (3) the spouse of any person described in paragraph two); id. § 21351 (amended by Chapter 730) (noting that California Probate Code § 21350 does not apply if any of the following conditions are met: (1) the transferor is related by blood or marriage to, or cohabitates with the transferee or the drafter of the instrument; (2) the instrument is reviewed by an independent attorney who counsels the client about the nature of the intended transfer and signs and delivers to the transferor and the drafter a specified form of certificate; (3) after full disclosure of the relationships of those individuals involved, the instrument is approved; or (4) the court determines by clear and convincing evidence, excluding the testimony of specified persons under California Probate Code § 21350(a), that the transfer was not produced through fraud, menace, duress, or undue influence; however, should the court find that the transfer was due to fraud, menace, duress, or undue influence, the disqualified person shall be responsible for all costs of the proceeding, along with reasonable attorney's fees); id. § 21351(c) (amended by Chapter 730) (stating that California Probate Code § 21351(d) will apply only to the following instruments: (1) any instrument executed by a person not a resident of California at the time of execution of the instrument; (2) any instrument other than transferring to a person described in California Probate Code § 21350(a)(1); and (3) any instrument executed prior to or on July 1, 1993, by a person who was a California resident at the time the instrument was executed); id. § 21353 (amended by Chapter 730) (declaring that "[i]f a transfer fails under this part, the transfer must be made as if the disqualified person predeceased the transferor without spouse or issue, but only to the extent that the value of the transfer exceeds the intestate interest of the disqualified person").

40. Id. § 21355 (amended by Chapter 730); see id. (declaring that Chapter 730 applies to instruments becoming irrevocable on or after September 1, 1993; however, for the purposes of California Probate Code § 21355, an instrument which is otherwise revocable or amendable will be deemed to be irrevocable if on September 1, 1993, the transferor was unable to change the disposition of his or her property due to incapacity and did not regain capacity before the date of death).
Chapter 293 of 1993 made numerous changes in the law relating to self-dealing by fiduciaries, particularly with regard to wills.41 Chapter 293 was prompted by the highly questionable acts of an Orange County attorney who, among other things, drafted wills naming himself as the major beneficiary.42 Due to these incidents, the State Bar and other individuals were prompted to seek the enactment of Chapter 293 which was aimed at prohibiting this type of behavior by attorneys.43

The Estate Planning, Trust and Probate Law Section of the State Bar (hereinafter "State Bar Section") sponsored Chapter 730 because of the belief that several provisions of Chapter 293 were unclear.44 Thus, Chapter 730 was enacted to make numerous technical and substantive revisions in Chapter 293 and other Probate Code provisions.45

A. Fiduciary Self-Dealing

1. Grounds for Attorney Discipline

Chapter 730 provides for attorney discipline if an attorney knew or should have known of the facts leading to a violation of the law regarding dual compensation or donative transfers.46 The author and the State Bar Section state that

41. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 2 (May 10, 1995); see also 1993 Cal. Legis. Serv. ch. 293, at 1664-70.
42. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 2 (May 10, 1995); see id. (noting that the highly questionable and possibly illegal acts of an Orange County attorney included drafting wills naming himself as major beneficiary, drafting trusts naming himself as the exclusive trustee of large, discretionary estates, naming himself to be the conservator of a client, and authorizing the payment of large amounts of money to his law firm); see also Davan Maharaj, Ex-Lawyer Told to Return Client's Bequest, L.A. TIMES, July 16, 1994, at A23 (discussing how an Orange County Superior Court judge ordered former probate lawyer James D. Gunderson to return $3.5 million he received from the estate of a 98 year old man); id. (noting that Gunderson's behavior prompted the Legislature to pass the 1993 law that invalidated bequests to attorneys who name themselves as beneficiaries).
43. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 2 (May 10, 1995).
44. id.
45. Id.
46. CAL. BUS. & PROF. CODE § 6103.6 (amended by Chapter 730); cf. In re Estate of Weinstock, 351 N.E.2d 647, 648 (N.Y. Ct. App. 1976) (holding that two attorneys, a father and son, were guilty of overreaching when they drafted a will for an 82 year old man they had never met and named themselves as executors); State v. Gulbankian, 196 N.W.2d 733, 737 (Wis. 1972) (holding that a routine practice by an attorney to name the attorney as executor was suspicious, and that it was unprofessional for the attorney-drafter to solicit, directly or indirectly, or to appear to solicit, that the attorney be named as executor). See generally Gerald P. Johnston, An Ethical Analysis of Common Estate Planning Practices—Is Good Business Bad Ethics?, 45 OHIO ST. L.J. 57 (1984) (discussing situations in which an attorney who has drafted a will is nominated as the executor).

