



# California Corporate & Securities Law

## Voting By Trustees

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Often shares are held in the name of multiple trustees. For example, a corporation may issue shares to “Jane & John Doe, Trustees under the Doe Family Trust”. What if only Jane signs an action by written consent?

Section 15620 of the California Probate Code provides as follows:

*Unless otherwise provided in the trust instrument, a power vested in two or more trustees may only be exercised by their unanimous action.*

This statute would seem to require that both Jane and John sign the consent unless the corporation can determine that the trust instrument provides otherwise.

Section 704 of the California Corporations Code, however, seems to dictate a different result. That statute provides:

*If shares stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, husband and wife as community property, tenants by the entirety, voting trustees, persons entitled to vote under a shareholder voting agreement or otherwise, or if two or more persons (including proxyholders) have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:*

*(1) If only one votes, such act binds all;*

*(2) If more than one vote, the act of the majority so voting*

*binds all;*

*(3) If more than one vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionately.*

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*If the instrument so filed or the registration of the shares shows that any such tenancy is held in unequal interests, a majority or even split for the purpose of this section shall be a majority or even split in interest.*

Are these two statutes in conflict? If so, which governs? The California Court of Appeal tackled this question in *Edwards v. Edwards*, 61 Cal. App. 599 (1998) holding: “In this very, very close case, we conclude the more specific statute, section 704, controls over the general rule stated in section 15620.”

From the corporation’s standpoint, the Court of Appeal’s decision makes practical sense. In many cases it will be impracticable to request and review trust instruments to determine who may bind the shareholder.

However, I don’t think that this should be such a close case or even that the statutes are in conflict. Section 704 governs what the corporation needs to determine whether to count a shareholder’s vote (under Section 194, a “vote” includes authorization by written consent). I don’t think Section 704 should be consider to overrule trust law. Thus, while the corporation may count the vote of one trustee, the trust law can treat the vote of a single trustee as a breach of trust for which the trustee may be held liable. This would be analogous to the unauthorized act of a corporate agent that binds the corporation as to third parties.

Of course, these are only my musings for the sake of discussion. We’ll have to see what the courts do when a they are forced to confront Section 704 and another state’s statutory limitation on actions by trustees. [As a reminder, please review the terms of use for this site.]

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