

Memorandum 75-41

Subject: Study 81 - Transfer of Out-of-State Trusts to California

Attached to this memorandum is the recommendation relating to transfer of out-of-state trusts to California. This is a new topic which was originally brought to the attention of the Commission by one of the Commission's consultants in private practice who found that there were no statutory guidelines for transfer of a trust which was administered in another jurisdiction, and which the parties desired to transfer to California because of change of residence of the beneficiaries or other changed circumstances.

The legislation proposed to deal with the problem is attached to the recommendation. It is suggested that a new article be added to the Probate Code which would provide a comprehensive procedure for dealing with requested transfers. Once transfer of the trust is approved by the court and a trustee appointed to deal with the property in California, it is proposed that the trust be administered with accordance with Article 2.5 (commencing with Section 1138) of the Probate Code. This would allow the court to supervise administration of these transferred trusts in the same manner that inter vivos and other trusts which are not under the control of the Probate Court are supervised.

For the convenience of the Commission, there has been attached to this memorandum copies of Article 2.5 (commencing with Section 1138) of the Probate Code (Inter Vivos and Other Trusts) and Article 3 (commencing with Section 1139)(Transfer to Another Jurisdiction).

Respectfully submitted,

Jo Anne Friedenthal
Legal Counsel

EXHIBIT I

ARTICLE 2.5 INTER VIVOS AND OTHER TRUSTS [NEW]

See.

- 1138. Trust defined.
- 1138.1 Petition by trustee, beneficiary or remainderman to superior court; grounds.
- 1138.2 Orders and decrees of court; other necessary action.
- 1138.3 Venue; "principal place of administration of the trust" defined.
- 1138.4 Petition; verification; filing; contents.
- 1138.5 Dismissal of petition; grounds.
- 1138.6 Setting petition for hearing; notice of time and place; posting; mailing; personal delivery; proof; law governing proceedings.
- 1138.7 Appointment of guardian ad litem; threatened exercise of power not conferred upon trustee; contents of petition; mailing copy.
- 1138.8 Resignation of trustee or cotrustee; appointment of successor trustee.
- 1138.9 Vacancy in trusteeship; appointment of successor trustee.
- 1138.10 Grounds for appeal.
- 1138.11 Cumulative and nonexclusive remedies.
- 1138.12 Legislative intent.
- 1138.13 Applicability of article.

Article 2.5 added by Stats.1970, c. 849, p. 1582, § 2, urgency, eff. Sept. 3, 1970, operative July 1, 1971.

§ 1138. Trust defined

As used in this article, "trust" means a written voluntary express trust, with additions thereto, whether created by will or other than by will which is entirely administered or to be entirely administered in this state. As used in this article, "trust" does not mean a trust subject to court supervision under Article 1 (commencing with Section 1120) of this chapter or Chapter 10 (commencing with Section 175) of Division 1, a Totten trust, a business trust which is taxed as a partnership or corporation, an investment trust subject to regulation under the laws of this state or any other jurisdiction, a common trust fund, a voting trust, a deed of trust, a transfer in trust for purpose of suit or enforcement of a claim or right, a trust for the primary purpose of paying debts, dividends, interest, salaries, wages, pensions, or employee benefits of any kind, an arrangement under which a person is a nominee or escrow holder for another, a trust subject to supervision of the Attorney General under Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code during the period when no private beneficiary or remainderman has or may claim an interest therein, nor a trust declared exempt from supervision under Section 12583 of the Government Code.

§ 1138.1 Petition by trustee, beneficiary or remainderman to superior court; grounds

(a) A trustee, beneficiary, or remainderman may petition the superior court for any of the following purposes:

- (1) Determining to whom the property shall pass or be delivered upon final or partial termination of the trust, to the extent such determination is not concluded by the trust instrument.
- (2) Settling the accounts and passing upon the acts of the trustee.
- (3) Authorizing the trustee to accept additions to the trust when the trust instrument does not prohibit such additions.
- (4) Instructing the trustee.
- (5) Compelling the trustee to submit his accounts and report his acts as trustee to a beneficiary or remainderman when it appears that the trustee has failed to submit an accounting and report within 60 days after written request of a beneficiary or remainderman and no accounting and report has been made within six months preceding such request.
- (6) Granting to the trustee powers not expressly contained in the trust instrument to the extent provided in Section 1120.2.
- (7) Fixing, directing, or allowing payment of compensation to the trustee in accordance with Section 2274 of the Civil Code.