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this provision provides for an appropriate standard of care by attorneys.\textsuperscript{47} However, proponents of Chapter 730 believe that this law does not unduly punish attorneys for facts that were beyond their ability to reasonably know.\textsuperscript{48}

2. Removal of Trustee

Chapter 730 eliminates the presumption for removal of a trustee where a trustee is a disqualified person.\textsuperscript{49} The disqualified person concept was the primary objective of Chapter 293.\textsuperscript{50} The concept sets forth those persons most likely to have a personal interest that would conflict with that of the trustor or a settlor of a will, and who would be in a position to influence the making of the trust or the will.\textsuperscript{51}

Chapter 730 clarifies that there are some circumstances in which the mere fact that one may be in a fiduciary relationship with the trustor, does not automatically mean the trustee should be removed.\textsuperscript{52} If the trustor wants the trustee to continue in his or her capacity, he or she should be able to do so absent evidence of fraud, duress, menace, or undue influence.\textsuperscript{53} Chapter 730 attempts to balance the interests of protecting vulnerable trustors with the rights of trustors to appoint the trustee of his or her choosing.\textsuperscript{54}

Chapter 730 also provides a court with the authority to order fees and costs, including attorney's fees, to be paid by a person petitioning for the removal of a trustee in bad faith.\textsuperscript{55} State Bar Section argues that where a person petitions for removal of a trustee in bad faith, it can negatively affect the trustor, the trustee, the beneficiaries, and the trust.\textsuperscript{56} Without Chapter 730, the trust and the beneficiaries pay for the cost of bad faith challenges.\textsuperscript{57}

\textsuperscript{47} SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 3 (July 11, 1995).
\textsuperscript{48} Id.
\textsuperscript{50} SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 4 (July 11, 1995).
\textsuperscript{51} Id. at 4-5.
\textsuperscript{52} Id. at 5.
\textsuperscript{53} Id.
\textsuperscript{54} Id.
\textsuperscript{55} CAL. PROB. CODE § 15642(d) (amended by Chapter 730).
\textsuperscript{56} SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 6 (July 11, 1995).
\textsuperscript{57} Id.; see id. (stating that if the trust and beneficiaries have to pay the cost of bad faith challenges, a situation could be created in which one beneficiary, without risk, could obstruct a trust and the interests of other beneficiaries by making such a challenge and forcing a settlement).
3. **Time-frame for Setting Aside Transfers by Self-Dealing**

Since transfers by instruments, other than wills, are usually ongoing, the general limitations for fraud are sufficient. However, this is not the case with wills since once the property has been distributed, it is difficult to re-open the estate to set aside a completed distribution. Thus, Chapter 730 gives sufficient time for a person claiming self-dealing to learn of the necessary facts and object to the distribution.

**B. Notice**

1. **Discretionary Beneficiaries**

Chapter 730 ensures that notice will be given to discretionary beneficiaries.

2. **Hearing for Temporary Guardianship**

State Bar Section noted that in some cases prior to Chapter 730, the court was persuaded to grant a guardianship without notice to the minor's parents. However, California law prevented the court from re-hearing the temporary guardianship until at least fifteen days after notice of the re-hearing. Chapter 730 allows the court to set the matter for re-hearing immediately upon notice to the parents, so that the issue of the temporary guardianship may be more quickly re-heard.

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58. *Id.* at 7.

59. *Id.*; *see id.* (noting that during the probating of the estate, notice is required to be given to all beneficiaries and, depending on the size of the estate and the time required to account, notice is required to be given to creditors; then, a proposed distribution must be made).

60. CAL. PROB. CODE § 21356 (enacted by Chapter 730). See generally Eliot J. Katz, Annotation, *Fraud as Extending Statutory Limitations Period For Contesting Will or Its Probate*, 48 A.L.R. 4TH 1094 (1986) (analyzing state and federal cases which have discussed the circumstances that the procurement of a will, or of a decree of probate of a will by fraud, tolls or extends the statutory limitations period for contesting the validity of the will or its probate).


62. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 13 (July 11, 1995).

63. CAL. PROB. CODE § 1511(a) (West Supp. 1995); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 13 (July 11, 1995).

