

AMENDED IN SENATE JULY 18, 1995

AMENDED IN SENATE JULY 6, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1466**

**Introduced by Assembly Member Kaloogian**

February 24, 1995

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An act to amend Section 6103.6 of the Business and Professions Code, and to amend Sections 1208, 2250, 2580, ~~3002~~, 6100, 6100.5, 15642, 15687, 21306, 21350, 21351, 21353, and 21355 of, and to add Sections 2640.1, 2646, ~~3100.5~~, 21350.5, and 21356 to, the Probate Code, relating to trusts and wills.

LEGISLATIVE COUNSEL'S DIGEST

AB 1466, as amended, Kaloogian. Trusts and wills.

(1) Under existing law, a violation of specified provisions of law regarding dual compensation and donative transfers are grounds for attorney discipline if the violation occurs on or after January 1, 1994.

This bill would make a violation of these provisions grounds for attorney discipline only if the attorney had actual knowledge of the facts leading to the violation.

(2) Existing law prescribes requirements for giving notice to a trust or trustee and notice of a hearing for reconsideration of a temporary guardianship.

This bill would revise these requirements, as specified.

(3) Existing law authorizes a conservator to petition a court for an order authorizing or requiring the conservator to take

a proposed action to benefit the conservatee or the estate, to minimize taxes or expenses of administration of the estate, or to provide gifts, as specified. Existing law provides for the compensation of a guardian, conservator, and attorney under guardianship or conservatorship proceedings.

This bill would permit a conservator to make a will for the conservatee if the conservator has petitioned for and been granted that authority. The bill would provide that, in proceedings for compensation, the court shall only determine fees that are payable from the estate of the ward or conservatee.

The bill would, if a person has petitioned for the appointment of a particular conservator and another conservator was appointed while the petition was pending, but not before a specified time, authorize that person and that person’s attorney to petition the court for an order fixing and allowing compensation and costs, as specified.

~~(4) Existing law defines “community property” and “transaction” for purposes of provisions of existing law regarding the management or disposition of community property where a spouse lacks legal capacity.~~

~~This bill would redefine “community property” to delete existing exclusion of community property in a revocable trust and would provide that a court may authorize separate property to be included in a transaction, as specified.~~

~~(5) Existing law provides for the removal of a trustee on the basis of specified grounds, the enforceability of a no-contest clause, for the compensation of a trustee who is an attorney, and for the invalidation of donative transfers.~~

This bill would among other things, revise the grounds for removal of a trustee and the definition of a disqualified person, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 6103.6 of the Business and  
2 Professions Code is amended to read:



1 6103.6. Violation of Section 15687 of the Probate  
2 Code, or of Part 3.5 (commencing with Section 21350) of  
3 Division 11 of the Probate Code, shall be grounds for  
4 discipline, if the attorney had actual knowledge of the  
5 facts leading to the violation. This section shall only apply  
6 to violations that occur on or after January 1, 1994.

7 SEC. 2. Section 1208 of the Probate Code is amended  
8 to read:

9 1208. (a) Except as provided in subdivision (b), if  
10 notice is required to be given to a trust or trustee, notice  
11 to trust beneficiaries is not required.

12 (b) Subject to subdivision (c), where the personal  
13 representative and the trustee are the same person, or  
14 where no trustee has been appointed, notice shall be  
15 given to (1) each person to whom income or principal  
16 would be required or authorized in the trustee's  
17 discretion to be currently distributed if the trust were in  
18 effect, or (2) if there are no such persons, to each person  
19 who, under the terms of the trust, would be entitled to  
20 any distribution if the trust were terminated at the time  
21 the notice is required to be given.

22 (c) Notice to trust beneficiaries is not required under  
23 subdivision (b) where the trust has more than one trustee  
24 and notice is given to a cotrustee who is not a personal  
25 representative.

26 SEC. 3. Section 2250 of the Probate Code is amended  
27 to read:

28 2250. (a) On or after the filing of a petition for  
29 appointment of a guardian or conservator, any person  
30 entitled to petition for appointment of the guardian or  
31 conservator may file a petition for appointment of:

32 (1) A temporary guardian of the person or estate or  
33 both.