- (8) Appointing a trustee.
 - (9) Accepting the resignation of a trustee.
 - (10) Removing a trustee.
 - (11) Authorizing or directing removal of the trusts or assets of the trust to another jurisdiction pursuant to the procedure provided in Article 3 (commencing with Section 1139), Chapter 19, Division 3.
 - (12) Directing the relief provided in Section 2279.1 of the Civil Code.
- (b) The terms of a trust subject to this article may expressly or by necessary implication limit or eliminate the authority of any trustee, beneficiary, remainderman or other person to petition the court under this article for any one or more of the purposes enumerated in subdivision (a).

§ 1138.2 Orders and decrees of court; other necessary action

The court may make all orders and decrees and take all other action necessary or proper to dispose of the matters presented by the petition.

§ 1138.3 Venue; "principal place of administration of the trust" defined

Proceedings under this article shall be commenced in the superior court of the county in which is located the principal place of administration of the trust. As used in this section, the "principal place of administration of the trust" is the trustee's usual place of business where the day-to-day records pertaining to the trust are kept or the trustee's residence if he has no such place of business. In the case of cotrustees, the principal place of administration is the usual place of business where such records are kept, or, if none, the usual place of business or residence of any of the cotrustees as agreed upon by them, or, if none, the county in which any trustee resides or maintains a place of business.

§ 1138.4 Petition; verification; filing; contents

Each proceeding under this article shall be commenced by filing a verified petition which shall state facts showing that the petition is authorized under this article and the terms of the trust.

§ 1138.5 Dismissal of petition; grounds

The court may dismiss a petition when it appears:

- (a) That the proceeding is not reasonably necessary for the protection of the interests of a trustee or for the protection of the interests of beneficiaries or remaindermen; or
- (b) That nondisclosure of the terms, assets, management, and administration of the trust is in the best interests of the objects of the trust.

§ 1138.6 Settling petition for hearing; notice of time and place; posting; mailing; personal delivery; proof; law governing proceedings

(a) Upon the filing of a petition provided for in this article, the clerk shall set the petition for hearing and shall cause a notice of the time and place of hearing thereof to be posted at the courthouse of the county where the proceeding is pending at least 30 days before the date of the hearing, giving the name of the trustor, the name of the petitioner, and the nature of the petition, referring thereto for further particulars, and stating the time at which the petition will be heard.

At least 30 days before the time set for the hearing of the petition, the petitioner shall cause notice of the time and place of hearing thereof to be mailed to the trustee of the trust when he is not the petitioner, to any cotrustee not petitioning, and to all beneficiaries and remaindermen of the trust, including all persons in being who may participate in the corpus or income of the trust, addressed to them at their respective offices or places of residence, if known, and if not known such notice shall be given as the court may require in the manner provided in Section 413.30 of the Code of Civil Procedure.

When a cotrustee not petitioning, a beneficiary, or a remainderman, in person or by counsel, has served and filed a notice of appearance directed to the petitioner or his counsel in connection with the particular petition and proceeding, or a written request for a copy of the petition, and given an address to which notices or such copy may be sent or delivered, the petitioner shall cause a copy of the petition to be sent by mail to such cotrustee or person or counsel within five days after service of notice of appearance or receipt of such request.

Personal delivery is the equivalent of mailing.

Proof of the giving of notice and of mailing or personal delivery of a copy of the petition shall be made at the hearing. If it appears to the satisfaction of the court that the notice has been given as required, the court shall so find in its order, and the order, when it becomes final, shall be conclusive upon all persons.

(b) Proceedings under this article shall be governed, whenever possible, by the provisions of this article, and when the provisions of this article do not appear applicable, the provisions of Division 3 (commencing with Section 300) shall apply.

(c) The court for good cause may shorten the time required for performance of any act required by this section.