C. Compensation

1. Petitioning Conservator

State Bar Section states that a petitioner may conduct a significant amount of fact-finding which enables a lawyer or other person to be appointed conservator.\(^6\) Chapter 730 now allows for compensation to that person and to that person's counsel.\(^6\)

2. Private Fee Arrangements in Probate Proceedings

State Bar Section notes that California law was designed to protect conservatees or wards from paying excessive compensation to fiduciaries appointed by the court.\(^6\) However, this was sometimes interpreted as preventing competent third parties from retaining and paying for professional services for the benefit of the conservatee.\(^6\) Chapter 730 requires the court only to determine the fees that are payable from the estate and will not limit the fees payable from other sources.\(^6\)

D. Powers of Conservator

1. Power to Make a Will

State Bar Section contends that it does not make sense to authorize a conservator to dispose of a conservatee's property by trust, but not by will, since these are similar types of transactions.\(^7\) Thus, Chapter 730 allows a conservator to make a will for a conservatee.\(^7\)

E. Technical Changes

Chapter 730 clarifies that proceedings to determine the invalidity of transfers or to remove trustees do not constitute a contest of the instrument, so that an innocent beneficiary is not inappropriately victimized.\(^7\) Moreover, Chapter 730

\(^6\) SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 13 (July 11, 1995).
\(^6\) CAL. PROB. CODE § 2640.1(a) (enacted by Chapter 730); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 13, (July 11, 1995).
\(^6\) SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 14 (July 11, 1995).
\(^6\) Id.
\(^6\) CAL. PROB. CODE § 2646 (enacted by Chapter 730); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 14 (July 11, 1995).
\(^7\) SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 14 (July 11, 1995).
\(^7\) CAL. PROB. CODE § 2580(b)(13) (amended by Chapter 730).
\(^7\) Id. § 21306(c), (d) (amended by Chapter 730); ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1466, at 6 (May 10, 1995).
Administration of Estates clarifies "disqualified persons" to remove any vagueness and uncertainty. These clarifications were enacted to clean-up the 1993 legislation.

Michelle M. Sheidenberger

Administration of Estates; trusts—prudent investor rule

Probate Code §§ 16008, 16042, 16223 (repealed); §§ 16045, 16046, 16047, 16048, 16049, 16050, 16051, 16052, 16053, 16054 (new); §§ 16003, 16012, 16040, 16200, 16401 (amended).

SB 222 (Beverly); 1995 STAT. Ch. 63

ADMINISTERING THE TRUST

Under prior law, a trustee was required to administer a trust with the care,
skill, prudence and diligence as would a prudent person under similar circumstances. Also, prior law provided that the appropriate standard of care for a trustee was not dependent upon the trustee's receipt of compensation.

In the administration of a trust, Chapter 63 declares that a trustee must instead exercise reasonable care, skill, and caution as would a prudent person under similar circumstances.

**INVESTING AND MANAGING THE TRUST**

Prior law held that a trustee, while investing and managing a trust, should act with the care, skill, prudence, and diligence of a prudent person under similar circumstances. Furthermore, under prior law a trustee had the express power to invest in both real or personal property. A trustee was under a duty, under prior law, to dispose of any trust property if the disposition would be an improper investment for the trustee to make.

Existing law provides that if a trust has multiple beneficiaries, the trustee must deal impartially with them. Chapter 63 further provides that a trustee must

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3. See [BLACK'S LAW DICTIONARY](http://example.com) 1387 (6th ed. 1990) (defining “skill” as being familiar with principles and processes of an art combined with the ability to apply these principles and processes in practice).

4. See id. at 1226 (6th ed. 1990) (defining “prudence” to mean such things as exercising carefulness, precaution, attentiveness and good judgment).


6. 1990 Cal. Stat. ch. 79, sec. 14, at 945 (enacting CAL. PROB. CODE § 16040(a)).

7. Id. (enacting CAL. PROB. CODE § 16041).

8. See BLACK'S LAW DICTIONARY 1265 (6th ed. 1990) (defining “reasonable care” as due care, considering the totality of the circumstances).

9. CAL. PROB. CODE § 16040(a) (amended by Chapter 63); see id. (providing also that a trustee must administer the trust as would a prudent person in a similar endeavor with the aim of accomplishing the purpose of the trust as shown in the trust agreement); id. § 16040(b) (incorporating 1990 Cal. Stat. ch. 79, sec. 14, at 945) (amended by Chapter 63) (granting a settlor the ability to either expand or restrict the standard utilized in California Probate Code § 16040(a) through express provisions declaring such intent in the trust agreements); id. § 16040(c) (amended by Chapter 63) (declaring that California Probate Code § 16040 is inapplicable to California Probate Code §§ 16045-16054); see also id. §§ 16045-16054 (enacted by Chapter 63) (providing that the prudent investor rule applies to the investment and management of trust assets).