34 (2) A temporary conservator of the person or estate or  
35 both.

36 (b) The petition shall state facts which establish good  
37 cause for appointment of the temporary guardian or  
38 temporary conservator. The court, upon such petition or  
39 other showing as it may require, may appoint a temporary  
40 guardian of the person or estate or both, or a temporary



1 conservator of the person or estate or both, to serve  
2 pending the final determination of the court upon the  
3 petition for the appointment of the guardian or  
4 conservator.

5 (c) Unless the court for good cause otherwise orders,  
6 not less than five days before the appointment of the  
7 temporary guardian or temporary conservator, notice of  
8 the proposed appointment shall be personally delivered  
9 to the proposed ward if 12 years of age or older or to the  
10 proposed conservatee, to the parent or parents if the  
11 proposed ward is a minor, and to any person having a  
12 valid visitation order with the proposed ward that was  
13 effective at the time of the filing of the petition. In a  
14 proceeding for temporary guardianship of the person,  
15 evidence that a custodial parent has died or become  
16 incapacitated and that the petitioner is the nominee of  
17 the custodial parent may constitute good cause for the  
18 court to order that this notice not be delivered.

19 (d) If a temporary guardianship is granted ex parte  
20 and the hearing on the general guardianship petition is  
21 not to be held within 30 days of the granting of the  
22 temporary guardianship, the court shall set a hearing  
23 within 30 days to reconsider the temporary guardianship.  
24 Notice of the hearing for reconsideration of the  
25 temporary guardianship shall be provided pursuant to  
26 Section 1511, except that the court may for good cause  
27 shorten time for notice of the hearing.

28 (e) Visitation orders with the proposed ward granted  
29 prior to the filing of a petition for temporary guardianship  
30 shall remain in effect, unless for good cause the court  
31 orders otherwise.

32 (f) One petition may request the appointment of a  
33 guardian or conservator and also the appointment of a  
34 temporary guardian or conservator or these  
35 appointments may be requested in separate petitions.

36 (g) If the court suspends powers of the guardian or  
37 conservator under Section 2334 or 2654 or under any  
38 other provision of this division, the court may appoint a  
39 temporary guardian or conservator to exercise those  
40 powers until the powers are restored to the guardian or



1 conservator or a new guardian or conservator is  
2 appointed.

3 (h) If for any reason a vacancy occurs in the office of  
4 guardian or conservator, the court, on a petition filed  
5 under subdivision (a) or on its own motion, may appoint  
6 a temporary guardian or conservator to exercise the  
7 powers of the guardian or conservator until a new  
8 guardian or conservator is appointed.

9 SEC. 4. Section 2580 of the Probate Code is amended  
10 to read:

11 2580. (a) The conservator or other interested person  
12 may file a petition under this article for an order of the  
13 court authorizing or requiring the conservator to take a  
14 proposed action for any one or more of the following  
15 purposes:

16 (1) Benefiting the conservatee or the estate.

17 (2) Minimizing current or prospective taxes or  
18 expenses of administration of the conservatorship estate  
19 or of the estate upon the death of the conservatee.

20 (3) Providing gifts for any purposes, and to any  
21 charities, relatives (including the other spouse), friends,  
22 or other objects of bounty, as would be likely beneficiaries  
23 of gifts from the conservatee.

24 (b) The action proposed in the petition may include,  
25 but is not limited to, the following:

26 (1) Making gifts of principal or income, or both, of the  
27 estate, outright or in trust.

28 (2) Conveying or releasing the conservatee's  
29 contingent and expectant interests in property, including  
30 marital property rights and any right of survivorship  
31 incident to joint tenancy or tenancy by the entirety.

32 (3) Exercising or releasing the conservatee's powers as  
33 donee of a power of appointment.

34 (4) Entering into contracts.

35 (5) Creating for the benefit of the conservatee or  
36 others, revocable or irrevocable trusts of the property of  
37 the estate, which trusts may extend beyond the  
38 conservatee's disability or life. A special needs trust for  
39 money paid pursuant to a compromise or judgment for a  
40 conservatee may be established only under Chapter 4



1 (commencing with Section 3600) of Part 8, and not under  
2 this article.