§ 1138.7 Appointment of guardian ad litem; threatened exercise of power not conferred upon trustee; contents of petition; mailing copy

(a) At any stage of a proceeding under this article the court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. Where not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests.

(b) When it appears from the petition that the trustee seeks or is to be given instructions to exercise a power not conferred upon him, the petition shall set forth the particulars of, and the necessity for, the action sought to be taken. In addition to the notice required by Section 1138.6, when the petition relates to the exercise of a power not conferred or where the petition relates to determining to whom the property shall pass or be delivered upon final or partial termination of the trust, a copy of the petition shall be attached to, and mailed with, copies of the notice, and, at least 10 days before the time set for the hearing of the petition, the court or judge shall appoint a suitable person or persons who shall appear and act as guardian ad litem of any person or persons of a designated class who are not ascertained or in being or who may become beneficiaries or may participate in the trust.

(c) Sections 373 and 373.5 of the Code of Civil Procedure shall not apply to the appointment of a guardian ad litem under the provisions of this article.

§ 1138.8 Resignation of trustee or cotrustee; appointment of successor trustee

Unless otherwise expressly provided in the trust instrument a trustee or cotrustee may resign at any time. Such resignation and the appointment of a successor trustee shall be effected as provided in the trust instrument. If the trust instrument is silent a trustee may file with a court a petition tendering his resignation as such trustee and the court shall accept such resignation making any order appointing a successor trustee and other order which may be necessary for the preservation of the estate. The liability of the resigning trustee or the sureties on his bond, if any, shall not be discharged, released, or affected in any manner by the resignation, but shall continue until the trustee has delivered all of the estate to the person whom the court shall appoint to receive it.

§ 1138.9 Vacancy in trusteeship; appointment of successor trustee

If a trustee of a trust subject to this article dies, resigns, falls or declines to act, cannot be identified, is incapable of acting for any reason, or is removed, or a vacancy in the trusteeship is otherwise created or exists, and the trust instrument does not provide a method for appointing a successor trustee, the court shall have the power to appoint a trustee to fill the vacancy upon the petition of the trustee or anyone interested in the trust estate.

§ 1138.10 Grounds for appeal

An appeal may be taken from any final order or decree made pursuant to paragraph (1), (2), (4), (6), (7), (8), (10), or (11) of subdivision (a) of Section 1138.1, or from an order dismissing the petition or denying a motion to dismiss under Section 1138.5.

§ 1138.11 Cumulative and nonexclusive remedies

The remedies provided under this article are cumulative and nonexclusive.

§ 1138.12 Legislative intent

It is the intent of the Legislature in enacting this article that the administration of trusts subject to this article proceed expeditiously and free of judicial intervention subject to the jurisdiction of the courts of this state as invoked pursuant to this article or otherwise invoked pursuant to law.

§ 1138.13 Applicability of article

This article shall apply to all trusts created on or after the operative date of this article, and to any trust created prior thereto which by its terms or by amendment expressly makes this article applicable to such trust. However, this article shall not apply to any trust the terms and provisions of which expressly or by necessary implication make this article inapplicable to such trust.

ARTICLE 3. TRANSFER TO ANOTHER JURISDICTION [NEW]

Sec.

- 1139. Application of article.
- 1139.1 Transfer of place of administration or assets.
- 1139.2 Petition for transfer; contents.
- 1139.3 Notice and hearing; notice to persons named in petition and attorney general; opposition.
- 1139.4 Order; requirements.
- 1139.5 Manner of transfer; conditions; discharge of trustee.
- 1139.6 Other trusts; proceedings.
- 1139.7 Beneficiary defined.

Article 3 was added by Stats. 1971, c. 958, p. 1869, § 9.

§ 1139. Application of article

(a) This article applies to (1) a trust over which jurisdiction continues after distribution, as provided by Section 1120; (2) a trust subject to Chapter 10 (commencing with Section 175) of Division 1; (3) a trust subject to Article 2.5 (commencing with Section 1138) of this chapter; and (4) any other trust to which the provisions of this article are made applicable by statute or trust instrument.

(b) This chapter shall not be construed to prevent the transfer of the place of administration of a trust or of trust assets to another jurisdiction in any case where judicial approval of a transfer was not required under law in effect immediately prior to the effective date of this article.