11. Id. at 950 (enacting CAL. PROB. CODE § 16223).

12. Id. at 944 (enacting CAL. PROB. CODE § 16008(a)); see id. (granting an exception whereby a trustee could continue to hold property if retention was in the best interests of the trust or the furtherance of the purpose of the trust, as long as the trust agreement did not provide otherwise).

13. See CAL. PROB. CODE § 24(c) (West 1991) (defining “beneficiary” for the purposes of a trust as a person who has a present or future interest, whether vested or contingent).

14. Id. § 16003 (amended by Chapter 63); see [Keystone v. Keystone](http://example.com), 102 Cal. App. 2d. 223, 227, 227 P.2d 17, 21 (1951) (ruling that a trustee must act in the “highest good faith” when interacting with the trustee’s beneficiary); cf. COLO. REV. STAT. § 15-1.1-106 (Supp. 1995); 1995 Or. Laws 157 § 7 (mandating that when there is more than one beneficiary, a trustee must act impartially in the investment and management of the trust assets and take into account any differing interests between the beneficiaries).
consider any differing interests among the beneficiaries while remaining impartial.15

Under Chapter 63, a trustee owes a duty to the beneficiaries of the trust to comply with the prudent investor rule16 unless the settlor expressly provides otherwise in the trust agreement.17 A trustee may invest in any type of property or investment or employ a strategy so long as it does not conflict with the provisions of Chapter 63.18

Chapter 63 declares that a trustee must invest and manage trust assets as a prudent investor would, looking at the totality of the circumstances, including the trust purpose, terms, and distribution requirements.19 Chapter 63 further requires that while acting as a prudent investor, a trustee must use reasonable care, skill, and caution.20

In addition, any decisions made by the trustee regarding the investment and management of the trust must not be viewed in isolation under Chapter 63, but rather in the context of the trust portfolio as a whole and as part of an overall investment strategy considering both risk and return objectives reasonably suited to the trust.21 Chapter 63 further dictates that whether a trustee complied with the

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15. CAL. PROB. CODE § 16003 (amended by Chapter 63).
16. Id. §§ 16045-16054 (enacted by Chapter 63); see id. (setting forth the permissible actions by a trustee in the investment and management of trust assets).
17. Id. § 16046 (enacted by Chapter 63); see id. § 16046(a) (enacted by Chapter 63) (excepting from the general duty owed by trustees to beneficiaries to comply with the prudent investor rule, California Probate Code § 16046(b)); id. § 16046(b) (enacted by Chapter 63) (stating that a settlor, through express provisions in the trust agreement, can expand or restrict the prudent investor rule); id. (providing that a trustee is not liable to a beneficiary so long as the trustee acts in good faith reliance on the express provisions). See generally M.L. Cross, Annotation, Construction and Effect of Instrument Authorizing or Directing Trustee or Executor to Retain Investments Received Under Such Instrument, 47 A.L.R. 2d 187 (1956 & 1992) (discussing the effects of a trust which requires a trustee to retain certain trust assets).
18. CAL. PROB. CODE § 16047(e) (enacted by Chapter 63); cf. ALA. CODE § 19-3-120(a) (1990) (providing that a trustee, using reasonable business prudence, may invest in only certain enumerated classes of investments including such things as United States bonds, and Alabama county general obligation bonds).
19. CAL. PROB. CODE § 16047(a) (enacted by Chapter 63); cf. ARIZ. REV. STAT. ANN. § 14-7302 (1995) (declaring that a trustee should be held to the standard of a prudent person dealing with the property of another); NEB. REV. STAT. § 30-2813 (1989) (holding a trustee to the standard of a prudent person dealing with the property of another); WASH. REV. CODE ANN. § 11.100.020 (West 1987); WYO. STAT. § 4-8-101(a)(iii) (Supp. 1995) (providing that a trustee will be held to the standard of a prudent person in the management of the trustee's own affairs); Harvard College v. Amory, 26 Mass. 446, 461 (1830) (demanding that a trustee act as a prudent man would while managing a trust); In re Parks' Trust, 238 P.2d 1205, 1210 (Wash. 1951) (holding that a trustee who uses the same care, skill, and diligence dealing with the trust as an ordinarily prudent man would exercise dealing with his own property is not liable).
20. CAL. PROB. CODE § 16047(a) (enacted by Chapter 63).
21. Id. § 16047(b) (enacted by Chapter 63). But see In re Bank of New York, 323 N.E.2d 700, 703 (N.Y. 1974) (holding that although the portfolio increased in overall value, the trustee was still liable for individual investments).

