

**Powers.**—Attorney may bind client at any stage of action or proceeding by his agreement filed with clerk, or entered upon minutes of court, and not otherwise. Also has power to receive money claimed by client in action or proceeding, during pendency thereof, or after judgment, unless a revocation of his authority is filed, and upon payment thereof, and not otherwise, to discharge claim or acknowledge satisfaction of judgment. (C. C. P. 283).

**Change of Attorneys.**—Cannot be changed in action or proceeding, except upon consent of both client and attorney, filed with clerk, or entered upon minutes, or by order of court upon application of either client or attorney, after notice from one to other. (C. C. P. 284).

**Liabilities.**—May be held strictly to a fiduciary and trust character. (206 Cal. 689, 275 Pac. 941). Attorney-client relationship is one of special confidence and trust demanding that member of profession be held to strictest account in matters affecting relationship of attorney and client. Attorney is guilty of misdemeanor punishable by imprisonment, fine or both if party to deceit or collusion, willfully delays suit with view to own gain, or misappropriates money or other property of client. (Bus. & Prof. C. 6128).

**Compensation.**—Stipulations in security instruments as to payment of attorney's fee, after default are legal, but compensation shall be such as court finds reasonable, not exceeding amount named in instrument. (Com'l. C. 9504). Compensation is left to agreement of parties, except where fixed by statute. (C. C. P. 1021). Fees in probate cases for attorneys are fixed on same basis of compensation as for administrators or executors and attorneys may charge reasonable fee in representing person filing §650 petition. (Prob. C. 910). Contingency fee contracts generally must be in writing and governed by Bus. & Prof. C. 6146-6147. Other fees must be in writing where it is reasonably foreseeable that total expense to client will exceed \$1,000. (Bus. & Prof. C. 6148).

**Disbarment or Suspension.**—Supreme Court may disbar or suspend attorneys. (Bus. & Prof. C. 6100). Member may be disbarred or suspended for conviction of crime involving moral turpitude; record of conviction is conclusive evidence. (Bus. & Prof. C. 6101, 6102, 6106.5). Board of Governors of State Bar, after hearing, has power to make disbarment or suspension recommendations to court or to take lesser disciplinary actions. (Bus. & Prof. C. 6078). Although Board's findings are not binding on court, petitioner has burden of showing wherein decision of Board is erroneous or unlawful. (50 Cal.2d 202, 333 P.2d 1003; 62 Cal.2d 17, 396 P.2d 33).

**Attorney-Client Privilege.**—Governed by Evidence Code §950 et seq.

**Unauthorized Practice.**—No one except active members of State Bar may practice law in California. (Bus. & Prof. C. 6125).

**Professional Association or Corporation.**—See topic Corporations, subhead Professional Corporations.

**AUTOMOBILES:** See topic Motor Vehicles.

**BAIL:** See topic Criminal Law.

## BANKS AND BANKING:

**Regulated by.**—Banking business in California is primarily regulated by Financial Code (1951, c. 364), Uniform Commercial Code (1963, c. 819), and laws, rules and regulations of Federal Deposit Insurance Corporation (12 U.S.C. 1811 et seq.). Statutory scheme divides banks into commercial banks and trust companies, although banks may carry out trust operations in separate department of bank. (Finan. C. 103; 1500.1). Since only corporations may do banking business (Finan. C. 102), banks are also subject to California corporate laws to extent not inconsistent with Financial Code (Finan. C. 101). Corporation cannot engage in commercial banking or trust business without certificate of authority. (Finan. C. 403).

Banks are subject to supervision of State Banking Department, chief officer of which is Superintendent of Banks. (Finan. C. 200; 210). State regulatory scheme calls for extensive examinations and reports concerning banks' condition no less than once every two years. (Finan. C. 1900-1916, 1930-1939, 1583-1585).

**Shares.**—Common shares of every banking corporation are subject to assessment to restore impairments of contributed capital. (Finan. C. 662). Par value may be determined by Bank Boards. (Finan. C. 620). Distributions to shareholders may not be made (with some exceptions approved by superintendent) in amount which exceeds lesser of retained earnings or net income for last three fiscal years less distributions made during such time. (Finan. C. 640-646).

