

First Supplement to Memorandum 86-34

Study L - Assembly Bill 2652 - Comprehensive Trust Bill

The Commission has received the attached letter from Assembly Member Gary A. Condit requesting that the Commission consider adding an amendment to Assembly Bill 2652 to deal with a matter of concern to Assembly Member Condit.

A letter from David L. Gianelli, attached to the letter from Assembly Member Condit, indicates the problem and suggests language to solve it. You should read the letter.

Probate Code Section 1127.5 reads as follows:

1127.5. Upon the petition of a nonprofit corporation named or designated as trustee in a will or acting as a successor trustee thereunder within the scope of its own charitable purposes and trust, the court may name as substitute or successor trustee a charitable corporation of which the nonprofit corporation is the sole member without requiring any bond not therefore required of the nonprofit corporation.

It is suggested in Mr. Gianelli's letter that the following be substituted for the existing language of Section 1127.5:

1127.5. Unless it is otherwise provided in the instrument creating the trust, a nonprofit [charitable] corporation named or designated as trustee in a will or named by a court as a substitute or successor trustee, which action thereunder is within the scope of its own charitable purposes and trust, shall not be required to give bond [unless the court in its discretion, and upon petition of an interested person, determines that such bond shall be required].

The language in brackets is suggested by Mr. Gianelli as optional provisions.

What action does the Commission wish to take on Mr. Condit's request the this amendment be added to Assembly Bill 2652?

Respectfully submitted,

John H. DeMouilly
Executive Secretary



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ASSEMBLY RURAL CAUCUS

March 26, 1985
Sacramento, California

John DeMouilly
California Law Revision Committee
4000 Middlefield Road, Suite #D-2
Palo Alto, CA 94303-4739

Dear Mr. DeMouilly: *John*

I have been in touch with Assemblyman McAlister's office regarding amendments to AB 2652. They informed me that your Committee is the sponsor of this measure and to contact your office.

I have enclosed a proposed amendment for your consideration that I would like added to this bill. This amendment would change the way the text reads in the Probate Code §1127.5. Please review it, and if you have any technical questions contact David L. Gianelli at (916) 443-2051.

I would appreciate your prompt response as to your position on this amendment. Please contact my Legislative Aide, P. J. Whittingham, if any other information or assistance is needed.

Sincerely,

Gary A. Condit
GARY A. CONDIT

GAC:pj

Enclosure

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March 3, 1986

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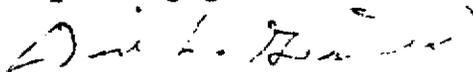
Dear DeeDee:

I have included the text of how I feel P.C. §1127.5 should read to make it consistent with the way our experience has shown that Superior Court judges are interpreting it. Although the section heading indicates that no bond is required of a nonprofit corporate trustee, the literal language of the section seems to indicate that only charitable corporations (a term that is not defined under California law - at least in the Corporations Code), of which the nonprofit corporation is a member, may be designated as substitute or successor trustee to serve without bond. It also seems to require that the charitable corporation can serve without bond only if the nonprofit corporation was named in the will to act as trustee and only upon petition of the nonprofit corporation.

Our proposal would bring the law closer to that of most other states which require bond be given only if the testator so requests it in the will. Bond still may be required in the court's discretion without a provision in the will if an interested person requests it. "Interested person" is intended to be defined the same way as it is use throughout the Probate Code.

DeeDee, I really appreciate your help on this. Let me know if there is any other information needed or if I can be of any assistance. Thanks.

Very truly yours,



DAVID L. GIANELLI

DLG:mar

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P.C. §1127.5

Unless it is otherwise provided in the instrument creating the trust, a nonprofit (charitable) corporation named or designated as trustee in a will or named by a court as a substitute or successor trustee, where action thereunder is within the scope of its own charitable purposes and trust, shall not be required to give bond (unless the court in its discretion, and upon petition of an interested party, determines that such bond shall be required).

*Optional provisions are in parenthesis.