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prudent investor rule is to be determined in light of the facts and circumstances existing at the time of the decision or action, not by hindsight.\textsuperscript{22}

Upon accepting a trusteeship or receiving trust assets, a trustee is required, within a reasonable time, to review the trust assets and make decisions regarding the disposition of the assets, in order to ensure compliance with the trust’s purpose, terms and distribution requirements, and the provisions of Chapter 63.\textsuperscript{23}

In addition, a trustee is required by Chapter 63 to make a reasonable effort to determine relevant facts concerning the investment and management of the trust assets.\textsuperscript{24}

Chapter 63 enumerates certain circumstances that a trustee should consider while investing.\textsuperscript{25} Also, Chapter 63 states that a trustee owes a duty to diversify the investments of a trust, unless doing so would be imprudent.\textsuperscript{26}

Under Chapter 63 a trustee may only incur such costs as are appropriate and reasonable in relation to the trust’s purpose, investment strategy, and any other circumstances.\textsuperscript{27}

\begin{itemize}
  \item \textsuperscript{22} CAL. PROB. CODE § 16051 (enacted by Chapter 63); cf. N.Y. EST. POWERS & TRUSTS LAW § 11-2.3(b)(1) (McKinney Supp. 1996) (declaring that whether a trustee complied with the prudent investor rule should be determined through consideration of the facts and circumstances existing at the time of the decision of the trust); In re Clark’s Will, 177 N.E. 397, 398 (N.Y. 1931) (holding that the factors for consideration in determining liability are those that existed at the time of the investment, not those which occurred later).
  \item \textsuperscript{23} Id. § 16051(d) (enacted by Chapter 63).
  \item \textsuperscript{24} Id. § 16051(d) (enacted by Chapter 63).
  \item \textsuperscript{25} Id. § 16051(d) (enacted by Chapter 63); see id. § 16047(c) (enacted by Chapter 63) (enumerating the following as a non-exhaustive listing of conditions for consideration in the investment and management of a trust: (1) economic conditions; (2) the effect of inflation or deflation; (3) the anticipated tax consequences of investment decisions or strategies; (4) the role each investment or course of action plays within the trust portfolio; (5) any total return from income and appreciation of capital; (6) the other resources of the beneficiaries known to the trustee as determined from information provided by the beneficiaries; (7) the demand for liquidity, regularity of income, and preservation or appreciation of capital; and (8) the uniqueness of the asset to the purpose of the trust or to one or more of the beneficiaries); cf. WASH. REV. CODE ANN. § 11.100.020 (West 1987) (listing the following factors to be considered by a fiduciary in the application of the total asset management approach: (1) probable income as well as the likely safety of the capital; (2) marketability of the investments; (3) term length of the investments; (4) duration of the trust; (5) liquidity needs; (6) requirements of the beneficiary or beneficiaries; (7) other assets of the beneficiary class including their earning potential; and (8) effect of investments in increasing or diminishing liability for taxes).
  \item \textsuperscript{26} Id. § 16051(d) (enacted by Chapter 63); cf. COLO. REV. STAT. ANN. § 15-1.1-103 (Supp. 1995) (mandating that a trustee diversify the investments of a trust unless special circumstances require nondiversification and the trustee reasonably determines that the purposes of the trust would not be served by diversification); Fla. STAT. ANN. § 518.111(1)(c) (West Supp. 1995) (providing that a trustee is under a duty to diversify unless the trustee reasonably believes it is in the interests of the beneficiaries and furthers the purposes of the trust not to diversify); N.Y. EST. POWERS & TRUSTS LAW § 11-2.3(b)(3)(C) (McKinney Supp. 1995) (requiring a trustee to diversify the corpus trust assets unless it is not in the best interest of the beneficiaries to do so, considering the purpose, terms, and provisions of the trust agreement); Steiner v. Hawaiian Trust Co., 393 P.2d 96, 105 (Haw. 1964) (declaring that the duty to diversify the trust assets is implied within the duty to act as a "reasonably prudent businessman" unless the trust expressly prohibits diversification). See generally P.G. Guthrie, Annotation, Duty of Trustee to Diversify Investments, and Liability for Failure to Do So, 24 A.L.R. 3d 730 (1969 & Supp. 1995) (discussing the duty of a trustee to diversify trust assets and the possibility of liability for failing to do so).
  \item \textsuperscript{27} CAL. PROB. CODE § 16050 (enacted by Chapter 63).
\end{itemize}
Finally, Chapter 63 stipulates that certain language included in the provisions of a trust authorizes any type of investment so long as such language complies with Chapter 63. 28

