

## PUBLICATION UPDATE

Route to: ☐ \_\_\_\_\_ ☐ \_\_\_\_\_ ☐ \_\_\_\_\_ ☐ \_\_\_\_\_  
☐ \_\_\_\_\_ ☐ \_\_\_\_\_ ☐ \_\_\_\_\_ ☐ \_\_\_\_\_

# California Wills & Trusts

Publication 00034

Release 24A

April 2011

## HIGHLIGHTS

### **Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010**

- On December 17, 2010 the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 reinstated the estate tax effective for decedents dying and transfers made after December 31, 2009.

### **New California Probate Code §§ 21360–21392**

- With the enactment of new Probate Code §§ 21360–21392 effective January 1, 2011, and the related repeal of Probate Code §§ 21350–21356 effective January 1, 2014, the term “disqualified persons” will no longer be used after 2013.

### **New California Probate Code § 16069**

- The trustee is not required to account to the beneficiary of a revocable trust (as defined in Prob. Code § 15800), provide the terms of the trust to such beneficiary, or provide requested information to such beneficiary pursuant to Prob. Code § 16061, for the period when

the trust may be revoked or when the beneficiary and the trustee are the same person.

### **Transferring Shares in a Professional Corporation**

- Effective January 1, 2008, there is an exception in regards to transferring shares in a dental corporation.

Release 24A is completely updated to reflect all significant 2010 state and federal legislation, administrative regulations, IRS materials, and significant judicial decisions.

**Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.** On December 17, 2010 the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (“2010 Tax Act”) reinstated the estate tax effective for decedents dying and transfers made after December 31, 2009. The 2010 Tax Act also extended the sunset provisions of the 2001 Tax Act to December 31, 2012. See § 2.02.

**New California Probate Code §§ 21360–21392.** With the enactment of new Probate Code §§ 21360–21392 effective January 1, 2011, and the related repeal of Probate Code §§ 21350–21356 effective

January 1, 2014, the term “disqualified persons” will no longer be used after 2013, although most of the concepts of the repealed statutes will be retained in the new statutory framework. See § 4.05[3][c].

**New California Probate Code § 16069.**

New Prob. Code § 16069 states that the trustee is not required to account to the beneficiary of a revocable trust (as defined in Prob. Code § 15800), provide the terms of the trust to such beneficiary, or provide requested information to such beneficiary pursuant to Prob. Code § 16061, for the period when the trust may be revoked or when the beneficiary and the trustee are the same person. See § 96.02[7].

**Transferring Shares in a Professional Corporation** Effective January 1, 2008, there is an exception in regards to transfers shares in a dental corporation. Upon a licensed dentist’s death or incapacity certain non-dentists who are the trustee or successor trustee of a trust or subtrust may, subject to certain requirements, contract with another licensed dentist or dentists to continue the dental practice for a period not exceeding 12 months if the practice meets specified criteria and conditions, including providing a specific notice to the Dental Board of California. See § 140.08[5].

**Significant case law** includes the following:

- **Definition of Care Custodian for purposes of Prob. Code § 21362.** *Estate of Austin* (2010) 188 Cal. App. 4th 512, 115 Cal. Rptr. 3d 481. Although plaintiff, a decedent’s daughter, sought to invalidate gifts given by the decedent to defendant while the decedent was residing in a nursing home, plaintiff failed to prove defendant was the decedent’s care custodian as a result of the limited services de-

fendant performed for the decedent while the decedent was not in a nursing home; therefore, the gifts were valid. § 4.05[3][c].

- **Example of an “interested person”.** *Estate of Kraus* (2010) 184 Cal. App. 4th 103, 108 Cal. Rptr. 3d 760, 2010 Cal. App. LEXIS 572. Trust beneficiaries have standing to seek restitution for misappropriated funds, even when their rights in the decedent’s estate have not been conclusively determined; Prob. Code, § 850, by its clear and plain terms, does not require the probate court to find that the property in question belongs to the interested petitioning party). See § 36.07[1]
- **Example of a proceeding that does not violate a no-contest clause.** *Balian v. Balian* (2010) 179 Cal. App. 4th 1505; 102 Cal. Rptr. 3d 470. In accordance with Prob. Code § 21320(b)(1), a proposed modification under Prob. Code § 15409 of a trust containing a no contest clause to delete a special needs provision because the settlor misunderstood the circumstances was not a contest under Prob. Code § 21303 and a Prob. Code § 21320 safe harbor petition was properly granted. See § 40.06[3].
- **Spendthrift Provisions.** *Chatard v. Oveross* (2009) 179 Cal. App. 4th 1098; 101 Cal. Rptr. 3d 883; 2009 Cal. App. LEXIS 1908. When breach of fiduciary duty by a beneficiary-trustee resulted in harm to the trust, the interest of the beneficiary-trustee in the spendthrift trust could properly be impounded to satisfy the claim of