(c) This article shall not apply to any proceeding or action pending on the effective date of this article.

§ 1139.1 Transfer of place of administration or assets

An order may be made by the superior court for the transfer of the place of administration of a trust or the transfer of some or all of the assets of a trust to another jurisdiction outside of California: (a) where, under Section 1120 of this code, jurisdiction is retained over any trust created by the will of a non-resident decedent, which will has been probated in the state of his residence and a duly appointed, qualified and acting domiciliary trustee has entered upon and is engaged in the administration of the same trust with respect to the assets situated in that state; or (b) where the trustee or beneficiary of a trust to which this article applies desires to transfer the place of administration of a trust to another jurisdiction outside of California, unless the trust instrument precludes the transfer of the place of administration to another jurisdiction outside of California.

§ 1139.2 Petition for transfer; contents

A petition for an order authorizing a transfer may be filed by the trustee or by a beneficiary of a trust. The petition shall be verified and shall set forth:

(1) The names, ages and places of residence of the trustee administering the trust in this state, the trustee, including any domiciliary trustee, in the other jurisdiction to whom administration of the trust or such trust assets will be transferred, and all persons who are interested in the trust as beneficiaries, so far as known to petitioner.

(2) Whether the trustee in the other jurisdiction has agreed to accept the trust. If he has, the acceptance or a true copy shall be attached as an exhibit to the petition, or otherwise filed with the court.

(3) A statement of the character, condition, location and value of the property comprising the assets sought to be transferred.

(4) A general statement of the qualifications of the trustee who will administer the trust in the other jurisdiction; the amount of his bond, if any; the nature and value of the assets of any trust of the decedent or trustor under his administration in the other jurisdiction; and the name of the court, if any, having jurisdiction of such trustee or of his accounts or in which a proceeding may be had, with respect to administration of the trust or the trustee's accounts.

(5) Whether there is any pending civil action in this state against the trustee.

(6) A statement of the reasons for the transfer.

§ 1139.3 Notice and hearing; notice to persons named in petition and attorney general; opposition

Upon the filing of such petition the clerk shall set the same for hearing and shall give notice of such hearing as provided in Section 1200 of this code at least 30 days before the time set for the hearing of the petition. Petitioner, at least 30 days prior to the time so set for hearing, shall cause to be mailed to each of the persons named in the petition, at their respective places of residence therein stated, a copy of such notice. If the trust involves or may involve a charitable trust, bequest or devise of the character specified in Section 328, a copy of the notice shall be mailed to or served upon the attorney general at least 20 days before the hearing. Any person interested in the trust, either as trustee, beneficiary or otherwise, may appear and file written grounds in opposition thereto.

§ 1139.4 Order; requirements

The court may, in its discretion, grant the petition and order the trustee to transfer the trust assets or to change the place of administration to the other jurisdiction, if, after hearing, it appears to the court:

(1) That the transfer of the trust assets to a trustee in another jurisdiction, or that the transfer of the place of administration of the trust to another jurisdiction, would facilitate the economical and convenient administration of the trust and promote the best interests of the trust and those interested therein.

(2) That the substantial rights of residents of this state will not be materially affected thereby.

(3) That transfer will not violate the terms of the trust.

(4) That any new trustee, to whom the trust assets are to be transferred, is qualified and able to administer the trust or such assets upon the same trusts.

§ 1139.5 Manner of transfer; conditions; discharge of trustee

If a transfer is ordered, the court may direct the manner of transfer and impose such terms and conditions as may be just, including but not by limitation, a requirement for the substitution of a successor trustee in any pending litigation in this state. The delivery in accordance with the order of the court is a full discharge of the trustee in relation to all property embraced in the order.

§ 1138.6 Other trusts; proceedings

In the case of trusts not subject to Chapter 10 (commencing with Section 175) of Division 1, or Article 1 (commencing with Section 1120) or Article 2.5 (commencing with Section 1138) of this chapter, a proceeding pursuant to this article shall be commenced in the superior court of the county in which is located the principal place of administration of the trust, as defined in Section 1138.3, unless the statute providing for the proceeding otherwise provides.

