

RESOLUTION 05-04-2015

DIGEST

Probate: Delete Reference to Repealed Probate Code Section

Amends Probate Code section 16062 to delete a reference to Probate Code section 21350.5 which was repealed by the Legislature in 2014.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 16062 to read as follows:

§16062

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

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

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

11 (d) Except as provided in Section 16064, the duty of a trustee to account pursuant to
12 former Section 1120.1a of the Probate Code (as repealed by Chapter 820 of the Statutes of 1986),
13 under a trust created by a will executed before July 1, 1977, which has been removed from
14 continuing court jurisdiction pursuant to former Section 1120.1a, continues to apply after July 1,
15 1987. The duty to account under former Section 1120.1a may be satisfied by furnishing an
16 account that satisfies the requirements of Section 16063.

17 (e) Any limitation or waiver in a trust instrument of the obligation to account is against
18 public policy and shall be void as to any sole trustee as described in subdivision (a) of Section
19 21380, but not described in Section 21382. ~~who is either of the following:~~

20 ~~(1) A disqualified person as defined in Section 21350.5.~~

21 ~~(2) Described in subdivision (a) of Section 21380, but not described in Section 21382.~~

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Existing Probate Code section 16062 makes reference to “A disqualified person as defined in Section 21350.5.” Section 21350.5 was repealed by the Legislature effective in 2014.

The Solution: This resolution deletes the obsolete reference to Probate Code section 21350.5.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESPONSIBLE FLOOR DELEGATE: Kevin R. Yee

RESOLUTIONS COMMITTEE RECOMMENDATIONS

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Probate Code section 16062 to delete a reference to Probate Code section 21350.0 which was repealed by the Legislature in 2014. This resolution should be approved in principle because this code section no longer exists.

Probate Code section 21350.5 was repealed in 2014. The section should be amended to reflect current law.

SECTION COMMENTS TO RESOLUTION 05-04-2015

TRUST AND ESTATES SECTION OF THE STATE BAR OF CALIFORNIA**APPROVE**

TEXCOM agrees the Resolution is appropriate to clean up the language of 16062.

DISCLAIMER:

This position is only that of the TRUSTS & ESTATES SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the TRUSTS & ESTATES SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.