

RESOLUTION 3-06-03

DIGEST

Temporary Trustees: Rights and Duties

Amends Probate Code section 17206 to provide for specific powers and limitations on powers of temporary trustees similar to the powers enumerated for special administrators.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

None known.

Reasons:

This resolution amends Probate Code section 17206 to provide for specific powers and limitations on powers of temporary trustees similar to the powers enumerated for special administrators. This resolution should be disapproved because it is likely to complicate the administration of trusts by temporary trustees.

This resolution is modeled on the provisions which apply to a special administrator in an estate proceeding. In an estate proceeding, where a special administrator is acting (usually because of a contest over admission of the will to probate), the bulk of the special administrator's powers and duties are governed by the Probate Code. In the case of a trust proceeding, however, the Probate Code governs only in a situation where there is no provision in the trust directing or limiting actions by the trustee.

This resolution's proposed language is likely to increase the level of confusion in this area. For instance, the proposed amendment spells out that the power to sell property is available to a temporary trustee, after an order of the court. If the trust instrument says that a trustee may sell property without prior court order, the trust instrument should govern over the provisions of the statute.

Although there may be problems in individual cases under current law, those problems can be resolved more easily by individual orders regarding a specific temporary trustee. A blanket change in the law is neither necessary nor desirable.

SECTION/COMMITTEE REPORT

TRUSTS AND ESTATES SECTION EXECUTIVE COMMITTEE

Recommendation: **DISAPPROVE**

Reasons:

This resolution would add unnecessary complexity to the statute, and the court already has sufficient power to define the rights and duties of a temporary trustee.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 17206 to read as follows:

1 §17206

2 The court in its discretion may make any orders and take any other action necessary or

3 proper to dispose of the matters presented by the petition, including appointment of a temporary
4 trustee to administer the trust in whole or in part. A temporary trustee shall have powers duties and
5 obligations as follows:

6 (a) Except where the order appointing a temporary trustee provides otherwise, a temporary
7 trustee has all of the powers of a successor trustee under Section 15660.

8 (b) Except as otherwise restricted by the court, where the order appointing a temporary
9 trustee specifies that the powers of the temporary trustee are limited, the temporary trustee has the
10 power to do all of the following without further order of the court:

11 (1) Take possession of all of the real and personal property of the trust and preserve it from
12 damage, waste, and injury.

13 (2) Collect all claims, rents, and other income belonging to the trust.

14 (3) Commence and maintain or defend suits and other legal proceedings.

15 (4) Sell perishable property.

16 (c) Where the order appointing a temporary trustee specifies that the powers of the temporary
17 trustee are limited, the temporary trustee has the power to do all of the following on order of the
18 court:

19 (1) Borrow money, or lease, mortgage, or execute a deed of trust on real property, in the
20 same manner as a successor trustee.

21 (2) Pay the interest due or all or any part of an obligation secured by a mortgage, lien, or
22 deed of trust on property in the trust, where there is danger that the holder of the security may
23 enforce or foreclose on the obligation and the property exceeds in value the amount of the obligation.
24 This power may be ordered only on petition of the temporary trustee or any interested person, with
25 any notice that the court deems proper, and shall remain in effect until appointment of a successor
26 trustee. The order may also direct that interest not yet accrued be paid as it becomes due, and the
27 order shall remain in effect and cover the future interest unless and until for good cause set aside or
28 modified by the court in the same manner as for the original order.

29 (3) Exercise other powers that are conferred by order of the court.

30 (d) A temporary trustee appointed to perform a particular act has no duty to take any other
31 action to protect the trust.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Beverly Hills Bar Association

STATEMENT OF REASONS

Existing Law: Provides for the appointment of a temporary trustee but does not specify the duties powers and obligations.

This Resolution: Provides that the temporary trustee has all of the powers of a successor trustee unless specifically limited.

The Problem: Probate Code section 8544 provides a specific statement as to the powers duties and obligations of a special administrator of a decedent's estate who is appointed to fill a temporary vacancy in office and to provide interim protection for the estate. Probate Code section 17206 similarly provides for the appointment of a temporary trustee but does not specify the duties powers and obligations. As a result temporary trustees often cannot provide specific authority for their acts and are prevented from carrying out their duties when third parties refuse to recognize the authority of the temporary trustee. This resolution would provide that the temporary trustee has all of the powers of a successor trustee unless specifically limited. It would enumerate the powers duties and obligations of a limited temporary trustee using language similar to that of Section 8544.

IMPACT STATEMENT

This resolution affects Probate Code sections 15642, 16420 and 17200 regarding the appointment of temporary trustees. It may affect other Probate Code sections. There are no additional costs.

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