
CONSENT

Bill No: AB 1079
Author: Gallagher (R)
Amended: 6/14/21 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 11-0, 6/22/21

AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird, Stern, Wieckowski, Wiener

ASSEMBLY FLOOR: 75-0, 4/15/21 (Consent) - See last page for vote

SUBJECT: Trusts: revocation

SOURCE: Trusts and Estates Section of the California Lawyers Association

DIGEST: This bill, for instances in which a settlor of a revocable trust becomes incompetent, delineates the duties of the trustee and the class of beneficiaries owed those duties.

ANALYSIS:

Existing law:

- 1) Defines “beneficiary” under the Probate Code as a person to whom a donative transfer of property is made or that person’s successor in interest and, as it relates to a trust, specifies that this includes a person who has any present or future interest, vested or contingent. (Prob. Code § 24.)¹
- 2) Provides that except to the extent a trust instrument otherwise provides or where the joint action of the settlor and all beneficiaries is required, during the time that a trust is revocable and the person holding the power to revoke is competent, the person holding the power to revoke, not the beneficiary, has rights afforded to beneficiaries and the duties of the trustee are owed to the person holding the power to revoke. (§ 15800.)

¹ All further section references are to the Probate Code unless otherwise indicated.

- 3) Provides that a trustee has a duty to keep beneficiaries of the trust reasonably informed of the trust and its administration. (§ 16060.) Generally requires trustees to: provide the terms of the trust to beneficiaries (§ 16060.7), report to beneficiaries, upon reasonable request, by providing information to the beneficiary relating to the administration of the trust relevant to the beneficiary's interest (§ 16061), and provide annual accounting to a beneficiary at the termination of the trust and upon change of trustee (§ 16062). However, a trustee is not required to account to the beneficiary, provide the terms of the trust to the beneficiary, or provide requested information to the beneficiary during the period when the trust may be revoked. (§ 16069.)
- 4) Authorizes a beneficiary to petition a court concerning the internal affairs of a trust or to determine its existence, except as provided in Section 15800, described above. (§ 17200(b).)

This bill:

- 1) Provides that, except to the extent the trust instrument otherwise provides or where the joint action of the settlor and all beneficiaries is required, if, during the time that a trust is revocable, at least one person holding the power to revoke the trust is not competent, the following apply:
 - a) Within 60 days of the obtaining of information establishing the incompetency, the trustee must provide notice and a copy of the trust to each beneficiary to whom the trustee would be required or authorized to distribute income or principal if the settlor had died as of the date of receipt of the information.
 - b) The trustee's duties of accounting and providing information are owed to each beneficiary described in (a).
 - c) A beneficiary whose interest is conditional on some factor not yet in existence or not yet determinable is not a beneficiary for purposes of a), unless the trustee believes it is likely that the condition will be satisfied at the time of the settlor's death.
 - d) If the interest of a beneficiary fails because a condition to receiving that interest has not been satisfied or the trustee does not believe that the condition will be satisfied at the time of the settlor's death, the duties described above are instead owed to the successor to the beneficiary's conditional interest.

- 2) Provides that in establishing incompetency, a trustee may rely on a method specified in the trust instrument or a judicial determination.
- 3) Makes a conforming change.
- 4) Clarifies that this bill neither diminishes the right of beneficiaries to bring certain actions against a trustee nor affects any legal standard for establishing capacity.

Comments

Under existing law, beneficiaries of a revocable trust generally are not entitled to information and accounting relating to the trust during the settlor's lifetime, as long as the settlor is competent. But if the settlor becomes incompetent, existing law is silent as to the trustee's duties. This silence has been interpreted to mean that the trustee must provide that information and accounting to all beneficiaries, no matter how remote or contingent their interest.

This bill is sponsored by the Trusts and Estates Section of the California Lawyers Association, who argue that "most settlors do not intend for disclosure of the terms of their trust, asset information, investment decisions, expenditures for their care, etc. to be shared during their lifetime, should they become incompetent, with every beneficiary named in their trust, regardless of the interest granted to those beneficiaries." Following the model set forth in the Uniform Trust Code, this bill defines the class of beneficiaries owed duties by the trustee when the settlor is incapacitated. Compared to existing law, this bill enables trustees to more narrowly focus on those beneficiaries whose interest in the trust are vested or likely to become vested.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 6/25/21)

Trusts and Estates Section of the California Lawyers Association (source)
California Judges Association

OPPOSITION: (Verified 6/25/21)

None received

ASSEMBLY FLOOR: 75-0, 4/15/21

AYES: Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner
Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi,

Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Wicks, Wood, Rendon

NO VOTE RECORDED: Aguiar-Curry, Medina, Quirk-Silva

Prepared by: Josh Tosney / JUD. / (916) 651-4113
6/25/21 10:27:51

**** END ****