

AMENDED IN ASSEMBLY JANUARY 3, 2000

AMENDED IN ASSEMBLY APRIL 14, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 460

Introduced by Assembly Member Ackerman

February 16, 1999

An act to add Section 53216.8 to the Government Code, and to amend Sections 16060.5, 16061.5, ~~and~~ 16061.7, *and* 16061.8 of, *and to add Section 16061.9 to*, the Probate Code, relating to trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 460, as amended, Ackerman. Trusts: trustees and other fiduciaries.

(1) Existing law authorizes the legislative body of a local agency to establish a pension trust, as specified.

This bill would, in cases where the pension trust permits a participant or beneficiary to direct investments in his or her account, provide that a custodian, trustee, or a fiduciary, or a person who otherwise provides services to the trust shall not be liable for any loss, or for any breach, which results from the participant's or beneficiary's directions with respect to the assets in his or her account.

(2) Existing law defines the phrase "terms of the trust" for purposes of laws regarding the duty of a trustee to keep the beneficiaries of a trust reasonably informed of the trust and its administration to include the written trust instrument of an

irrevocable trust or those provisions of a written trust instrument that describe or affect an irrevocable portion of a trust.

This bill would revise the definition to state that it means the written trust instrument of an irrevocable trust instrument in effect at the settlor's death that describes or affects that portion of a trust that has become irrevocable at the settlor's death. It also would provide that the phrase includes documents exercising a power of appointment, as specified, but does not include superseded trust instruments or amendments.

(3) Existing law requires, when a revocable trust or any portion thereof becomes irrevocable for any reason, *that* the trustee ~~to~~ *shall* provide a copy of the trust or irrevocable portion of it, as specified.

~~This bill would revise the definition of the above-described phrase and would~~ require the trustee to provide the copy, as specified, only when the trust becomes irrevocable or ~~the~~ *a* portion of the trust becomes irrevocable because of the death of one or more of the settlors.

~~(3)~~

(4) Existing law requires a trustee to provide specified information regarding the trust and the trustee to each beneficiary of an irrevocable trust or irrevocable portion of a trust; to each heir of the settlor, and to the Attorney General, as specified.

~~This bill would revise these provisions to, among other things, immunize a trustee who provides the notice from liability if the trustee withholds distributions from the trust for the period during which a beneficiary or heir may bring an action to contest the trust. Existing law also provides that a trustee who fails to make a good faith effort to serve the notification by the trustee shall be responsible for all damages including attorneys' fees and costs resulting from the failure.~~

This bill would revise and recast these provisions to, among other things, immunize trustees for failure to provide notification with respect to assets already distributed, absent a showing of bad faith or lack of reasonable diligence. The bill would also provide that a trustee may consider the fact that



the period within which a beneficiary may contest a trust has not expired when exercising discretion in distributing assets.

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 53216.8 is added to the
2 Government Code, to read:

3 53216.8. In the case of a pension trust established
4 pursuant to this article which provides for individual
5 accounts and permits a participant or beneficiary to
6 direct investments in his or her account, if a participant
7 or beneficiary directs investments in his or her account,
8 no person who is a custodian, trustee, or a fiduciary, or
9 otherwise provides services to the pension trust shall be
10 liable for any loss, or by reason of any breach, which
11 results from that participant's or beneficiary's directions
12 with respect to the assets in his or her account.

13 SEC. 2. Section 16060.5 of the Probate Code is
14 amended to read:

15 16060.5. As used in this article, ~~the~~ "terms of the trust"
16 ~~shall include~~ *means* the written trust instrument of an
17 irrevocable trust or those provisions of a written trust
18 instrument *in effect at the settlor's death* that describe or
19 affect ~~an irrevocable~~ that portion of a trust ~~in effect at the~~
20 ~~settlor's death, including~~ *that has become irrevocable at*
21 *the death of the settlor. In addition, 'terms of the trust'*
22 *includes*, but is not limited to, signatures, amendments,
23 disclaimers, and any directions or instructions to the
24 trustee that affect the disposition of the trust. "Terms of
25 the trust" does not include documents which were
26 intended to affect ~~administration or~~ disposition only
27 while the trust was revocable. *If a trust has been*
28 *completely restated, "terms of the trust" does not include*
29 *trust instruments or amendments which are superseded*
30 *by the last restatement before the settlor's death, but it*
31 *does include amendments executed after the*
32 *restatement. "Terms of the trust" also includes any*
33 *document exercising a power of appointment over the*



