

## Assembly Bill No. 2069

### CHAPTER 682

An act to add Section 6185 to the Business and Professions Code, and to amend Sections 100, 101, 13651, 16060.5, 16061, 16061.5, 16061.7, 16062, 16246, and 17200 of, and to add Sections 2468, 9764, and 18201 to, the Probate Code, relating to protective and probate proceedings.

[Approved by Governor September 21, 1998. Filed  
with Secretary of State September 22, 1998.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2069, Kaloogian. Estates and trusts: protective proceedings.

(1) Existing law establishes procedures for the establishment of a conservatorship over a person and the administration of an estate of a decedent.

This bill would authorize the appointment, by the superior court, of a practice administrator with specified powers to take control of the practice or deceased or disabled member of the State Bar of California, as specified.

(2) Existing law prescribes the disposition of community and quasi-community property upon the death of a married person.

This bill would provide that, notwithstanding these provisions, a husband and wife may agree in writing to divide community or quasi-community property on the basis of a non pro rata division of the aggregate value of the property on the basis of a division of each individual item or asset of the property, or partly on each basis. This bill would make various conforming changes.

(3) Existing law defines the phrase "terms of the trust" for purposes of laws regarding the duty of a trustee to keep the beneficiaries of a trust reasonably informed of the trust and its administration to include the written trust instrument of an irrevocable trust or provisions of a written trust instrument that describe or affect an irrevocable portion of a trust, as specified. Existing law requires the trustee to provide, upon reasonable request, the beneficiary with the terms of the trust that describe or affect the beneficiary's interest.

This bill would exclude from the phrase "terms of the trust" documents which were intended to affect administration or disposition of the trust only while the trust was revocable. It would also require the trustee to provide, upon reasonable request, the beneficiary with the terms of the trust. This bill would also revise various trustee notification requirements, as specified.

(4) Existing law provides that, if the settlor retains the power to revoke the trust in whole or in part, the trust property is subject to



the claims of creditors of the settlor to the extent of the power of revocation during the lifetime of the settlor.

This bill would provide that the trust property subject to the claims of creditors pursuant to the above described provision of existing law shall be entitled to specified exemptions.

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

SECTION 1. Section 6185 is added to the Business and Professions Code, to read:

6185. (a) Upon appointment by the superior court pursuant to Section 2468, 9764, or paragraph (22) or (23) of subdivision (b) of Section 17200 of the Probate Code, a practice administrator, who is an active member of the State Bar, may be granted, by order of the court appointing this person, one or more of the following powers to take control of the practice of a deceased or disabled member of the State Bar of California:

(1) Take control of all operating and client trust accounts, business assets, equipment, client directories, and premises that were used in the conduct of the deceased or disabled member's practice.

(2) Take control and review all client files of the deceased or disabled member.

(3) Contact each client of the deceased or disabled member who can be reasonably ascertained and located to inform the client of the condition of the member and of the appointment of a practice administrator. The practice administrator may discuss various options for the selection of successor counsel with the client.

(4) In each case that is pending before any court or administrative body, notify the appropriate court or administrative body and contact opposing counsel in the cases under the control of the deceased or disabled member and obtain additional time for new counsel to appear for the affected client.

(5) Determine the liabilities of the practice and pay them for the assets of the practice. If the assets of the practice are insufficient to pay these obligations or for the expenses incurred by the practice administrator to carry out the powers ordered pursuant to this section, the practice administrator shall apply to the personal representative to obtain the additional funds that may be required. If the personal representative and the practice administrator are unable to agree on the amount that is necessary for the practice administrator to undertake the duties ordered pursuant to this paragraph, either party may apply to the court having jurisdiction over the estate of the deceased or disabled member for an order requesting funds from the estate.

(6) Employ any person, including but not limited to the employees of the deceased or disabled member, who may be



necessary to assist the practice administrator in the management, winding up, and disposal of the practice.

(7) Create a plan for disposition of the practice of the deceased or disabled member to protect its value as an asset of the estate of the member. Subject to the approval of the personal representative of the estate, agree to the sale of the practice and its goodwill.

