

## Assembly Bill No. 1848

### CHAPTER 136

An act to amend Section 18100.5 of, and to add Sections 18105, 18106, 18107, and 18108 to, the Probate Code, relating to trusts.

[Approved by Governor July 13, 2004. Filed with  
Secretary of State July 13, 2004.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1848, Harman. Certification of trusts: change of trustee.

Existing law governs the establishment and recordation of trusts. Existing law authorizes a trustee to present a certification of trust to any person in lieu of providing a copy of the trust instrument to establish the existence or terms of the trust, as specified.

Existing law also makes it a felony to knowingly offer a false document to be recorded in any public office.

This bill would authorize any person to record a certification of trust that relates to an interest in real property. The bill would also authorize a successor trustee to execute and record an affidavit of change of trustee if title to an interest in real property is affected by a change of trustee. The bill would require the county recorder to index this document, as specified. The bill would require the county recorder to impose any fee prescribed by law for recording and indexing these documents. The bill would make related changes. By imposing new duties on county recorders, the bill would create a state-mandated local program. In addition, because knowingly offering a false document to be recorded in any public office is a felony, by expanding the class of documents that may be recorded, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for specified reasons.

*The people of the State of California do enact as follows:*

SECTION 1. Section 18100.5 of the Probate Code is amended to read:

18100.5. (a) The trustee may present a certification of trust to any person in lieu of providing a copy of the trust instrument to establish the



existence or terms of the trust. A certification of trust may be executed by the trustee voluntarily or at the request of the person with whom the trustee is dealing.

(b) The certification of trust may confirm the following facts or contain the following information:

(1) The existence of the trust and date of execution of the trust instrument.

(2) The identity of the settlor or settlors and the currently acting trustee or trustees of the trust.

(3) The powers of the trustee.

(4) The revocability or irrevocability of the trust and the identity of any person holding any power to revoke the trust.

(5) When there are multiple trustees, the signature authority of the trustees, indicating whether all, or less than all, of the currently acting trustees are required to sign in order to exercise various powers of the trustee.

(6) The trust identification number, whether a social security number or an employer identification number.

(7) The manner in which title to trust assets should be taken.

(8) The legal description of any interest in real property held in the trust.

(c) The certification shall contain a statement that the trust has not been revoked, modified, or amended in any manner which would cause the representations contained in the certification of trust to be incorrect and shall contain a statement that it is being signed by all of the currently acting trustees of the trust. The certification shall be in the form of an acknowledged declaration signed by all currently acting trustees of the trust. The certification signed by the currently acting trustee may be recorded in the office of the county recorder in the county where all or a portion of the real property is located.

(d) The certification of trust may, but is not required to, include excerpts from the original trust documents, any amendments thereto, and any other documents evidencing or pertaining to the succession of successor trustees. The certification of trust shall not be required to contain the dispositive provisions of the trust which set forth the distribution of the trust estate.

(e) A person whose interest is, or may be, affected by the certification of trust may require that the trustee offering or recording the certification of trust provide copies of those excerpts from the original trust documents, any amendments thereto, and any other documents which designate, evidence, or pertain to the succession of the trustee or confer upon the trustee the power to act in the pending transaction, or both. Nothing in this section is intended to require or imply an obligation to



provide the dispositive provisions of the trust or the entire trust and amendments thereto.

(f) A person who acts in reliance upon a certification of trust without actual knowledge that the representations contained therein are incorrect is not liable to any person for so acting. A person who does not have actual knowledge that the facts contained in the certification of trust are incorrect may assume without inquiry the existence of the facts contained in the certification of trust. Actual knowledge shall not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the trust certification. Any transaction, and any lien created thereby, entered into by the trustee and a person acting in reliance upon a certification of trust shall be enforceable against the trust assets. However, if the person has actual knowledge that the trustee is acting outside the scope of the trust, then the transaction is not enforceable against the trust assets. Nothing contained herein shall limit the rights of the beneficiaries of the trust against the trustee.

(g) A person's failure to demand a certification of trust does not affect the protection provided that person by Section 18100, and no inference as to whether that person has acted in good faith may be drawn from the failure to demand a certification of trust. Nothing in this section is intended to create an implication that a person is liable for acting in reliance upon a certification of trust under circumstances where the requirements of this section are not satisfied.

(h) Except when requested by a beneficiary or in the context of litigation concerning a trust and subject to the provisions of subdivision (e), any person making a demand for the trust documents in addition to a certification of trust to prove facts set forth in the certification of trust acceptable to the third party shall be liable for damages, including attorney's fees, incurred as a result of the refusal to accept the certification of trust in lieu of the requested documents if the court determines that the person acted in bad faith in requesting the trust documents.

(i) Any person may record a certification of trust that relates to an interest in real property in the office of the county recorder in any county in which all or a portion of the real property is located. The county recorder shall impose any fee prescribed by law for recording that document sufficient to cover all costs incurred by the county in recording the document. The recorded certification of trust shall be a public record of the real property involved. This subdivision does not create a requirement to record a certification of trust in conjunction with the recordation of a transfer of title of real property involving a trust.

SEC. 2. Section 18105 is added to the Probate Code, to read:



18105. If title to an interest in real property is affected by a change of trustee, the successor trustee may execute and record in the county in which the property is located an affidavit of change of trustee. The county recorder shall impose any fee prescribed by law for recording that document in an amount sufficient to cover all costs incurred by the county in recording the document. The affidavit shall include the legal description of the real property, the name of the former trustee or trustees and the name of the successor trustee or trustees. The affidavit may also, but is not required to, include excerpts from the original trust documents, any amendments thereto, and any other documents evidencing or pertaining to the succession of the successor trustee or trustees.

SEC. 3. Section 18106 is added to the Probate Code, to read:

18106. (a) A document establishing the fact of change of trustee recorded pursuant to this chapter is subject to all statutory requirements for recorded documents.

(b) The county recorder shall index a document establishing the fact of change of a trustee recorded pursuant to this section in the index of grantors and grantees. The index entry shall be for the grantor, and for the purpose of this index, the person who has been succeeded as trustee shall be deemed to be the grantor. The county recorder shall impose any fee prescribed by law for indexing that document in an amount sufficient to cover all costs incurred by the county in indexing the document.

SEC. 4. Section 18107 is added to the Probate Code, to read:

18107. A document establishing the change of a trustee recorded pursuant to this chapter is prima facie evidence of the change of trustee insofar as the document identifies an interest in real property located in the county, title to which is affected by the change of trustee. The presumption established by this section is a presumption affecting the burden of producing evidence.

SEC. 5. Section 18108 is added to the Probate Code, to read:

18108. Any person whose interest is, or may be, affected by the recordation of an affidavit of change of trustee pursuant to this chapter may require that the successor trustee provide copies of those excerpts from the original trust documents, any amendments thereto, and any other documents which evidence or pertain to the succession of the successor trustee or trustees. Nothing in this section is intended to require or imply an obligation to provide the dispositive provisions of the trust or the entire trust and any amendments thereto.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction,



within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

In addition, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

