

AMENDED IN ASSEMBLY MARCH 22, 2012

AMENDED IN ASSEMBLY MARCH 13, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1683**

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**Introduced by Assembly Member Hagman  
(Coauthors: Assembly Members Jeffries and Wieckowski)**

February 14, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1683, as amended, 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, *notwithstanding these provisions*, specify that ~~these provisions do not prevent~~ a settlor ~~from granting~~ *may grant* 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 instrument, and to the extent there is no direction by the settlor or in the trust instrument, 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 instrument, secondly as directed by the person exercising the power of revocation, and to the extent there is no direction in the trust instrument 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, signed by the settlor or any  
 9 other person holding the power of revocation and delivered to the  
 10 trustee during the lifetime of the settlor or the person holding the  
 11 power of revocation. If the trust instrument explicitly makes the  
 12 method of revocation provided in the trust instrument the exclusive  
 13 method of revocation, the trust may not be revoked pursuant to  
 14 this paragraph.

1 (b) (1) Unless otherwise provided in the instrument, if a trust  
2 is created by more than one settlor, each settlor may revoke the  
3 trust as to the portion of the trust contributed by that settlor, except  
4 as provided in Section 761 of the Family Code.

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

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

17 (d) This section shall not limit the authority to modify or  
18 terminate a trust pursuant to Section 15403 or 15404 in an  
19 appropriate case.

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

24 SEC. 2. Section 15410 of the Probate Code is amended to read:

25 15410. At the termination of a trust, the trust property shall be  
26 disposed of as follows:

27 (a) In the case of a trust that is revoked by the settlor, the trust  
28 property shall be disposed of in the following order of priority:

29 (1) As directed by the settlor.

30 (2) As provided in the trust instrument.

31 (3) To the extent that there is no direction by the settlor or in  
32 the trust instrument, to the settlor, or his or her estate, as the case  
33 may be.

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

37 (1) As provided in the trust instrument.

38 (2) As directed by the person exercising the power of revocation.

39 (3) To the extent that there is no direction in the trust instrument  
40 or by the person exercising the power of revocation, to the person

1 exercising the power of revocation, or his or her estate, as the case  
2 may be.

3 (c) In the case of a trust that is terminated by the consent of the  
4 settlor and all beneficiaries, as agreed by the settlor and all  
5 beneficiaries.

6 (d) In any other case, as provided in the trust instrument or in  
7 a manner directed by the court that conforms as nearly as possible  
8 to the intention of the settlor as expressed in the trust instrument.

9 (e) If a trust is terminated by the trustee pursuant to subdivision  
10 (b) of Section 15408, the trust property may be distributed as  
11 determined by the trustee pursuant to the standard provided in  
12 subdivision (d) without the need for a court order. If the trust  
13 instrument does not provide a manner of distribution at termination  
14 and the settlor's intent is not adequately expressed in the trust  
15 instrument, the trustee may distribute the trust property to the living  
16 beneficiaries on an actuarial basis.