3 (6) Transferring to a trust created by the conservator  
4 or conservatee any property unintentionally omitted  
5 from the trust.

6 (7) Exercising options of the conservatee to purchase  
7 or exchange securities or other property.

8 (8) Exercising the rights of the conservatee to elect  
9 benefit or payment options, to terminate, to change  
10 beneficiaries or ownership, to assign rights, to borrow, or  
11 to receive cash value in return for a surrender of rights  
12 under any of the following:

- 13 (i) Life insurance policies, plans, or benefits.
- 14 (ii) Annuity policies, plans, or benefits.
- 15 (iii) Mutual fund and other dividend investment  
16 plans.

17 (iv) Retirement, profit sharing, and employee welfare  
18 plans and benefits.

19 (9) Exercising the right of the conservatee to elect to  
20 take under or against a will.

21 (10) Exercising the right of the conservatee to disclaim  
22 any interest that may be disclaimed under Part 8  
23 (commencing with Section 260) of Division 2.

24 (11) Exercising the right of the conservatee (i) to  
25 revoke a revocable trust or (ii) to surrender the right to  
26 revoke a revocable trust, but the court shall not authorize  
27 or require the conservator to exercise the right to revoke  
28 a revocable trust if the instrument governing the trust (i)  
29 evidences an intent to reserve the right of revocation  
30 exclusively to the conservatee, (ii) provides expressly  
31 that a conservator may not revoke the trust, or (iii)  
32 otherwise evidences an intent that would be inconsistent  
33 with authorizing or requiring the conservator to exercise  
34 the right to revoke the trust.

35 (12) Making an election referred to in Section 13502 or  
36 an election and agreement referred to in Section 13503.

37 (13) Making a will.

38 SEC. 5. Section 2640.1 is added to the Probate Code,  
39 to read:



1 2640.1. (a) If a person has petitioned for the  
2 appointment of a particular conservator and another  
3 conservator was appointed while the petition was  
4 pending, but not before the expiration of 90 days from the  
5 issuance of letters, the person who petitioned for the  
6 appointment of a conservator but was not appointed and  
7 that person's attorney may petition the court for an order  
8 fixing and allowing compensation and reimbursement of  
9 costs.

10 (b) Notice of the hearing shall be given for the period  
11 and in the manner provided in Chapter 3 (commencing  
12 with Section 1460) of Part 1.

13 (c) Upon the hearing, the court shall make an order to  
14 allow (1) any compensation or costs requested in the  
15 petition the court determines is just and reasonable to the  
16 person who petitioned for the appointment of a  
17 conservator but was not appointed, for his or her services  
18 rendered in connection with and to facilitate the  
19 appointment of a conservator, and costs incurred in  
20 connection therewith, and (2) any compensation or costs  
21 requested in the petition the court determines is just and  
22 reasonable to the attorney for that person, for his or her  
23 services rendered in connection with and to facilitate the  
24 appointment of a conservator, and costs incurred in  
25 connection therewith. The compensation and costs so  
26 allowed shall thereupon be charged to the estate of the  
27 conservatee. If a conservator of the estate is not  
28 appointed, but a conservator of the person is appointed,  
29 the compensation and costs so allowed shall be ordered by  
30 the court to be paid from property belonging to the  
31 conservatee, whether held outright, in trust, or  
32 otherwise.

33 (d) It is the intent of the Legislature for this section to  
34 have retroactive effect.

35 SEC. 6. Section 2646 is added to the Probate Code, to  
36 read:

37 2646. In proceedings under this chapter, the court  
38 shall only determine fees that are payable from the estate  
39 of the ward or conservatee and not limit fees payable  
40 from other sources.