other beneficiaries for surcharge. See § 81.08[4].

- **The definition of “principal” includes money received from an entity in total or partial liquidation of the entity.** *Manson v. Shepherd* (2010) 188 Cal. App. 4th 1244; 116 Cal. Rptr. 3d 1. Substantial evidence supported trial court’s implied finding that development company indicated at or near the time of a distribution to trust that the corporation was making the distribution in partial liquidation where minutes of corporation’s board meeting reflected that board wanted to sell a parcel

of real property to, in part, provide cash to trust so trust would in turn pay its debt to company. See § 95.02[1][c].

---

Matthew Bender provides continuing customer support for all its products:

- Editorial assistance—please consult the “Questions About This Publication” directory printed on the copyright page;
- Customer Service—missing pages, shipments, billing or other customer service matters (1-800-833-9844).
- Outside the United States and Canada, (518) 487-3000, or fax (518) 487-3584;
- Toll-free ordering (1-800-223-1940).



[www.lexis.com](http://www.lexis.com)

---

---

Copyright © 2011 Matthew Bender & Company, Inc., a member of the LexisNexis Group.  
Publication 00034, Release 24A, April 2011

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.



<b>FILING INSTRUCTIONS</b>
----------------------------

# CALIFORNIA WILLS & TRUSTS

---

Publication 34    Release 24A

April 2011

---

**Check  
As  
Done**

- ☐ 1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 23A. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 23A, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.
- ☐ 2. Separate this Release Number 24A package into the following groups of material:
  - White Publication Table of Contents
  - White Revision pages
- ☐ Arrange these groups of material next to each other so that you can take material from each group as required and proceed with the filing of this release.
- ☐ 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

Check  
As  
Done

Remove Old  
Pages Numbered

Insert New  
Pages Numbered

*For faster and easier filing, all references are to right-hand pages only.*

## VOLUME 1

### White Publication Table of Contents

<input type="checkbox"/>	Tan Publication Table of Contents page 1 thru 3 . . . . .	White Publication Table of Contents page 1 thru 3
--------------------------	--	--

### Revision

<input type="checkbox"/>	Title page thru xv . . . . .	Title page thru xvii
<input type="checkbox"/>	1-9 thru 1-19 . . . . .	1-9 thru 1-20.3
<input type="checkbox"/>	1-35 thru 1-39 . . . . .	1-35 thru 1-40.1
<input type="checkbox"/>	2-1 thru 2-61 . . . . .	2-1 thru 2-69
<input type="checkbox"/>	3-7 thru 3-25 . . . . .	3-7 thru 3-26.3
<input type="checkbox"/>	3-35 thru 3-39 . . . . .	3-35 thru 3-40.1
<input type="checkbox"/>	3-61 thru 3-65 . . . . .	3-61 thru 3-66.1
<input type="checkbox"/>	3-75 thru 3-83 . . . . .	3-75 thru 3-85
<input type="checkbox"/>	4-1 thru 4-3. . . . .	4-1 thru 4-4.1
<input type="checkbox"/>	4-23 thru 4-39 . . . . .	4-23 thru 4-43
<input type="checkbox"/>	11-47 thru 11-55 . . . . .	11-47 thru 11-55
<input type="checkbox"/>	21-19 thru 21-21 . . . . .	21-19 thru 21-22.1
<input type="checkbox"/>	24-20.1 . . . . .	24-20.1
<input type="checkbox"/>	29-29 thru 29-45 . . . . .	29-29 thru 29-46.3
<input type="checkbox"/>	30-7 thru 30-8.1. . . . .	30-7 thru 30-8.1
<input type="checkbox"/>	31-23 thru 31-25 . . . . .	31-23 thru 31-25

