

ASSEMBLY BILL

No. 1683

Introduced by Assembly Member Hagman

February 14, 2012

An act to amend Sections 15401 and 15410 of the Probate Code, relating to trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1683, as introduced, Hagman. Revocable trusts.

Under existing law, a trust that is revocable by the settlor may be revoked in whole or in part by either compliance with any method of revocation provided in the trust instrument or by a writing, other than a will, signed by the settlor and delivered to the trustee during the settlor's lifetime, as specified.

This bill would also allow revocation of a trust to be made by a writing signed by any other person holding the power of revocation and delivered to the trustee during the lifetime of the settlor or the person holding the power of revocation.

Under existing law, if a trust is created by more than one settlor, each settlor may revoke the trust as to the portion of the trust contributed by that settlor, unless the trust instrument provides otherwise and except with respect to certain community property interests.

This bill would specify that these provisions do not prevent a settlor from granting to another person, including his or her spouse, a power to revoke all or part of that portion of the trust contributed by that settlor, regardless of whether that portion was separate property or community property of that settlor, and regardless of whether that power to revoke is exercisable during the lifetime of that settlor or continues after the death of that settlor, or both.

Existing law establishes procedures governing the disposal of property when a trust is terminated. Under existing law, if a trust is revoked by the settlor, then the trust property is disposed of according to the directions of the settlor.

This bill would instead specify that if a trust is revoked by the settlor, the trust property would be disposed of first as directed by the settlor, secondly, as provided in the trust, and to the extent there is no direction by the settlor or in the trust, to the settlor, or his or her estate, as specified. The bill would also specify that if a trust is revoked by any person holding a power of revocation other than the settlor, the trust property would first be disposed of as provided in the trust, secondly as directed by the person exercising the power of revocation, and to the extent there is no direction in the trust or by the person exercising the power of revocation, to the person exercising the power of revocation, or his or her estate. The bill would also make related conforming and nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

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

- 1 SECTION 1. Section 15401 of the Probate Code is amended
- 2 to read:
- 3 15401. (a) A trust that is revocable by the settlor *or any other*
- 4 *person* may be revoked in whole or in part by any of the following
- 5 methods:
- 6 (1) By compliance with any method of revocation provided in
- 7 the trust instrument.
- 8 (2) By ~~a writing (other than a will)~~ *writing, other than a will,*
- 9 *signed by the settlor or any other person holding the power of*
- 10 *revocation* and delivered to the trustee during the lifetime of the
- 11 *settlor or the person holding the power of revocation.* If the trust
- 12 instrument explicitly makes the method of revocation provided in
- 13 the trust instrument the exclusive method of revocation, the trust
- 14 may not be revoked pursuant to this paragraph.
- 15 (b) (1) Unless otherwise provided in the instrument, if a trust
- 16 is created by more than one settlor, each settlor may revoke the
- 17 trust as to the portion of the trust contributed by that settlor, except
- 18 as provided in Section 761 of the Family Code.

1 (2) Paragraph (1), including the reference to Section 761 of the
2 Family Code, shall not prevent a settlor from granting to another
3 person, including, but not limited to, his or her spouse, a power
4 to revoke all or part of that portion of the trust contributed by that
5 settlor, regardless of whether that portion was separate property
6 or community property of that settlor, and regardless of whether
7 that power to revoke is exercisable during the lifetime of that settlor
8 or continues after the death of that settlor, or both.

9 (c) A trust may not be modified or revoked by an attorney in
10 fact under a power of attorney unless it is expressly permitted by
11 the trust instrument.

12 (d) ~~Nothing in this~~ This section ~~limits~~ shall not limit the authority
13 to modify or terminate a trust pursuant to Section 15403 or 15404
14 in an appropriate case.

15 (e) The manner of revocation of a trust revocable by the settlor
16 or any other person that was created by an instrument executed
17 before July 1, 1987, is governed by prior law and not by this
18 section.

19 SEC. 2. Section 15410 of the Probate Code is amended to read:
20 15410. At the termination of a trust, the trust property shall be
21 disposed of as follows:

22 (a) In the case of a trust that is revoked by the settlor, ~~as directed~~
23 ~~by the settlor~~, the trust property shall be disposed of in the
24 following order of priority:

- 25 (1) As directed by the settlor.
26 (2) As provided in the trust.
27 (3) To the extent that there is no direction by the settlor or in
28 the trust, to the settlor, or his or her estate, as the case may be.

29 (b) In the case of a trust that is revoked by any person holding
30 a power of revocation other than the settlor, the trust property
31 shall be disposed of in the following order of priority:

- 32 (1) As provided in the trust.
33 (2) As directed by the person exercising the power of revocation.
34 (3) To the extent that there is no direction in the trust or by the
35 person exercising the power of revocation, to the person exercising
36 the power of revocation, or his or her estate, as the case may be.

37 ~~(b)~~
38 (c) In the case of a trust that is terminated by the consent of the
39 settlor and all beneficiaries, as agreed by the settlor and all
40 beneficiaries.

1 ~~(e)~~
2 ~~(d)~~ In any other case, as provided in the trust instrument or in
3 a manner directed by the court that conforms as nearly as possible
4 to the intention of the settlor as expressed in the trust instrument.
5 ~~(d)~~
6 ~~(e)~~ If a trust is terminated by the trustee pursuant to subdivision
7 (b) of Section 15408, the trust property may be distributed as
8 determined by the trustee pursuant to the standard provided in
9 subdivision ~~(e)~~ ~~(d)~~ without the need for a court order. ~~Where~~ *If* the
10 trust instrument does not provide a manner of distribution at
11 termination and the settlor's intent is not adequately expressed in
12 the trust instrument, the trustee may distribute the trust property
13 to the living beneficiaries on an actuarial basis.