1 ~~SEC. 7. Section 3002 of the Probate Code is amended~~  
2 ~~to read:~~

3 ~~3002. “Community property” means community real~~  
4 ~~property and community personal property, including,~~  
5 ~~but not limited to, a community property business that is~~  
6 ~~or was under the primary management and control of one~~  
7 ~~of the spouses.~~

8 ~~SEC. 8. Section 3100.5 is added to the Probate Code;~~  
9 ~~to read:~~

10 ~~3100.5. If the proposed transaction for which~~  
11 ~~authorization is sought includes separate property, the~~  
12 ~~court may authorize the separate property to be included~~  
13 ~~in the transaction as the court, in its discretion, deems~~  
14 ~~appropriate. It is the intent of the Legislature for this~~  
15 ~~section to have retroactive effect.~~

16 ~~SEC. 9.~~

17 ~~SEC. 7. Section 6100 of the Probate Code is amended~~  
18 ~~to read:~~

19 ~~6100. (a) An individual 18 or more years of age who~~  
20 ~~is of sound mind may make a will.~~

21 ~~(b) A conservator may make a will for the conservatee~~  
22 ~~if the conservator has been so authorized by a court order~~  
23 ~~pursuant to Section 2580. Nothing in this section shall~~  
24 ~~impair the right of a conservatee who is mentally~~  
25 ~~competent to make a will from revoking or amending a~~  
26 ~~will made by the conservator or making a new and~~  
27 ~~inconsistent will.~~

28 ~~SEC. 10.~~

29 ~~SEC. 8. Section 6100.5 of the Probate Code is~~  
30 ~~amended to read:~~

31 ~~6100.5. (a) An individual is not mentally competent~~  
32 ~~to make a will if at the time of making the will either of~~  
33 ~~the following is true:~~

34 ~~(1) The individual does not have sufficient mental~~  
35 ~~capacity to be able to (A) understand the nature of the~~  
36 ~~testamentary act, (B) understand and recollect the~~  
37 ~~nature and situation of the individual’s property, or (C)~~  
38 ~~remember and understand the individual’s relations to~~  
39 ~~living descendants, spouse, and parents, and those whose~~  
40 ~~interests are affected by the will.~~



1 (2) The individual suffers from a mental disorder with  
2 symptoms including delusions or hallucinations, which  
3 delusions or hallucinations result in the individual's  
4 devising property in a way which, except for the existence  
5 of the delusions or hallucinations, the individual would  
6 not have done.

7 (b) Nothing in this section supersedes existing law  
8 relating to the admissibility of evidence to prove the  
9 existence of mental incompetence or mental disorders.

10 (c) Notwithstanding subdivision (a), a conservator  
11 may make a will on behalf of a conservatee if the  
12 conservator has been so authorized by a court order  
13 pursuant to Section 2580.

14 ~~SEC. 11.~~

15 *SEC. 9.* Section 15642 of the Probate Code is amended  
16 to read:

17 15642. (a) A trustee may be removed in accordance  
18 with the trust instrument, by the court on its own motion,  
19 or on petition of a settlor, cotrustee, or beneficiary under  
20 Section 17200.

21 (b) The grounds for removal of a trustee by the court  
22 include the following:

23 (1) Where the trustee has committed a breach of the  
24 trust.

25 (2) Where the trustee is insolvent or otherwise unfit to  
26 administer the trust.

27 (3) Where hostility or lack of cooperation among  
28 cotrustees impairs the administration of the trust.

29 (4) Where the trustee fails or declines to act.

30 (5) Where the trustee's compensation is excessive  
31 under the circumstances.

32 (6) Where the sole trustee is a person described in  
33 subdivision (a) of Section 21350, whether or not the  
34 person is the transferee of a donative transfer by the  
35 transferor, unless, based upon any evidence of the intent  
36 of the settlor and all other facts and circumstances, which  
37 shall be made known to the court, the court finds that it  
38 is consistent with the settlor's intent that the trustee  
39 continue to serve and that this intent was not the product  
40 of fraud, menace, duress, or undue influence. Any waiver



1 by the settlor of this provision is against public policy and  
2 shall be void. This paragraph shall not apply to  
3 instruments that became irrevocable on or before  
4 January 1, 1994. This paragraph shall not apply if any of  
5 the following conditions are met:

6 (A) The settlor is related by blood or marriage to, or  
7 is a cohabitant with, any one or more of the trustees, the  
8 person who drafted or transcribed the instrument, or the  
9 person who caused the instrument to be transcribed.