§ 1138.7 Beneficiary defined

For the purposes of this article, beneficiary means all persons in being who shall or may participate in the corpus or income of the trust.

RECOMMENDATION

relating to

TRANSFER OF OUT-OF-STATE TRUSTS TO CALIFORNIA

The increasing mobility of individuals and the expansion of investment of assets of trusts in different jurisdictions has created some problems with regard to the proper and most convenient place for administration of trusts involving present California residents or property now located in California. In recognition of the need to change the place of administration in appropriate cases, a number of states have enacted legislation authorizing transfer of a locally administered trust to another state.¹ For example, California, which previously had permitted such transfer only in very limited situations,² in 1971 enacted Probate Code Sections 1139-1139.7³ to give superior courts discretion to order the transfer of trusts or assets of trusts from California to another jurisdiction upon a finding that: (1) the transfer will facilitate the economical and convenient administration of the trust and promote the best interests of the trust and those interested therein, (2) the substantial rights of residents of this state will not be materially affected thereby, (3) the transfer will not violate the terms of the trust, and (4) any new trustee, to whom the trust assets will be transferred, is qualified and able to administer the trust.⁴

The legislation in other states usually allows transfer when the beneficiaries reside in the state to which transfer is to be made. Typically, the statutes require that, prior to the transfer, the court

-
1. See, e.g., Ky. Rev. Stat. § 386.170; Mass. Gen. Laws, Ch. 206, § 29 (1955); Mich. Stat. Ann. §§ 27.3178(364), 27.3178(365) (1962); N.C. Gen. Stat. §§ 36-6 through 36-8 (1966); Va. Code Ann. § 26-64 (1969); Wis. Stat. Ann. § 701.23 (1974).
 2. Prob. Code §§ 1132-1136 (Cal. Stats. 1953, Ch. 350)(repealed). This procedure permitted transfer to another jurisdiction of trusts created by a nonresident decedent which consisted of assets of less than \$7,500 under the jurisdiction of the California court.
 3. Cal. Stats. 1971, Ch. 958, § 9.
 4. Prob. Code § 1139.4.

in the jurisdiction to which transfer is to be made appoint a qualified trustee with the requisite bond to administer the trust in the transferee state.⁵

The problem in California is the lack of concomitant legislation providing a specific procedure for the acceptance of a transfer to this state of a trust which has been under the supervision of a court in another jurisdiction. Although there have been some cases in which California probate courts have actually accepted such a transfer, it is not at all clear what procedures should be used to effectuate such transfers or in which court jurisdiction should lie.⁶ Since California residents are often beneficiaries of trusts originally established and administered elsewhere, it would seem beneficial for California to adopt a specific procedure to provide for acceptance of transfer of an out-of-state trust when it is in the best interest of the parties.⁷

In 1970, the Legislature adopted a comprehensive procedure for the administration of a variety of written voluntary express trusts which do not fall within the scope of the probate court as ancillary to the administration of a decedent's estate.⁸ Under this procedure, a trustee, beneficiary, or remainderman may petition the superior court for a broad array of purposes which encompass all matters dealing with supervision over administration of a trust.⁹ This procedure is ideally suited for the administration of trusts transferred to this state from other jurisdictions.

5. See statutes cited in note 1 supra. See generally 5 A. Scott, The Law of Trusts § 613 (3d ed. 1967).

6. 3 N. Condee, California Practice, Probate Court Practice § 1850 (2d ed. 1964).

7. See Condee, op. cit., supra note 2; Restatement of Conflict of Law § 271, Comment g.

8. Prob. Code §§ 1138-1138.13. The courts had held that the probate court had no general equity jurisdiction for the administration of trusts which had not come to the probate court as part of the administration of an estate. See Wells Fargo Bank v. Superior Court, 32 Cal.2d 1, 193 P.2d 721 (1948); Gillette v. Gillette, 122 Cal. App. 640, 10 P.2d 760 (1932). The need for this legislation providing for a procedure for administration of the large number of trusts which do not come within Probate Code Section 1120 was clearly pointed out in Wile, Judicial Assistance in Administration of California Trusts, 14 Stan. L. Rev. 321 (1961).