## VOLUME 2

### Revision

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	36-5 thru 36-29 . . . . .	36-5 thru 36-33
<input type="checkbox"/>	37-10.1 . . . . .	37-10.1
<input type="checkbox"/>	40-15 thru 40-27 . . . . .	40-15 thru 40-27
<input type="checkbox"/>	61-5 thru 61-6.1. . . . .	61-5 thru 61-6.1
<input type="checkbox"/>	80-21 thru 80-25 . . . . .	80-21 thru 80-25
<input type="checkbox"/>	81-29 thru 81-35 . . . . .	81-29 thru 81-37
<input type="checkbox"/>	82-19 thru 82-22.1 . . . . .	82-19 thru 82-22.1
<input type="checkbox"/>	91-33 thru 91-46.1 . . . . .	91-33 thru 91-46.1
<input type="checkbox"/>	93-11 thru 93-35 . . . . .	93-11 thru 93-37
<input type="checkbox"/>	94-19 thru 94-21 . . . . .	94-19 thru 94-22.1
<input type="checkbox"/>	95-5 thru 95-9 . . . . .	95-5 thru 95-10.1
<input type="checkbox"/>	95-29 thru 95-49 . . . . .	95-29 thru 95-53
<input type="checkbox"/>	96-11 thru 96-15 . . . . .	96-11 thru 96-16.1
<input type="checkbox"/>	96-41 thru 96-45 . . . . .	96-41 thru 96-46.1

Check  
As  
Done

Remove Old  
Pages Numbered

Insert New  
Pages Numbered

## VOLUME 3

### Revision

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	110-3 thru 110-13 . . . . .	110-3 thru 110-14.1
<input type="checkbox"/>	111-19 thru 111-41 . . . . .	111-19 thru 111-43
<input type="checkbox"/>	112-11 thru 112-17 . . . . .	112-11 thru 112-18.1
<input type="checkbox"/>	112-41 thru 112-43 . . . . .	112-41 thru 112-44.1
<input type="checkbox"/>	112-65 thru 112-79 . . . . .	112-65 thru 112-81
<input type="checkbox"/>	113-3 thru 113-55 . . . . .	113-3 thru 113-59
<input type="checkbox"/>	114-21 thru 114-23 . . . . .	114-21 thru 114-24.1
<input type="checkbox"/>	115-33 . . . . .	115-33 thru 115-34.1
<input type="checkbox"/>	118-17 thru 118-23 . . . . .	118-17 thru 118-24.1
<input type="checkbox"/>	140-17 thru 140-48.1 . . . . .	140-17 thru 140-48.5
<input type="checkbox"/>	150-10.1 thru 150-10.3 . . . . .	150-10.1 thru 150-10.3
<input type="checkbox"/>	151-15 thru 151-17 . . . . .	151-15 thru 151-18.1
<input type="checkbox"/>	151-35 thru 151-39 . . . . .	151-35 thru 151-39
<input type="checkbox"/>	TC-1 thru TC-33 . . . . .	TC-1 thru TC-33
<input type="checkbox"/>	TS-1 thru TS-69 . . . . .	TS-1 thru TS-75
<input type="checkbox"/>	I-1 thru I-185 . . . . .	I-1 thru I-185

FILE IN THE FRONT OF THE FIRST VOLUME  
OF YOUR SET

To order missing pages log on to our self service center, [www.lexisnexis.com/printedsc](http://www.lexisnexis.com/printedsc) or call Customer Services at 1 (800) 833-9844 and have the following information ready:

- (1) the publication title;
- (2) specific volume, chapter and page numbers; and
- (3) your name, phone number, and Matthew Bender account number.

Please recycle removed pages.

MISSING FILING INSTRUCTIONS?  
FIND THEM AT [www.lexisnexis.com/printedsc](http://www.lexisnexis.com/printedsc)

Use the search tool provided to find and download missing filing instructions,  
or sign on to the Print & CD Service Center to order missing pages or  
replacement materials. Visit us soon to see what else  
the Print & CD Service Center can do for you!



[www.lexis.com](http://www.lexis.com)

---

---

Copyright © 2011 Matthew Bender & Company, Inc., a member of the LexisNexis Group.  
Publication 34, Release 24A, April 2011

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.