DELEGATING DUTIES RELATING TO THE TRUST

Existing law provides that a trustee shall not delegate acts which the trustee can reasonably be required to perform. 29 Where a trustee has delegated a matter to another person, the trustee must provide general supervision over the matter. 30

Chapter 63 allows a trustee to delegate investment and management functions only if prudent. 31 Additionally, Chapter 63 requires the trustee to use prudence in agent selection, in the determination of the scope and terms of the delegation, and in the periodic review of the agent's overall performance. 32 Chapter 63 also

28. Id. § 16053 (enacted by Chapter 63). Compare 1990 Cal. Stat. ch. 79, sec. 14, at 945 (enacting CAL. PROB. CODE § 16042) (providing that the prudent person standard was applicable to any trust, created on or before July 1, 1987, which refers to “investments permissible by law for investment of trust funds,” “legal investments,” “authorized investments,” or “investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of their capital,” or which utilizes synonymous terms that define the power of a trustee relating to investments) with CAL. PROB. CODE § 16053 (enacted by Chapter 63) (noting that if the following terms are utilized: “investments permissible by law for the investment of trust funds,” “legal investments,” “authorized investments,” “using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital,” “prudent man rule,” “prudent trustee rule,” “prudent person rule,” and “prudent investor rule,” it is implicit that such wording employs an investment or strategy permitted under Chapter 63).

29. CAL. PROB. CODE § 16012(a) (amended by Chapter 63); see id. (providing that a trustee may neither transfer the office of trustee to another person or delegate the entire administration of the trust to another person or a cotrustee). But see id. § 16012(c) (amended by Chapter 63) (stating that California Probate Code § 16012 is inapplicable to investment and management functions governed by California Probate Code § 16052); see also id. § 16052 (enacted by Chapter 63) (allowing a trustee to delegate investment functions, and enumerating a nonexhaustive list of areas under which the trustee must exercise prudence when delegating).

30. Id. § 16012(b) (amended by Chapter 63). But see id. § 16012(c) (amended by Chapter 63) (declaring that California Probate Code § 16012 is not applicable to the investment and management functions under California Probate Code § 16052); see also id. § 16052 (enacted by Chapter 63) (setting forth the circumstances in which a trustee may delegate investment and management functions and requiring the trustee to act prudently when so doing).

31. Id. § 16052(a) (enacted by Chapter 63); cf. FLA. STAT. ANN. § 518.112(2) (West Supp. 1995) (allowing a fiduciary to delegate investment functions so long as the fiduciary: (1) exercises reasonable care, judgment, and caution; and (2) gives written notice to the beneficiaries of the trust of the trustee’s intent to delegate within 30 days of the delegation, unless the right to receive notice has been waived by the beneficiaries).

32. CAL. PROB. CODE § 16052(a) (enacted by Chapter 63); see id. § 16052(a)(2) (enacted by Chapter 63) (providing that the scope and terms of the delegation must be consistent with the terms and purpose of the trust); id. § 16052(a)(3) (enacted by Chapter 63) (declaring that a trustee must review the agent’s overall performance and compliance with the terms of the delegation); cf. N.Y. EST. POWERS & TRUSTS LAW § 11-2.3(c) (McKinney Supp. 1996) (requiring a trustee to exercise care, skill and caution in the: (1) selection of
requires an agent to exercise reasonable care when performing delegated functions. 33

Under existing law, a trustee may be liable to the beneficiaries for the actions of an agent. 34 The provisions of Chapter 63 apply to all trusts created on or after its effective date. 35 For trusts created prior to Chapter 63’s effective date, the provisions of Chapter 63 will apply to any decisions or actions made after the effective date. 36

Under existing law, the trustee is awarded any powers enumerated in the trust instrument, and any powers conferred by statute, unless the agreement provides otherwise. 37 Chapter 63 provides that a trustee is granted the power to perform any act that a trustee would perform under the prudent investor rule in the administration, investment, and management of the trust. 38

**COMMENT**

The standard to which a trustee is held when administering, investing, and

33. **CAL. PROB. CODE § 16052(b)** (enacted by Chapter 63); **see id. § 16052(d)** (enacted by Chapter 63) (acknowledging that acceptance by an agent of a delegation of duties from a trustee constitutes submission to jurisdiction in state and federal courts in California); **see also BLACK’S LAW DICTIONARY** 1265 (6th ed. 1990) (defining “reasonable care”).