9. Prob. Code § 1138.1.

In view of the need for a specific procedure to facilitate transfer of trusts administered in other jurisdictions to this state, the Commission recommends the adoption of legislation with the following features:

(1) A trustee or beneficiary of a trust subject to continuing supervision of administration in a jurisdiction outside of California may petition the superior court for an order accepting transfer of place of administration to California and appointing a trustee¹⁰ to administer the trust in California.

(2) The court may, in its discretion, grant the petition upon a finding that: (a) the transfer will facilitate the economical and convenient administration of the trust and promote the best interests of the trust and those interested therein, (b) the substantial rights of residents of California will not be affected thereby, (c) the transfer will not violate the terms of the trust, (d) the trustee to be appointed to administer the trust in California is willing and able to serve, and (e) the court in the jurisdiction transferring administration has approved the transfer.

(3) When appropriate to facilitate transfer from another jurisdiction, the California court may issue a conditional order prior to approval of the transfer, appointing a trustee to administer the trust in California and indicating that, upon issuance of the order of transfer by the court having jurisdiction over the administration, the transfer to California will be approved.

10. In most cases where trust administration is transferred from another jurisdiction to California, the trustee or a newly appointed trustee will be a resident of California. One important reason for a transfer is to relieve the trustee in the original jurisdiction from the onerous obligations of administering a trust when the assets of the beneficiaries are located in another state. Except for the restriction on foreign corporations other than national banks serving as trustees in California (Fin. Code § 1503), there is no requirement that a trustee be a California resident. See 7 B. Witkin, Summary of California Law, Trusts § 30 (8th ed. 1974); Restatement (Second) of Trusts § 94 (19); see also J. Cohan, Drafting California Irrevocable Inter Vivos Trusts § 14.31 (Cal. Cont. Ed. Bar 1973). If a trustee appointed in another state is qualified, willing, and able to administer the trust in California, the court should have discretion to permit the trustee to administer the trust in California subject to bonding and other statutory requirements. Civil Code Section 1018 requires a nonresident fiduciary to appoint an agent for service for tax purposes.

(4) Upon transfer to California, the trust will be administered in accordance with Article 2.5 (commencing with Section 1138) of Chapter 19 of the Probate Code.

(5) Venue for supervision of administration shall be in the "principal place of administration of the trust" as defined in Probate Code Section 1138.3. If the court in its discretion appoints as trustee a natural person who is not a resident of California, venue for supervision of administration may be in the superior court in a county where either one of the beneficiaries resides or where a substantial portion of the assets of the trust are or will be located.

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

An act to amend Sections 1138 and 1138.3 of, and to add Article 4 (commencing with Section 1139.10) to, the Probate Code, relating to transfer of out-of-state trusts to California.

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

043/158

§ 1138. "Trust" defined

SECTION 1. Section 1138 of the Probate Code is amended to read:

1138. As used in this article, "trust" means a written voluntary express trust, with additions thereto, whether created by will or other than by will which is entirely administered or to be entirely administered in this state or administration of which is transferred to this state pursuant to Article 4 (commencing with Section 1139.10) of this chapter . As used in this article, "trust" does not mean a trust subject to court supervision under Article 1 (commencing with Section 1120) of this chapter or Chapter 10 (commencing with Section 175) of Division 1, a Totten trust, a business trust which is taxed as a partnership or corporation, an investment trust subject to regulation under the laws of this state or any other jurisdiction, a common trust fund, a voting

trust, a deed of trust, a transfer in trust for purpose of suit or enforcement of a claim or right, a trust for the primary purpose of paying debts, dividends, interest, salaries, wages, pensions, or employee benefits of any kind, an arrangement under which a person is a nominee or escrow holder for another, a trust subject to supervision of the Attorney General under Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code during the period when no private beneficiary or remainderman has or may claim an interest therein, nor a trust declared exempt from supervision under Section 12583 of the Government Code.

Comment. Section 1138 is amended to include within the definition of trusts to be administered in accordance with the provisions of this article any trust transferred to this state from another jurisdiction under the provisions of Article 4 (commencing with Section 1139.10).