10 (B) The instrument is reviewed by an independent  
11 attorney who (1) counsels the settlor about the nature of  
12 his or her intended trustee designation and (2) signs and  
13 delivers to the settlor and the designated trustee a  
14 certificate in substantially the following form:

15  
16 "CERTIFICATE OF INDEPENDENT REVIEW  
17 I, \_\_\_\_\_, have reviewed  
18 (attorney's name)  
19 \_\_\_\_\_ and have counseled my client,  
20 (name of instrument)  
21 \_\_\_\_\_, fully and privately on the nature and  
22 (name of client)  
23 legal effect of the designation as trustee of \_\_\_\_\_  
24 (name of trustee)  
25

26 contained in such instrument. I am so disassociated from the interest  
27 of the person named as trustee as to be in a position to advise my  
28 client impartially and confidentially as to the consequences of the  
29 designation. On the basis of this counsel, I conclude that the  
30 designation of a person who would otherwise be subject to removal  
31 under paragraph (6) of subdivision (b) of Section 15642 of the  
32 Probate Code is clearly the settlor's intent and such intent is not the  
33 product of fraud, menace, duress, or undue influence.

34  
35 \_\_\_\_\_"  
36 (Name of Attorney) (Date)  
37

38 This independent review and certification may occur  
39 either before or after the instrument has been executed,  
40 and if it occurs after the date of execution, the named



1 trustee shall not be subject to removal under this  
2 paragraph. Any attorney whose written engagement  
3 signed by the client is expressly limited to the preparation  
4 of a certificate under this subdivision, including the prior  
5 counseling, shall not be considered to otherwise  
6 represent the client.

7 (C) After full disclosure of the relationships of the  
8 persons involved, the instrument is approved pursuant to  
9 an order under Article 10 (commencing with Section  
10 2580) of Chapter 6 of Part 4 of Division 4.

11 (7) For other good cause.

12 (c) If, pursuant to paragraph (6) of subdivision (b),  
13 the court finds that the designation of the trustee was not  
14 consistent with the intent of the settlor or was the product  
15 of fraud, menace, duress, or undue influence, the person  
16 being removed as trustee shall bear all costs of the  
17 proceeding, including reasonable attorney's fees.

18 (d) If the court finds that the petition for removal of  
19 the trustee was filed in bad faith and that removal would  
20 be contrary to the settlor's intent, the court may order  
21 that the person or persons seeking the removal of the  
22 trustee bear all or any part of the costs of the proceeding,  
23 including reasonable attorney's fees.

24 (e) If it appears to the court that trust property or the  
25 interests of a beneficiary may suffer loss or injury pending  
26 a decision on a petition for removal of a trustee and any  
27 appellate review, the court may, on its own motion or on  
28 petition of a cotrustee or beneficiary, compel the trustee  
29 whose removal is sought to surrender trust property to a  
30 cotrustee or to a receiver or temporary trustee. The court  
31 may also suspend the powers of the trustee to the extent  
32 the court deems necessary.

33 (f) For purposes of this section, the term "related by  
34 blood or marriage" shall include persons within the  
35 seventh degree.

36 ~~SEC. 12.~~

37 *SEC. 10.* Section 15687 of the Probate Code is  
38 amended to read:

39 15687. (a) Notwithstanding any provision of a trust to  
40 the contrary, a trustee who is an attorney may receive



1 only (1) the trustee's compensation provided in the trust  
2 or otherwise provided in this article or (2) compensation  
3 for legal services performed for the trustee, unless the  
4 trustee obtains approval for the right to dual  
5 compensation as provided in subdivision (d).

6 (b) No parent, child, sibling, or spouse of a person who  
7 is a trustee, and no law partnership or corporation whose  
8 partner, shareholder, or employee is serving as a trustee  
9 shall receive any compensation for legal services  
10 performed for the trustee unless the trustee waives  
11 trustee compensation or unless the trustee obtains  
12 approval for the right to dual compensation as provided  
13 in subdivision (d).

14 (c) This section shall not apply if the trustee is related  
15 by blood or marriage to, or is a cohabitant with, the  
16 settlor.