**Deposits and Withdrawals.**—Bank accounts by or in name of married women or minors must be held for exclusive right and benefit of such persons, whose receipt is valid release and discharge to bank. (Finan. C. 850-851). Deposits in joint tenancy may be paid to any joint tenant or any survivor, unless bank is given contrary written instructions. (Finan. C. 852). Bank account agreements can be made providing for payment on death to designated person. Such "pay-on-death" provisions shall not be deemed to effect testamentary disposition of property. (Finan. C. 852.5). Deposits in trust, without written notice of terms of trust, may be credited upon death of trustee to person for whom deposit was made, whether or not minor. (Finan. C. 853). Statements of account conclusively presumed correct if no objection within four years from rendition. (Finan. C. 861). Bank under no obligation to customer to pay noncertified check presented more than six months after its date, but bank may charge customer's account for payment made thereafter. (Com'l. C. 4404). (California version of this code section omits "in good faith" at end thereof.) Bank has right of set off against

deposits if it has matured claim against depositor. (See gen. C.C. 3054.) Set off right limited if depositor is natural person and matured claim relates to personal, family or household debt. (Finan. C. 864). Any bank certifying check must immediately charge account of drawer. (Finan. C. 970). Checks drawn by authorized agent of depositor in authorized manner may be assumed by bank to be drawn for authorized purpose and within scope of agent's authority, even though drawn to personal order of agent. (Finan. C. 953). Bank must notify holders of time deposits, in writing of maturity date, within ten (but no sooner than 60) days prior to such date. (Finan. C. 855). Bank cannot charge penalty for failure to deposit or late deposit into savings account where depositor has agreed to make installment deposits. (Finan. C. 863).

Bank deposits and collections are also governed generally by Com'l. C. 4104-4504. See Com'l. C. 3101-3805; 4201-4303 for significant provisions governing checks. See topic Commercial Code, subhead Material Variations from 1972 Official Text.

Financial institutions (term that includes, inter alia, banks, savings and loan associations and credit unions) must pay no less than 2% simple annual interest on money prepaid into impound accounts established to protect value of mortgagee's security interest by providing for payment of property taxes, insurance premiums and other property related costs. (C. C. 2954.8).

**Account Disclosures.**—Banks must make disclosures as to charges and interest rates to their depositors, including persons identified in bank's records as having interest in account with bank. (Finan. C. 865[b]). If more than one depositor has interest in account, notice need only be given to one depositor. (Finan. C. 865.4[d]). Banks must maintain and display, or maintain and publicly display means of obtaining, in each office or branch written schedule of amount or method of determining charges on accounts (Finan. C. 865.2[1]; 865[c]) and written schedule concerning interest rates paid (Finan. C. 865.2). Required disclosure not limited to truth-in-lending and Regulation Z disclosures. (Finan. C. 865.2). Provision is also made for notifying new depositors of charges (Finan. C. 865.4[a]), for notifying all depositors of changes in type or amount of charges and interest rates (Finan. C. 865.4[b]), and notifying all customers and potential customers of bank's policy as to when customer may withdraw funds deposited by check in customer's account (Finan. C. 866 et seq.). Sanctions potentially imposed on bank for failure to comply. (Finan. C. 866.4).

**Unclaimed Deposits.**—In 1959, California adopted Uniform Disposition of Unclaimed Property Act. (C.C.P. 1500-1527). Under this Act, and provisions of C.C.P. 1300, et seq. pertaining to unclaimed property, deposits held or owing by banking organizations are presumed abandoned if owner has not, within seven years, caused activity in or with respect to them.

**Lien.**—Banker has general lien, dependent on possession, upon all property in his hands belonging to customer for balance due from customer in course of business. (C.C. 3054). Banker's exercise of this lien with respect to deposit accounts is subject to limitations and procedures set forth in Finan. C. 864. Lien on depositors' accounts is more accurately termed right of set-off, based on general principles of equity. (Bank's exercise of right of set-off not state action and need not conform to standards of procedural due process. [11 C.3d 352, 113 Cal. Rptr. 449, 521 P.2d 441]). Exercise of right of set off in connection with debt secured by real property constitutes one form of action which precludes foreclosure on real property. (152 Cal. App.3d 767, 199 Cal. Rptr. 557). See topic Mortgages of Real Property.