(8) Subject to the approval of the personal representative of the estate, reach agreements with successor counsel for division of fees for work in process on the cases of the deceased or disabled member.

(9) Subject to the prohibitions against soliciting cases, the practice administrator may act as successor counsel for a client of the deceased or disabled member.

(b) If the practice administrator is uncertain as to how to proceed with the powers granted pursuant to this section, he or she may apply to the Superior Court that has jurisdiction over the estate of the deceased or disabled member for instructions.

SEC. 2. Section 100 of the Probate Code is amended to read:

100. (a) Upon the death of a married person, one-half of the community property belongs to the surviving spouse and the other half belongs to the decedent.

(b) Notwithstanding subdivision (a), a husband and wife may agree in writing to divide their community property on the basis of a non pro rata division of the aggregate value of the community property or on the basis of a division of each individual item or asset of community property, or partly on each basis. Nothing in this subdivision shall be construed to require this written agreement in order to permit or recognize a non pro rata division of community property.

SEC. 3. Section 101 of the Probate Code is amended to read:

101. (a) Upon the death of a married person domiciled in this state, one-half of the decedent's quasi-community property belongs to the surviving spouse and the other half belongs to the decedent.

(b) Notwithstanding subdivision (a), a husband and wife may agree in writing to divide their quasi-community property on the basis of a non pro rata division of the aggregate value of the quasi-community property, or on the basis of a division of each individual item or asset of quasi-community property, or partly on each basis. Nothing in this subdivision shall be construed to require this written agreement in order to permit or recognize a non pro rata division of quasi-community property.

SEC. 4. Section 2468 is added to the Probate Code, to read:

2468. (a) The conservator of the estate of a disabled attorney who was engaged in the practice of law at the time of his or her disability, or other person interested in the estate, may bring a petition seeking the appointment of an active member of the State Bar of California to take control of the files and assets of the practice of the disabled member.



(b) The petition may be filed and heard on such notice that the court determines is in the best interests of the persons interested in the estate of the disabled member. If the petition alleges that the immediate appointment of a practice administrator is required to safeguard the interests of the estate, the court may dispense with notice provided that the conservator is the petitioner or has joined in the petition or has otherwise waived notice of hearing on the petition.

(c) The petition shall indicate the powers sought for the practice administrator from the list of powers set forth in Section 6185 of the Business and Professions Code. These powers shall be specifically listed in the order appointing the practice administrator.

(d) The petition shall allege the value of the assets that are to come under the control of the practice administrator, including but not limited by the amount of funds in all accounts used by the disabled member. The court shall require the filing of a surety bond in the amount of the value of the personal property to be filed with the court by the practice administrator. No action may be taken by the practice administrator unless a bond has been duly filed with the court.

(e) The practice administrator shall not be the attorney representing the conservator.

(f) The court shall appoint the attorney nominated by the disabled member in a writing, including but not limited to the disabled member's will, unless the court concludes that the appointment of the nominated person would be contrary to the best interests of the estate or would create a conflict of interest with any of the clients of the disabled member.

(g) The practice administrator shall be compensated only upon order of the court making the appointment for his or her reasonable and necessary services. The law practice shall be the source of the compensation for the practice administrator unless the assets are insufficient, in which case, the compensation of the practice administrator shall be charged against the assets of the estate as a cost of administration. The practice administrator shall also be entitled to reimbursement of his or her costs.

(h) Upon conclusion of the services of the practice administrator, the practice administrator shall render an accounting and petition for its approval by the superior court making the appointment. Upon settlement of the accounting, the practice administrator shall be discharged and the surety on his or her bond exonerated.

(i) If the court appointing the practice administrator determines upon petition that the disabled attorney has recovered his or her capacity to resume his or her law practice, the appointment of a practice administrator shall forthwith terminate and the disabled attorney shall be restored to his or her practice.

(j) For purposes of this section, the person appointed to take control of the practice of the disabled member shall be referred to



as the “practice administrator” and the conservatee shall be referred to as the “disabled member.”