§ 1138.3. Venue; "principal place of administration of the trust" defined

043/159

SEC. 2. Section 1138.3 of the Probate Code is amended to read:

1138.3. (a) Proceedings under this article shall be commenced in the superior court of the county in which is located the principal place of administration of the trust.

(b) As used in this section, the "principal place of administration of the trust" is the :

(1) The trustee's usual place of business where the day-to-day records pertaining to the trust are kept or the trustee's residence if he has no such place of business.

(2) In the case of cotrustees, the principal place of administration is the usual place of business where such records are kept, or, if none, the usual place of business or residence of any of the cotrustees

as agreed upon by them, or, if none, the county in which any trustee resides or maintains a place of business.

(c) In the case of a trust transferred to this state from another jurisdiction for purposes of administration in this state pursuant to Article 4 (commencing with Section 1139.10), proceedings under this article shall be commenced in the superior court of the county described in Section 1139.11.

Comment. Section 1138.3(c) makes the proper venue for trusts transferred to California from another jurisdiction pursuant to Article 4 the same as the venue for filing the petition under Section 1139.11. If a California resident is appointed as trustee by the court, venue is determined on the basis of "principal place of administration of the trust" as defined in paragraphs (1) and (2) of subdivision (b). If the trustee is a nonresident, venue is proper in the county where either any beneficiary resides or where a substantial portion of the assets are or will be located. See Section 1139.11.

043/160

§§ 1139.10-1139.16 (added)

SEC. 3. Article 4 (commencing with Section 1139.10) is added to Chapter 19 of Division 3 of the Probate Code, to read:

Article 4. Transfer From Another Jurisdiction

§ 1139.10. Application of article

1139.10. (a) This article applies to any written voluntary express trust or portion thereof, whether created by will or otherwise, subject to continuing administration by a court in another jurisdiction outside of this state when transfer of place of administration to this state is sought.

(b) This chapter shall not be construed to prevent transfer of the place of administration of a trust or of trust assets to this state from another jurisdiction in any case where judicial approval of the transfer was not required under the law in effect immediately prior to the effective date of this article.

Comment. Section 1139.10 makes Sections 1139.10-1139.16 applicable to the transfer of the place of administration to California of trusts administered in another jurisdiction outside of California. This procedure applies to trusts administered in foreign countries as well as those administered in sister states. Subdivision (b) makes clear that the enactment of these sections is not intended to prevent transfer in those cases in which approval was not previously considered necessary, e.g., where the court in the other jurisdiction did not require the consent of the California court or appointment of a trustee to serve in California prior to permitting transfer.

405/814

§ 1139.11. Petition for transfer; venue

1139.11. A petition for an order accepting transfer of place of administration of a trust from another jurisdiction to this state may be filed by the trustee or a beneficiary of the trust in the superior court of any county where:

- (a) Any beneficiary of the trust resides;
- (b) A substantial portion of the assets of the trust are located or will be located; or
- (c) If a resident of this state is to be appointed as trustee, the petition shall be filed where the proposed "principal place of administration of the trust" (as defined by paragraphs (1) and (2) of subdivision (b) of Section 1138.3 of the Probate Code) is located.

Comment. Section 1139.11 sets out the venue for a petition for an order accepting transfer of place of administration of a trust from another jurisdiction to this state. If the trustee to be appointed by the court to administer the trust is a nonresident, venue is proper in the county where either any beneficiary resides or where a substantial portion of the assets are or will be located. If a California resident is to be appointed trustee by the court, venue is determined on the basis of a "principal place of administration of the trust" as defined in paragraphs (1) and (2) of subdivision (b) of Section 1138.3. Venue is the same for filing the petition as for administration of the trust. See Section 1138.3.

043/161

§ 1139.12. Contents of petition

1139.12. The petition shall be under oath and shall set forth:

(a) The names, ages, and places of residence of:

(1) The trustees administering the trust in the other jurisdiction.

(2) The proposed trustee to whom administration of the trust in this state will be transferred.

(3) All persons who are interested in the trust as beneficiaries as far as known to petitioner.

(b) Whether a petition or appropriate request for transfer of place of administration of the trust to this state which complies with the procedural requirements of the court in the jurisdiction outside of this state where the trust is administered has been filed with the court in the other jurisdiction and the status of such petition.

