

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

Recognition of Trustees' Powers

March 1990

This tentative recommendation is being distributed so interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Comments sent to the Commission are a public record, and will be considered at a public meeting of the Commission. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe it should be revised.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN JUNE 1, 1990.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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Letter of Transmittal

This tentative recommendation would make a third person liable for costs and attorney's fees incurred by the trustee in court proceedings to confirm the existence of a statutory power where the third person unreasonably refuses to accept the existence of the power.

The Commission is informed that some third persons are unwilling to rely on the automatic statutory powers, despite the Trust Law provisions relieving the third person from liability and any duty of inquiry. The Commission is interested in learning whether, in the experience of those commenting on this tentative recommendation, this problem is a significant one that merits a legislative solution.

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

RECOMMENDATION

The Trust Law provides a set of statutory powers that are automatically granted a trustee, except to the extent that the powers are limited in the trust instrument.¹ This automatic powers scheme avoids the need to repeat the statutory powers in the trust instrument.

The Trust Law protects third persons who deal with the trustee in good faith and for value and without actual knowledge that the trustee is exceeding the trustee's powers or exercising them improperly.² The Trust Law focuses on the trustee's duty to exercise powers consistently with fiduciary principles, rather than on the question of whether a power has been granted by the trust, as under former law.³ The statute makes clear that the third person does not have a duty to inquire into the existence or manner of exercise of the power.⁴

These elements of the Trust Law seek to improve the efficiency of transactions between trustees and third persons and to avoid the expense and delay that result from the need to petition for court confirmation of the existence of a power.

1. Prob. Code §§ 16200(b), 16220-16249.

2. Probate Code Section 18100 provides:

18100. With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, if the third person acts in good faith and for a valuable consideration and without actual knowledge that the trustee is exceeding the trustee's powers or improperly exercising them:

(a) The third person is not bound to inquire whether the trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise.

(b) The third person is fully protected in dealing with or assisting the trustee just as if the trustee has and is properly exercising the power the trustee purports to exercise.

3. See former Civ. Code § 2267; former Prob. Code § 1120.2. Under former law, the trustee had only the powers conferred by the trust instrument and a few statutory powers, unless additional powers were granted by the court. See *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501, 543 (1986).

4. Protecting persons acting in good faith in transactions with a trustee brings trust law into conformity with modern developments in the law applicable to negotiable instruments, securities, and bank accounts. See *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501, 593 & n.374 (1986).

However, the Commission is informed that this purpose is being thwarted in some cases by overly cautious third persons who are unwilling to rely on the automatic statutory powers and the relief from liability and any duty of inquiry provided by the Trust Law. Accordingly, the Commission recommends that the Trust Law be revised to provide that a third person who unreasonably refuses to accept the exercise of a statutory trustee's power is liable for costs and attorney's fees incurred in proceedings necessary to obtain court confirmation of the power.

PROPOSED LEGISLATION

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

An act to add Section 18105 to the Probate Code, relating to trusts.

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

Probate Code § 18105 (added). Liability for unreasonable refusal to accept exercise of statutory trustee's power

SECTION 1. Section 18105 is added to the Probate Code, to read:

18105. If a third person dealing with a trustee unreasonably refuses to accept the exercise of a trustee's power provided in Article 2 (commencing with Section 16220) of Chapter 2 of Part 4 of Division 9, the third person is liable for costs and attorney's fees incurred in any action or proceeding necessary to confirm the existence of the statutory power.

Comment. Section 18105 is a new provision intended to make more effective the statutory grant of trustees' powers. See Sections 16200(b) (statutory powers granted, except as limited by trust instrument), 16220-16249 (statutory powers of trustees). A third person is liable under this section only where the refusal to accept the existence of the trustee's statutory power is unreasonable. Thus, a third person is not liable under this section where a question arises concerning a power granted only in the trust instrument, or where there is legitimate doubt about whether the trust instrument contains a limitation on the exercise of one of the statutory powers set forth in Sections 16220-16249.