SEC. 5. Section 9764 is added to the Probate Code, to read:

9764. (a) The personal representative of the estate of a deceased attorney who was engaged in a practice of law at the time of his or her death or other person interested in the estate may bring a petition for appointment of an active member of the State Bar of California to take control of the files and assets of the practice of the deceased member.

(b) The petition may be filed and heard on such notice that the court determines is in the best interests of the estate of the deceased member. If the petition alleges that the immediate appointment of a practice administrator is required to safeguard the interests of the estate, the court may dispense with notice only if the personal representative is the petitioner or has joined in the petition or has otherwise waived notice of hearing on the petition.

(c) The petition shall indicate the powers sought for the practice administrator from the list of powers set forth in Section 6185 of the Business and Professions Code. These powers shall be specifically listed in the order appointing the practice administrator.

(d) The petition shall allege the value of the assets that are to come under the control of the practice administrator, including, but not limited by the amount of funds in all accounts used by the deceased member. The court shall require the filing of a surety bond in the amount of the value of the personal property to be filed with the court by the practice administrator. No action may be taken by the practice administrator unless a bond has been fully filed with the court.

(e) The practice administrator shall not be the attorney representing the personal representative.

(f) The court shall appoint the attorney nominated by the deceased member in a writing, including, but not limited to, the deceased member’s will, unless the court concludes that the appointment of the nominated person would be contrary to the best interests of the estate or would create a conflict of interest with any of the clients of the deceased member.

(g) The practice administrator shall be compensated only upon order of the court making the appointment for his or her reasonable and necessary services. The law practice shall be the source of the compensation for the practice administrator unless the assets are insufficient in which case, the compensation of the practice administrator shall be charged against the assets of the estate as a cost of administration. The practice administrator shall also be entitled to reimbursement of his or her costs.

(h) Upon conclusion of the services of the practice administrator, the practice administrator shall render an accounting and petition for its approval by the superior court making the appointment. Upon



settlement of the accounting, the practice administrator shall be discharged and the surety on his or her bond exonerated.

(i) For the purposes of this section, the person appointed to take control of the practice of the deceased member shall be referred to as the “practice administrator” and the decedent shall be referred to as the “deceased member.”

SEC. 6. Section 13651 of the Probate Code is amended to read:

13651. (a) A petition filed pursuant to Section 13650 shall allege that administration of all or a part of the estate of the deceased spouse is not necessary for the reason that all or a part of the estate is property passing to the surviving spouse, and shall set forth all of the following information:

(1) If proceedings for the administration of the estate are not pending, the facts necessary to determine the county in which the estate of the deceased spouse may be administered.

(2) A description of the property of the deceased spouse which the petitioner alleges is property passing to the surviving spouse, including the trade or business name of any property passing to the surviving spouse that consists of an unincorporated business or an interest in an unincorporated business which the deceased spouse was operating or managing at the time of death, subject to any written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.

(3) The facts upon which the petitioner bases the allegation that all or a part of the estate of the deceased spouse is property passing to the surviving spouse.

(4) A description of any interest in the community property or quasi-community property, or both, which the petitioner requests the court to confirm to the surviving spouse as belonging to the surviving spouse pursuant to Section 100 or 101, subject to any written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.

(5) The name, age, address, and relation to the deceased spouse of each heir and devisee of the deceased spouse, the names and addresses of all persons named as executors of the will of the deceased spouse, and the names and addresses of all persons appointed as personal representatives of the deceased spouse, which are known to the petitioner.

Disclosure of any written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community property assets, or both, or the affirmative statement that this agreement does not exist. If a dispute arises as to the division of the community property assets or quasi-community property assets, or both, pursuant to this agreement, the court shall



determine the division subject to terms and conditions or other remedies that appear equitable under the circumstances of the case, taking into account the rights of all interested persons.

(b) If the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will of the deceased spouse, a copy of the will shall be attached to the petition.

(c) If the petitioner bases the description of the property of the deceased spouse passing to the surviving spouse or the property to be confirmed to the surviving spouse, or both, upon a written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both, a copy of the agreement shall be attached to the petition.