(c) Whether the trustee proposed to administer the trust in this state has agreed to accept the trust and to the change of place of administration. If the trustee has agreed to accept the trust and to

the change of place of administration, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(d) A general statement of the qualification of the trustee who will administer the trust in this state and the amount of fiduciary bond to be requested, if any.

(e) A copy of the trust instrument or a statement of the terms of the trust instrument.

(f) A statement of the character, condition, location, and value of the property comprising the assets of the trust.

(g) A statement of the reasons for the transfer.

Comment. Section 1139.12 sets out the requirements for a petition for an order authorizing transfer of a trust from another jurisdiction to California. The information to be included in the petition will inform the court on the questions of identification of interested parties, the terms of the trust instrument and assets of the trust, the satisfaction of requirements for transfer in the other jurisdiction, and the reason for the requested transfer. The section is patterned after Probate Code Section 1139.2.

It should be noted that a foreign corporation other than a national banking association authorized to conduct trust business in this state cannot act as trustee in California. Fin. Code § 1503.

043/162

§ 1139.13. Notice and hearing

1139.13. (a) Upon the filing of the petition, the clerk shall set the petition for hearing, shall give notice of the hearing as provided in Section 1200 at least 30 days before the time set for the hearing, and shall cause to be mailed to each of the persons named in the petition, at their respective places of residence therein stated, a copy of such notice.

(b) If the trust involves or may involve a charitable trust, bequest, or devise of the character specified in Section 328, a copy of the notice shall be mailed to or served upon the Attorney General at least 20 days before the hearing.

(c) The court for good cause may shorten the time required for performance of any act required by this section.

(d) Any person interested in the trust, either as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

Comment. Section 1139.13 is based upon Section 1139.3. The section sets out the method and time limitations for notification of the hearing. Subdivision (d) allows any interested party to appear and file written opposition to the petition.

043/164

§ 1139.14. Order accepting transfer and appointing trustee

1139.14. The court may, in its discretion, grant the petition and issue an order accepting transfer of place of administration of the trust from another jurisdiction to this state, to be administered in accordance with Article 2.5 (commencing with Section 1138), appoint a trustee to administer the trust in this state, and require the trustee to post appropriate bond, if necessary, if after hearing the court determines all of the following:

(a) The transfer of place of administration of the trust to this state from the other jurisdiction will facilitate the economical and convenient administration of the trust and promote the best interests of the trust and those interested therein.

(b) The substantial rights of residents of this state will not be materially affected by the transfer.

(c) Transfer will not violate the terms of the trust.

(d) The trustee appointed by the court to administer the trust in this state is qualified, willing, and able to administer the trust.

Comment. Section 1139.14 gives the court discretion to transfer place of administration of a trust from another jurisdiction to this state provided that the court having jurisdiction has approved the transfer. The provisions of Article 2.5 (commencing with Section 1138) govern administration of trusts transferred under this article.

043/166

§ 1139.15. Conditional order accepting transfer of place of administration

1139.15. When appropriate to facilitate transfer of place of administration of a trust subject to continuing administration in another jurisdiction, the court may issue a conditional order appointing a trustee to administer the trust in this state and indicating that transfer of place of administration to this state will be accepted if transfer is approved by the appropriate court of the other jurisdiction.

Comment. Section 1139.15 provides a method whereby the California court can indicate its willingness to accept jurisdiction over a trust presently administered in another jurisdiction where the law of the other jurisdiction requires appointment of a trustee in the proposed new place of administration prior to approving transfer. See, e.g., Mass. Gen. Laws, Ch. 206, § 29 (1955); N.C. Gen. Stat. §§ 36-6 through 36-8 (1966); see Recommendation Relating to Transfer of Out-of-State Trusts to California, 13 Cal. L. Revision Comm'n Reports 0000 (1976).

§ 1139.16. "Beneficiary" defined

1139.16. For purposes of this article, "beneficiary" means all persons in being who shall or may participate in the corpus or income of the trust.

Comment. Section 1139.16 is the same as Section 1139.7. It eliminates the requirement of appointment of a representative for unborn beneficiaries.