17 (d) After full disclosure of the nature of the  
18 compensation and relationship of the trustee to all  
19 persons receiving compensation under this section, the  
20 trustee may obtain approval for dual compensation by  
21 either of the following:

22 (1) An order pursuant to paragraph (21) of subdivision  
23 (b) of Section 17200.

24 (2) Giving 30 days' advance written notice to the  
25 persons entitled to notice under Section 17203. Within  
26 that 30-day period, any person entitled to notice may  
27 object to the proposed action by written notice to the  
28 trustee or by filing a petition pursuant to paragraph (21)  
29 of subdivision (b) of Section 17200. If the trustee receives  
30 this objection during that 30-day period and if the trustee  
31 wishes dual compensation, the trustee shall file a petition  
32 for approval pursuant to paragraph (21) of subdivision  
33 (b) of Section 17200.

34 (e) Any waiver of the requirements of this section is  
35 against public policy and shall be void.

36 (f) This section applies to services rendered on or after  
37 January 1, 1994.

38 ~~SEC. 13.~~

39 *SEC. 11.* Section 21306 of the Probate Code is  
40 amended to read:



1 21306. A no contest clause is not enforceable against  
2 a beneficiary to the extent the beneficiary, with probable  
3 cause, brings a contest that is limited to one or more of the  
4 following grounds:

5 (a) Forgery.

6 (b) Revocation.

7 (c) An action to establish the invalidity of any transfer  
8 described in Section 21350.

9 (d) A petition to remove a trustee under paragraph  
10 (6) of subdivision (b) of Section 15642.

11 ~~SEC. 14.~~

12 *SEC. 12.* Section 21350 of the Probate Code is  
13 amended to read:

14 21350. (a) Except as provided in Section 21351, no  
15 provision, or provisions, of any instrument shall be valid  
16 to make any donative transfer to any of the following:

17 (1) The person who drafted the instrument.

18 (2) A person who is related by blood or marriage to, is  
19 a cohabitant with, or is an employee of, the person who  
20 drafted the instrument.

21 (3) Any partner or shareholder of any law partnership  
22 or law corporation in which the person described in  
23 paragraph (1) has an ownership interest, and any  
24 employee of any such law partnership or law corporation.

25 (4) Any person who has a fiduciary relationship with  
26 the transferor, including, but not limited to, a conservator  
27 or trustee, who transcribes the instrument or causes it to  
28 be transcribed.

29 (5) A person who is related by blood or marriage to, is  
30 a cohabitant with, or is an employee of a person who is  
31 described in paragraph (1).

32 (b) For purposes of this section, “a person who is  
33 related by blood or marriage” to a person means all of the  
34 following:

35 (1) The person’s spouse or predeceased spouse.

36 (2) Relatives within the third degree of the person and  
37 of the person’s spouse.

38 (3) The spouse of any person described in paragraph  
39 (2).



1 In determining any relationship under this subdivision,  
2 Sections 6406, 6407, and 6408 shall be applicable.

3 ~~SEC. 15.~~

4 *SEC. 13.* Section 21350.5 is added to the Probate Code,  
5 to read:

6 21350.5. For purposes of this part, “disqualified  
7 person” means a person specified in subdivision (a) of  
8 Section 21350, but only in cases where Section 21351 does  
9 not apply.

10 ~~SEC. 16.~~

11 *SEC. 14.* Section 21351 of the Probate Code is  
12 amended to read:

13 21351. Section 21350 does not apply if any of the  
14 following conditions are met:

15 (a) The transferor is related by blood or marriage to,  
16 or is a cohabitant with, the transferee or the person who  
17 drafted the instrument. This subdivision shall  
18 retroactively apply to an instrument that becomes  
19 irrevocable on or after July 1, 1993.