SEC. 7. Section 16060.5 of the Probate Code is amended to read:

16060.5. As used in this article, the “terms of the trust” shall include the written trust instrument of an irrevocable trust or those provisions of a written trust instrument that describe or affect an irrevocable portion of a trust, including, but not limited to, signatures, amendments, disclaimers, and any directions or instructions to the trustee that affect the administration or disposition of the trust. “Terms of the trust” does not include documents which were intended to affect administration or disposition only while the trust was revocable.

SEC. 8. Section 16061 of the Probate Code is amended to read:

16061. Except as provided in Section 16064, on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary’s interest, including the terms of the trust.

SEC. 9. Section 16061.5 of the Probate Code is amended to read:

16061.5. (a) When a revocable trust or any portion thereof becomes irrevocable because of the death of one or more of the settlors of the trust or for any other reason, the trustee shall provide a true and complete copy of the terms of the irrevocable trust, or irrevocable portion of the trust, to any beneficiary of the trust who requests it and to any heir of a deceased settlor who requests it.

(b) The trustee shall, for purposes of this section, rely upon any final judicial determination of heirship. However, the trustee shall have discretion to make a good faith determination by any reasonable means of the heirs of a deceased settlor in the absence of a final judicial determination of heirship.

SEC. 10. Section 16061.7 of the Probate Code is amended to read:

16061.7. (a) A trustee shall serve a notification by the trustee described in this section in either of the following cases:



(1) When a revocable trust or any portion thereof becomes irrevocable because of the death of one or more of the settlors of the trust or for any other reason.

(2) When there is a change of trustee of an irrevocable trust.

(b) The notification by trustee required by subdivision (a) shall be served on each of the following:

(1) Each beneficiary of the irrevocable trust or irrevocable portion of the trust, subject to the limitations of Section 15804.

(2) If the event that requires trustee notification is the death of a settlor, to each heir of the deceased settlor.

(3) If the trust is a charitable trust subject to the supervision of the Attorney General, to the Attorney General.

(c) The trustee need not provide a copy of the notification by trustee to any beneficiary or heir the existence of whom is (A) known to the trustee but who cannot be located by the trustee after reasonable diligence, or (B) unknown to the trustee.

(d) The notification by trustee shall be served by mail to the last known address, pursuant to Section 1215, or by personal delivery.

(e) The notification by trustee shall be served not later than 60 days following the occurrence of the event requiring service of the notification by trustee, or 60 days following the trustee's becoming aware of the existence of a person entitled to receive notification by trustee, if that person was not known to the trustee on the occurrence of the event requiring service of the notification by trustee. If there is a vacancy in the office of the trustee on the date of the occurrence of the event requiring service of the notification by trustee, or if that event causes a vacancy, then the 60-day period for service of the notification by trustee commences on the date the new trustee commences to serve as trustee.

(f) The notification by trustee shall contain the following information:

(1) The identity of the settlor or settlors of the trust and the date of execution of the trust instrument.

(2) The name, mailing address and telephone number of each trustee of the trust.

(3) The address of the physical location where the principal place of administration of the trust is located, pursuant to Section 17002.

(4) Any additional information that may be required by the terms of the trust instrument.

(5) A notification that the recipient is entitled, upon reasonable request to the trustee, to receive from the trustee a true and complete copy of the terms of the trust.

(g) Unless the notification by trustee is served only because of a change of the trustee, the notification by trustee shall also include a warning, set out in a separate paragraph in not less than 10-point boldfaced type, or a reasonable equivalent thereof, that states as follows:



“You may not bring an action to contest the trust more than 120 days from the date this notification by the trustee is served upon you or 60 days from the day on which a copy of the terms of the trust is mailed or personally delivered to you in response to your request during that 120-day period, whichever is later.”

(h) A trustee who fails to serve the notification by trustee as required by this section shall be responsible for all damages, including attorney’s fees and costs, caused by the failure unless the trustee makes a good faith effort to comply with this section. A trustee shall, for purposes of this section, rely upon any final judicial determination of heirship; but the trustee shall have discretion to make a good faith determination by any reasonable means of the heirs of a deceased settlor in the absence of a final judicial determination of heirship known to the trustee.