34. **CAL. PROB. CODE § 16401(b)(2)** (amended by Chapter 63); **see id.** (stating that a trustee is liable where the trustee delegates an undelegable act to an agent); **id. § 16401(b)(5)** (amended by Chapter 63) (declaring that where a trustee conceals the act of an agent, the trustee is liable); **id. § 16401(b)(6)** (amended by Chapter 63) (providing that a trustee who negligently fails to take reasonable steps to require its agent to redress a wrong where the trustee is aware of its agent’s wrongdoing, be it an act or omission, is liable); **id. § 16052(c)** (enacted by Chapter 63) (declaring that a trustee who complies with California Probate Code § 16401(a) is not liable for an agent’s actions); **see also id. § 16401(a)** (amended by Chapter 63) (noting that liability will not be found except as provided in California Probate Code § 16401); **id. § 16401(e)** (amended by Chapter 63) (declaring that prior law governs the liability of a trustee for the agent’s acts or omissions, which occurred prior to July 1, 1987). **Compare** 1990 Cal. Stat. ch. 79, sec. 14, at 961 (enacting **CAL. PROB. CODE § 16401(b)(1)**) (holding a trustee liable where the trustee has the power to direct an agent’s action) **with CAL. PROB. CODE § 16401(b)(1)** (amended by Chapter 63) (stating that a trustee is liable where the trustee directs the act of the agent). **Compare** 1990 Cal. Stat. ch. 79, sec. 14, at 961 (enacting **CAL. PROB. CODE § 16401(b)(3)**) (declaring that a trustee who does not use reasonable care in either the selection or retention of an agent is liable) **with CAL. PROB. CODE § 16401(b)(3)** (amended by Chapter 63) (holding a trustee liable for failure to use reasonable prudence in the selection or retention of the agent). **Compare** 1990 Cal. Stat. ch. 79, sec. 14, at 961 (enacting **CAL. PROB. CODE § 16401(b)(4)**) (stating that a trustee shall be liable where the trustee fails to exercise proper supervision over the agent’s conduct where the trustee has the power to supervise the agent) **with CAL. PROB. CODE § 16401(b)(4)** (amended by Chapter 63) (providing that where the trustee does not periodically review the agent’s overall performance and compliance with the terms of the delegation, the trustee may be liable).

35. **CAL. PROB. CODE § 16054** (enacted by Chapter 63).

36. **id.**

37. **id. § 16200** (amended by Chapter 63); **see id.** (providing that such powers are granted without the need to obtain court authorization).

38. **id. § 16200(c)** (amended by Chapter 63).
managing a trust has evolved over time in concert with the development of various investment tools. By enacting Chapter 63, the Legislature has now codified the Uniform Prudent Investor Act, which seeks to modernize the investment practices of fiduciaries.

In addition, with the enactment of Chapter 63, the Legislature formally recognized the importance of considering both risk and return while investing. Chapter 63 also provides additional protection to any trustee who makes a proper delegation of investment and management duties. Finally, Chapter 63 codifies