20 (b) The instrument is reviewed by an independent  
21 attorney who (1) counsels the client (transferor) about  
22 the nature of his or her intended transfer and (2) signs  
23 and delivers to the transferor and the drafter a certificate  
24 in substantially the following form:

25

26 “CERTIFICATE OF INDEPENDENT REVIEW

27 I, \_\_\_\_\_, have reviewed

28 (attorney’s name)

29 \_\_\_\_\_ and counseled my client,

30 (name of instrument)

31 \_\_\_\_\_, on the nature of the transfer, or

32 (name of client)

33 transfers, of property to \_\_\_\_\_

34 (name of potentially disqualified person)

35

36 contained in such instrument. I am so disassociated from the interest  
37 of the transferee as to be in a position to advise my client impartially  
38 and confidentially as to the consequences of the transfer. On the basis  
39 of this counsel, I conclude that the transfer, or transfers, in such  
40 instrument that otherwise might be invalid under Section 21350 of



1 the Probate Code are valid because such transfer, or transfers, are not  
2 the product of fraud, menace, duress, or undue influence.

3  
4 \_\_\_\_\_”  
5 (Name of Attorney) (Date)

6  
7 Any attorney whose written engagement signed by the  
8 client is expressly limited solely to the preparation of a  
9 certificate under this subdivision, including the prior  
10 counseling, shall not be considered to otherwise  
11 represent the client.

12 (c) After full disclosure of the relationships of the  
13 persons involved, the instrument is approved pursuant to  
14 an order under Article 10 (commencing with Section  
15 2580) of Chapter 6 of Part 4 of Division 4.

16 (d) The court determines, upon clear and convincing  
17 evidence, excluding the testimony of any person  
18 described in subdivision (a) of Section 21350, that the  
19 transfer was not the product of fraud, menace, duress, or  
20 undue influence. If the court finds that the transfer was  
21 the product of fraud, menace, duress, or undue influence,  
22 the disqualified person shall bear all costs of the  
23 proceeding, including reasonable attorney’s fees.

24 (e) Subdivision (d) shall apply only to the following  
25 instruments:

26 (A) Any instrument executed by a person who was not  
27 a resident of this state at the time the instrument was  
28 executed.

29 (B) Any instrument other than one making a transfer  
30 to a person described in paragraph (1) of subdivision (a)  
31 of Section 21350.

32 (C) Any instrument executed on or before July 1, 1993,  
33 by a person who was a resident of this state at the time the  
34 instrument was executed.

35 (f) The transferee is a federal, state, or local public  
36 entity, an entity that qualifies for an exemption from  
37 taxation under Section 501(c)(3) or 501(c)(19) of the  
38 Internal Revenue Code, or a trust holding an interest for  
39 this entity, but only to the extent of the interest of the  
40 entity, or the trustee of this trust. This subdivision shall



1 retroactively apply to an instrument that becomes  
2 irrevocable on or after July 1, 1993.

3 (g) For purposes of this section, “related by blood or  
4 marriage” shall include persons within the seventh  
5 degree.

6 ~~SEC. 17.~~

7 *SEC. 15.* Section 21353 of the Probate Code is  
8 amended to read:

9 21353. If a transfer fails under this part, the transfer  
10 shall be made as if the disqualified person predeceased  
11 the transferor without spouse or issue, but only to the  
12 extent that the value of the transfer exceeds the intestate  
13 interest of the disqualified person.

14 ~~SEC. 18.~~

15 *SEC. 16.* Section 21355 of the Probate Code is  
16 amended to read:

17 21355. This part shall apply to instruments that  
18 become irrevocable on or after September 1, 1993. For  
19 the purposes of this section, an instrument which is  
20 otherwise revocable or amendable shall be deemed to be  
21 irrevocable if on September 1, 1993, the transferor by  
22 reason of incapacity was unable to change the disposition  
23 of his or her property and did not regain capacity before  
24 the date of his or her death.

25 ~~SEC. 19.~~

26 *SEC. 17.* Section 21356 is added to the Probate Code,  
27 to read:

28 21356. An action to establish the invalidity of any  
29 transfer described in Section 21350 can only be  
30 commenced within the periods prescribed in this section  
31 as follows:

32 (a) In case of a transfer by will, at any time after letters  
33 are first issued to a general representative and before an  
34 order for final distribution is made.

35 (b) In case of any transfer other than by will, within  
36 the later of three years after the transfer becomes  
37 irrevocable or three years from the date the person



- 1 bringing the action discovers, or reasonably should have
- 2 discovered, the facts material to the transfer.

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