(i) Any waiver by a settlor of the requirement of serving the notification by trustee required by this section is against public policy and shall be void.

(j) A trustee may serve a notification by trustee in the form required by this section on any person in addition to those on whom the notification by trustee is required to be served. A trustee is not liable to any person for serving or for not serving the notice on any person in addition to those on whom the notice is required to be served. A trustee is not required to serve a notification by trustee if the event that otherwise requires service of the notification by trustee occurs before January 1, 1998.

SEC. 11. Section 16062 of the Probate Code is amended to read:

16062. (a) Except as otherwise provided in this section and in Section 16064, the trustee shall account at least annually, at the termination of the trust, and upon a change of trustee, to each beneficiary to whom income or principal is required or authorized in the trustee’s discretion to be currently distributed.

(b) A trustee of a living trust created by an instrument executed before July 1, 1987, is not subject to the duty to account provided by subdivision (a).

(c) A trustee of a trust created by a will executed before July 1, 1987, is not subject to the duty to account provided by subdivision (a), except that if the trust is removed from continuing court jurisdiction pursuant to Article 2 (commencing with Section 17350) of Chapter 4 of Part 5, the duty to account provided by subdivision (a) applies to the trustee.

(d) Except as provided in Section 16064, the duty of a trustee to account pursuant to former Section 1120.1a of the Probate Code (as repealed by Chapter 820 of the Statutes of 1986), under a trust created by a will executed before July 1, 1977, which has been removed from continuing court jurisdiction pursuant to former Section 1120.1a, continues to apply after July 1, 1987. The duty to



account under former Section 1120.1a may be satisfied by furnishing an account that satisfies the requirements of Section 16063.

(e) Any limitation or waiver in a trust instrument of the obligation to account is against public policy and shall be void as to any sole trustee who is a disqualified person as defined in paragraph (1) of subdivision (b) of Section 21350.

SEC. 12. Section 16246 of the Probate Code is amended to read:

16246. The trustee has the power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made pro rata or non pro rata, and may be made pursuant to any written agreement providing for a non pro rata division of the aggregate value of the community property assets or quasi-community property assets, or both.

SEC. 13. Section 17200 of the Probate Code is amended to read:

17200. (a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

- (1) Determining questions of construction of a trust instrument.
- (2) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right.
- (3) Determining the validity of a trust provision.
- (4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.
- (5) Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers.
- (6) Instructing the trustee.
- (7) Compelling the trustee to report information about the trust or account to the beneficiary, if (A) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary and (B) no report or account has been made within six months preceding the request.
- (8) Granting powers to the trustee.
- (9) Fixing or allowing payment of the trustee's compensation or reviewing the reasonableness of the trustee's compensation.
- (10) Appointing or removing a trustee.
- (11) Accepting the resignation of a trustee.
- (12) Compelling redress of a breach of the trust by any available remedy.
- (13) Approving or directing the modification or termination of the trust.
- (14) Approving or directing the combination or division of trusts.



(15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest.

(16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

(17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.

(18) Approving removal of a testamentary trust from continuing court jurisdiction.

(19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.

(20) Determining the liability of the trust for any debts of a deceased settlor. However, nothing in this paragraph shall provide standing to bring an action concerning the internal affairs of the trust to a person whose only claim to the assets of the decedent is as a creditor.

(21) Determining petitions filed pursuant to Section 15687 and reviewing the reasonableness of compensation for legal services authorized under that section. In determining the reasonableness of compensation under this paragraph, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to Section 15687.

(22) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a deceased member under Section 9764, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a deceased member shall apply to the petition brought under this section.

(23) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a disabled member under Section 2468, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a disabled member shall apply to the petition brought under this section.

SEC. 14. Section 18201 is added to the Probate Code, to read:

18201. Any settlor whose trust property is subject to the claims of creditors pursuant to Section 18200 shall be entitled to all exemptions



as provided in Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

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