**Subsidiary Activities.**—State banks and their subsidiaries may engage in real property investment, including partnerships and joint ventures, for purpose of purchasing, subdividing and developing real property. (Finan. C. 751.3). Subsidiaries may engage in other non-banking activities, subject to regulations of Superintendent. (Finan. C. 772[a]). Subsidiary may not act as insurance company, insurance agent or insurance broker. (Finan. C. 772[b]).

**Sale, Merger and Conversion; Change of Control.**—Cross-industry sales, mergers and conversions by and among state banks, national banks, state savings and loan associations and federal savings and loan associations are permitted with approval of appropriate regulator. (Finan. C. 4800 et seq.). Acquisition of control (other than by sale, merger or conversion) requires approval of State Banking Department. (Finan. C. 700 et seq.).

**Foreign banks** (other nation and other state) may not maintain office or agency unless licensed. (Finan. C. 1700 et seq.). Other state banks may not transact banking business in state; other nation banks may do so when so licensed. (Finan. C. 1750). Foreign banks when carrying on activities listed in Corp. C. 191(d) shall not be deemed transacting business. (Finan. C. 1750[2]). Commercial banking activities and trust business of other nation banks are limited. (Finan. C. 1755; 1503).

**Savings and Loan Associations.**—S&L's are independently regulated by Department of Savings and Loan. (Finan. C. 5000-9001). Statutory framework as to deposits and withdrawals, unclaimed deposits and liens is substantially similar to banks. (Finan. C. 6650-6662). Significant differences exist in certain areas. Three year, staggered terms for directors are mandated for S&L's (Finan. C. 6153) but not permitted for other California corporations, including banks (Corp. C. 301; Finan. C. 101). Investment powers and permissible service corporation activities more liberal than those of banks. (Finan. C. 6500-6528; 7200-7704). Limits on loans to single borrower substantially greater than banks. (Finan. C. 7451; 1221). Shareholder derivative action may only be brought upon notice to Commissioner of Savings and Loan and finding by Commissioner that suit is proposed in good faith and that there is reasonable probability that prosecution of suit will benefit S&L and its shareholders. (Finan. C. 6052).



Bus. & Prof. C. 24755, et seq. (relating to alcoholic beverages) were found invalid as violation of Sherman Antitrust Act. (21 C.3d 431, 579 P.2d 476).

**Trade Names (Fictitious Business Names).**—Person doing business in state under fictitious name, or partnership doing business under fictitious name or designation not showing names of all partners, other than limited partnership which has filed certificate of limited partnership, or corporation doing business under name other than corporate name stated in articles of incorporation or in case of individual, name that does not include surname or which suggests existence of additional owners. (Bus. & Prof. C. 17900), must file Fictitious Business Name Statement with county clerk where principal place of business located or, with Sacramento County Clerk if there is no place of business in state (Bus. & Prof. C. 17913, 17915). Statement must be published and affidavit of publications filed. (Bus. & Prof. C. 17917). Except as provided in Bus. & Prof. C. 19720(b) and (c), statement expires after five years from Dec. 31 of year in which it was filed with county clerk. (Bus. & Prof. C. 19720). No person or other entity required to file statement or assignee may maintain action on account of contract made or transaction had under fictitious business name, until statement filed and published. (Bus. & Prof. C. 17918). Nonprofit corporations and certain real estate investment trusts do not have to file statement. (Bus. & Prof. C. 17911, 17912).

Filing of Fictitious Business Name Statement establishes rebuttable presumption or exclusive right to use as trade name, fictitious business name. (Bus. & Prof. C. 14411). Filing articles of incorporation in case of domestic corporation or obtaining certificate of qualification in case of foreign corporation establishes rebuttable presumption of exclusive right to use as trade name, name of corporation. (Bus. & Prof. C. 14415). Application for registration of trademark shall be accompanied by filing fee of \$10, payable to Secretary of State. (Bus. & Prof. C. 14233). Filing Articles of Incorporation pursuant to §200 of Corporations Code, shall not authorize use in this state of corporate name in violation of rights of another under Federal Trademark Act, Trademark Act, Fictitious Names Act, or common law. (Bus. & Prof. C. 14417).

