

Assembly Bill No. 1990

CHAPTER 538

An act to amend Section 16461 of the Probate Code, relating to trusts.

[Approved by Governor September 15, 2004. Filed
with Secretary of State September 15, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1990, Campbell. Trusts: trustee liability.

Existing law provides that a provision in a trust can relieve a trustee of liability for breach of trust, with specified exceptions for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interest of the beneficiary, or for any profit that the trustee derives from a breach of trust.

This bill would provide that, subject to those exceptions, a provision in a trust relieving a trustee of liability if a beneficiary fails to object to an item in an interim or final account or other written report within a specified time period would be effective only if certain conditions were met, including the provision of a specified notice and a period within which a beneficiary may object of not less than 180 days. Among other things, the bill would prohibit a beneficiary who fails to object in writing to an account or report that complies with these requirements from asserting any claim against the trustee regarding an item that is adequately disclosed in the account or report, with specified exceptions.

The bill would provide that when a beneficiary makes a valid objection to an item, any affected beneficiary may join in the objection, as specified. The bill would provide that, if proper notice has been given, and if a beneficiary has not made a timely objection, the trustee is not liable for any other claims adequately disclosed by any item in the account or report. The bill would provide, among other things, that it is not intended to establish a class of beneficiaries for actions on an account and report or provide that the action of one beneficiary is for the benefit of all beneficiaries.

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

SECTION 1. Section 16461 of the Probate Code is amended to read:
16461. (a) Except as provided in subdivision (b), (c), or (d), the trustee can be relieved of liability for breach of trust by provisions in the trust instrument.



(b) A provision in the trust instrument is not effective to relieve the trustee of liability (1) for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interest of the beneficiary, or (2) for any profit that the trustee derives from a breach of trust.

(c) Subject to subdivision (b), a provision in a trust instrument that releases the trustee from liability if a beneficiary fails to object to an item in an interim or final account or other written report within a specified time period is effective only if all of the following conditions are met:

(1) The account or report sets forth the item.

(2) The period specified in the trust instrument for the beneficiary to object is not less than 180 days, or the trustee elects to follow the procedure provided in subdivision (d).

(3) Written notice in 12-point boldface type is provided to a beneficiary with the account or report in the following form:

NOTICE TO BENEFICIARIES

YOU HAVE [insert “180 days” or the period specified in the trust instrument, whichever is longer] FROM YOUR RECEIPT OF THIS ACCOUNT OR REPORT TO MAKE AN OBJECTION TO ANY ITEM SET FORTH IN THIS ACCOUNT OR REPORT. ANY OBJECTION YOU MAKE MUST BE IN WRITING; IT MUST BE DELIVERED TO THE TRUSTEE WITHIN THE PERIOD STATED ABOVE; AND IT MUST STATE YOUR OBJECTION. YOUR FAILURE TO DELIVER A WRITTEN OBJECTION TO THE TRUSTEE WITHIN THE PERIOD STATED ABOVE WILL PERMANENTLY PREVENT YOU FROM LATER ASSERTING THIS OBJECTION AGAINST THE TRUSTEE. IF YOU DO MAKE AN OBJECTION TO THE TRUSTEE, THE THREE-YEAR PERIOD PROVIDED IN SECTION 16460 OF THE PROBATE CODE FOR COMMENCEMENT OF LITIGATION WILL APPLY TO CLAIMS BASED ON YOUR OBJECTION AND WILL BEGIN TO RUN ON THE DATE THAT YOU RECEIVE THIS ACCOUNT OR REPORT.

(d) A provision in a trust instrument that provides for a period less than 180 days to object to an item in an account or report shall be ineffective to release the trustee from liability. A trustee of a trust created by an instrument with an ineffective period may elect to be governed by the provisions of subdivision (c) by complying with the requirements of subdivision (c), except that “180 days” shall be substituted in the notice form for the ineffective period.



(e) Subject to subdivision (b), a beneficiary who fails to object in writing to an account or report that complies with the requirements of subdivision (c) within the specified, valid period shall be barred from asserting any claim against the trustee regarding an item that is adequately disclosed in the account or report. An item is adequately disclosed if the disclosure regarding the item meets the requirements of paragraph (1) of subdivision (a) of Section 16460.

(f) Except as provided in subdivision (a) of Section 16460, the trustee may not be released from liability as to any claim based on a written objection made by a beneficiary if the objection is delivered to the trustee within the specified, effective period. If a beneficiary has filed a written objection to an account or report that complies with the requirements of subdivision (c) within the specified, valid period that concerns an item that affects any other beneficiary of the trust, any affected beneficiary may join in the objection anytime within the specified, valid period or while the resolution of the objection is pending, whichever is later. This section is not intended to establish a class of beneficiaries for actions on an account and report or provide that the action of one beneficiary is for the benefit of all beneficiaries. This section does not create a duty for any trustee to notify beneficiaries of objections or resolution of objections.

(g) Provided that a beneficiary has filed a written objection to an account or report that complies with the requirements of subdivision (c) within the specified, valid period, a supplemental written objection may be delivered in the same manner as the objection not later than 180 days after the receipt of the account or report or no later than the period specified in the trust instrument, whichever is longer.

(h) Compliance with subdivision (c) excuses compliance with paragraph (6) of subdivision (a) of Section 16063 for the account or report to which that notice relates.

(i) Subject to subdivision (b), if proper notice has been given and a beneficiary has not made a timely objection, the trustee is not liable for any other claims adequately disclosed by any item in the account or report.

(j) Subdivisions (c) to (i), inclusive, apply to all accounts and reports submitted after the effective date of the act adding these subdivisions.