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39. See Jeffrey N. Gordon, The Puzzling Persistence of the Constrained Prudent Man Rule, 62 N.Y.U. L. REV. 52, 57-62 (1987) (analyzing the development of the prudent man rule and advocating that the rule has become obsolete); Robert A. Levy, The Prudent Investor Rule: Theories and Evidence, 1 GEO. MASON. U. L. REV. 1, 31 (1994) (encouraging the rejection of the prudent man standard and urging the adoption of the prudent investor rule); Gordon Williams, The Trouble with T-Bills, FINANCIAL WORLD, July 18, 1995, at 80 (discussing the evolution of the prudent man rule into the prudent investor rule); see also Harvard College v. Amory, 26 Mass. 446, 461 (1830) (rejecting the English rule which required investments in government securities by holding a trustee to the standard of that which "men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested"); King v. Talbot, 40 N.Y. 76, 96 (1869) (allowing a trustee to invest only in bonds with a fixed maturity and a definite rate of return); Shelby White, The Price of Prudence, FORBES, Sept. 25, 1995, at 229 (predicting that as new investment practices are developed, the prudent investor rule will likely become as archaic as the prudent man rule). See generally RESTATEMENT OF TRUSTS § 227(a) (1935) (declaring that a trustee owes a duty to the beneficiary to invest only as a prudent man, who is focusing primarily on the preservation of the estate and the amount of income to be derived, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested); RESTATEMENT (SECOND) OF TRUSTS § 227(a) (1957) (omitting the word "primarily" and requiring a trustee, while investing, to act as a prudent man, considering the desire for the preservation of the estate and the amount of income to be derived, would in the management of his property); RESTATEMENT (THIRD) OF TRUSTS § 227 (1990) (recognizing that a trustee owes a duty to the beneficiaries to invest and manage the corpus as a prudent investor would, considering the terms, purposes, and conditions of the trust).


41. Letter from Monica Dell’Osso, Executive Committee, Estate Planning, Trust and Probate Law Section, The State Bar of California, to Larry Doyle, Director, Office of Governmental Affairs, The State Bar of California (Apr. 24, 1995) (copy on file with the Pacific Law Journal); see Letter from Senator Robert G. Beverly, to Governor Pete Wilson (June 23, 1995) (copy on file with the Pacific Law Journal) (noting that the Uniform Prudent Investor Act, while primarily consistent with existing California law, emphasizes the prudent trustee’s duty to maximize return of the corpus through investments made through the balancing of risk and return).

42. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 222, at 5 (May 9, 1995); see also Williams, supra note 39 (declaring that diversification and asset allocation guard against risks inherent in investing trust assets); id. (noting that a trustee, in compliance with the prudent investor rule, may still buy certificates of deposit and Treasury bills but must also invest in stocks and mutual funds because certificates of deposit and Treasury bills do not protect against inflation).

43. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 222, at 5 (May 9, 1995); Letter from Senator Robert G. Beverly, supra note 41.
existing case law and finds a duty to diversify the trust assets.\textsuperscript{44} The enactment of Chapter 63 was virtually without opposition.\textsuperscript{45}

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\textsuperscript{44} CAL. PROB. CODE § 16048 (enacted by Chapter 63); see Letter from Monica Dell’Osso, supra note 41 (recognizing that the duty to diversify, while recognized in case law, was not yet codified and urging the enactment of SB 222 in order to codify the duty to diversify). \textit{Compare} CAL. PROB. CODE § 16048 (enacted by Chapter 63) (providing that a trustee must diversify the corpus unless doing so would be imprudent) \textit{with} Mandel v. Cemetery Bd., 185 Cal. App. 2d 583, 587, 8 Cal. Rptr. 342, 344 (1960) \textit{and} Day v. First Trust & Savings Bank of Pasadena, 47 Cal. App. 2d 470, 479, 118 P.2d 51, 56 (1941) (determining that being a prudent investor implies diversification of assets). See \textit{generally} Lynn Asinof, \textit{A Helping Hand; New Rule Puts Assistance at Trustees’ Fingertips}, CHI. TRIB., May 8, 1995, at C1 (noting that under the prudent investment rule a trustee who invests solely in treasury bonds may be subject to lawsuits).

\textsuperscript{45} Letter from Senator Robert G. Beverly, supra note 41; see Letter from Stan Ulrich, Assistant Executive Secretary, California Law Revision Commission, to Senator Charles Calderon, (May 3, 1995) (copy on file with the \textit{Pacific Law Journal}) (noting that the legal, academic, and financial communities uniformly support the enactment of SB 222); \textit{see also} id. (listing the State Bar Estate Planning, Trust and Probate Law Section; the Los Angeles County Bar Association; and the California Bankers Association as supporters of Chapter 63); Letter from John F. Foran, Nossaman, Gunther, Knox & Elliott, to Senator Robert Beverly (May 3, 1995) (copy on file with the \textit{Pacific Law Journal}) (declaring that Federated Investors, the largest provider in the United States of investment products to trustees, supports the enactment of SB 222); Letter from Marshal A. Oldman, Chairman, Legislative Monitoring Committee, Los Angeles County Bar Association, to Senator Robert G. Beverly (Apr. 5, 1995) (copy on file with the \textit{Pacific Law Journal}) (declaring that the Los Angeles County Bar Association supports the enactment of SB 222 because it will encourage certainty in the investment area).