For protection of names other than trade names, i.e., names of noncommercial organizations and associations, see Bus. & Prof. C. 14492-14495.

#### TRUST DEEDS:

See topic Mortgages of Real Property.

**TRUSTEE PROCESS:** See topic Garnishment.

#### TRUST RECEIPT SECURITY:

See topic Pledges.

#### TRUSTS:

New Trust Law effective July 1, 1987, (Prob. C.—Division 9; §§15000-18201). Trust of real or personal property or both may be created, subject to rules as to alienation, vesting, etc. (see topic Perpetuities), and subject to Statute of Frauds (Prob. C. 15206), for any purpose that is not illegal or against public policy (Prob. C. 15203). Common law of trusts, as modified by statute, is law governing trusts. (Prob. C. 15002).

**Kinds.**—Express trusts recognized by statute. (Prob. C. 15200). New Trust Law does not affect prior law relating to constructive or resulting trusts. (Prob. C. 15003). Resulting trust on failure of express trust is also recognized. (1 C.2d 724, 37 P.2d 76). Tentative or "Totten" trust doctrine, applicable to bank or savings deposits, has been recognized. (Prob. C. 80).

**Jurisdiction over Trusts.**—Superior court, as court of general equitable powers, has jurisdiction over inter vivos trusts. (Prob. C. 17000). Court in which will creating trust was probated retains jurisdiction over such trust for most purposes, except for trusts created by will after July 1, 1977 unless trustor provides otherwise. (Prob. C. 17300-01). Procedures are established to remove testamentary trust from continuing court jurisdiction. (Prob. C. 17350-54). Procedures are established to allow acceptance of trusts transferred from outside California (Prob. C. 17450-57), and to transfer trust to jurisdiction outside California (Prob. C. 17400-05).

**Creation.**—Trusts may be created inter vivos or by will. Inter vivos trusts may be created by specific methods. (Prob. C. 15200). Oral trusts are valid as to personalty. (Prob. C. 15207). To be enforceable, trusts of realty must be evidenced by writing unless created by operation of law. (Prob. C. 15206).

**Appointment of Trustee.**—Whenever there is vacancy and trust fails to provide practical method of appointment, court must appoint trustee giving preference to nominee of beneficiaries over age of 14. (Prob. C. 15660). Whenever no trustee is acting, court must appoint one or more successors in case of inter vivos trust or successor in case of testamentary trust. (Prob. C. 15660).

**Eligibility and Competency.**—Trustee may be individual, or bank or trust company qualified to conduct trust business in California. (Finan. C. 1500-02).

**Foreign corporation** cannot act as trustee except to limited extent provided in Finan. C. 1503 which permits such corporation to act as trustee for delivery, payment, registration, exchange, cancellation and the like of bonds, or as trustee under indenture securing bonds of railroad operating in California and extending into another state; but it cannot maintain office or agency in California unless complying with applicable provisions of Financial Code.

**Qualification.**—Trustees of inter vivos trusts and named trustees of testamentary trusts need not furnish bond unless trust instrument so requires or court finds necessary. Unnamed trustees appointed to fill vacancies in trusts must furnish bond. (Prob. C. 15602). No oath is required of trustees.

**Removal of Trustee.**—Superior Court may remove any trustee who has violated, or is unfit to execute trust. (Prob. C. 15642). Where hostility or continued lack of cooperation among co-trustees impairs administration of trust, court may remove one or more trustees. (Prob. C. 15642).

**General Powers and Duties of Trustees.**—Trustee is general agent and may bind trust property within scope of authority conferred by trust instrument and by law. (Prob. C. 16200). Trustee may give proxies to vote any shares held in trust. (Prob. C. 16234, Corp. C. 2218-2225).

Where there are several co-trustees all must unite in any act to bind trust estate unless trust instrument otherwise provides (Prob. C. 15620), except in emergencies (Prob. C. 15622) or if vacancy in co-trusteeship occurs (Prob. C. 15621).

**Sales and Leases.**—Sales of trust property may be made in accordance with trust provisions. (Prob. C. 16226). Trustee has power to lease trust property, including options, for term by and term of trust. (Prob. C. 16231-32).

**Investments.**—Governed by Prob. C. 16040, adopting standard of "prudent persons" managing their own affairs, except as otherwise provided by terms of particular trusts.

**Uniform Common Trust Fund Act** in substance adopted, with additional provisions that such fund is separate entity owned by trustee, and that administration of participating relationship requires no allocation or apportionment between capital and income different from that for such fund. (Finan. C. 1564; and see Corp. C. 10250).

**Securities in Name of Nominee.**—Fiduciary permitted to hold securities in name of nominee unless instrument creating trust provides to contrary, but trustee is liable for any act of nominee. (Prob. C. 16238). Trustee may also deposit securities in securities depository. (Prob. C. 16238).

**Bequests and Devises to Inter Vivos Trusts.**—See topic Wills, subhead Bequests and Devises to Inter Vivos Trusts.

**Uniform Simplification of Fiduciary Security Transfers Act** repealed by Uniform Commercial Code. (Com'l. C. 8402-8404, 8318). See topic Commercial Code.

**Accounting.**—Uniform Trustees Accounting Act has not been adopted. Trustees of certain testamentary trusts under court supervision are required to account annually. (Prob. C. 16062[b]). Annual accountings required of all trustees (Prob. C. 16062), unless requirement waived in trust instrument or by beneficiary in writing (Prob. C. 16064).

**Court Supervision.**—Any trustee, beneficiary or remainderman may petition superior court to determine to whom property passes, settle account, authorize additions to trust, instructions, compel accounting, grant powers, fix compensation, appoint or remove trustee, accept resignation of trustee, allow removal to another jurisdiction, amend trust to qualify as charitable trust, divide into two or more separate trusts. (Prob. C. 17200).

**Compensation.**—Trustee entitled to compensation as provided in trust instrument. Court has authority to raise or lower such compensation as equity demands. If instrument does not provide for compensation, reasonable compensation as determined by court is allowed. (Prob. C. 15680). If several trustees, compensation must be apportioned according to services rendered by each. (Prob. C. 15683).

**Modification or Termination.**—Upon petition of trustee or beneficiary, court may modify or terminate trust if value of trust principal is so low in relation to costs of administration that continuance will defeat purposes of trust. (Prob. C. 15408). Trustee may terminate trust worth less than \$20,000 without court approval. (Prob. C. 15408[b]). All beneficiaries may consent to terminate trust if continuation of trust not necessary to carry out material purpose of trust or unless court finds material purpose outweighed by circumstances. (Prob. C. 15403). Settlor and all beneficiaries may terminate trust. (Prob. C. 15404). Modifications and termination of trust permitted upon showing of changed circumstances. (Prob. C. 15409).

**Discharge.**—Trustee can be discharged by: (1) Extinction of trust, (2) completion of duties, (3) means prescribed by declaration of trust, (4) consent of beneficiary, if he has capacity to contract, (5) order of superior court.

**Spendthrift Trusts.**—Principal and income restrictions valid (Prob. C. 15300-01), subject to certain exceptions for support trusts (Prob. C. 15302), discretionary trusts (Prob. C. 15303), claims for child or spousal support (Prob. C. 15305), public support claims (Prob. C. 15306), and self-settled trusts (Prob. C. 15304). In addition, surplus of income beyond that needed for education and support of beneficiary is liable to creditor's claims, when no valid directions for accumulation given. (Prob. C. 15307).

**Revised Uniform Principal and Income Act** adopted with significant modifications. (Prob. C. 16300-16313).

**Gifts to Minors.**—See topic Infants.

**Uniform Fiduciaries Act** not adopted.

**Uniform Supervision of Trustees for Charitable Purposes Act** adopted. (Govt. C. 12580-95).

**Trust deeds to secure debts,** see topic Mortgages of Real Property.

**Accumulations.**—Accumulation of income permitted but may not extend beyond time permitted for vesting of future interests. (C. C. 724). Express direction to accumulate required. (See C. C. 733; 38 C.2d 289, 239 P.2d 617.)

**Perpetuities.**—See topic Perpetuities.