1 *trust or over any portion of the trust which has become*
2 *irrevocable.*

3 SEC. 3. Section 16061.5 of the Probate Code is
4 amended to read:

5 16061.5. (a) When a revocable trust or any portion of
6 a revocable trust becomes irrevocable because of the
7 death of one or more of the settlors of the trust, the trustee
8 shall provide a true and complete copy of the terms of the
9 irrevocable trust, or irrevocable portion of the trust, to
10 any beneficiary of the trust who requests it and to any heir
11 of a deceased settlor who requests it.

12 (b) The trustee shall, for purposes of this section, rely
13 upon any final judicial determination of heirship.
14 However, the trustee shall have discretion to make a good
15 faith determination by any reasonable means of the heirs
16 of a deceased settlor in the absence of a final judicial
17 determination of heirship *known to the trustee.*

18 SEC. 4. Section 16061.7 of the Probate Code is
19 amended to read:

20 16061.7. (a) A trustee shall serve a notification by the
21 trustee as described in this section ~~when~~ *in the following*
22 *events:*

23 (1) *When a revocable trust or any portion thereof*
24 *becomes irrevocable because of the death of one or more*
25 *of the settlors of the trust* ~~or for any other reason.~~

26 (2) *Whenever there is a change of trustee of an*
27 *irrevocable trust. The duty to serve the notification by the*
28 *trustee is the duty of the continuing or successor trustee,*
29 *and any one cotrustee may serve the notification.*

30 (b) The notification by the trustee required by
31 subdivision (a) shall be served on each of the following:

32 (1) Each beneficiary of the irrevocable trust or
33 irrevocable portion of the trust, subject to the limitations
34 of Section 15804, ~~unless the existence of the beneficiary is~~
35 ~~not known to the trustee until more than 120 days after~~
36 ~~the death of one or more of the settlors of the trust.~~

37 (2) Each heir of the deceased settlor, ~~unless either (A)~~
38 ~~the existence of the heir is not known to the trustee until~~
39 ~~more than 120 days after the death of one or more of the~~



1 ~~settlers of the trust or (B) the trustee is either one of the~~
2 ~~following:~~

3 ~~(i) A financial institution.~~

4 ~~(ii) An individual who is not a disqualified person~~
5 ~~under Section 21350 and is not a beneficiary of the trust~~
6 ~~or a relative of the settlor. *if the event that requires*~~
7 ~~*notification is the death of a settlor.*~~

8 (3) If the trust is a charitable trust subject to the
9 supervision of the Attorney General, to the Attorney
10 General.

11 (c) *A trustee shall, for purposes of this section, rely*
12 *upon any final judicial determination of heirship, known*
13 *to the trustee, but the trustee shall have discretion to*
14 *make a good faith determination by any reasonable*
15 *means of the heirs of a deceased settlor in the absence of*
16 *a final judicial determination of heirship known to the*
17 *trustee.*

18 (d) The trustee need not provide a copy of the
19 notification by trustee to any beneficiary or heir—~~the~~
20 ~~existence of whom is (1) known to the trustee but who~~
21 ~~cannot be located by the trustee after reasonable~~
22 ~~diligence or (2) unknown to the trustee. ~~If the trustee has~~~~
23 ~~actual knowledge that there is an heir or beneficiary, but~~
24 ~~does not have actual knowledge of the address for the heir~~
25 ~~or beneficiary, or if, after mailing the notice to the last~~
26 ~~known address known to the trustee and the notice is~~
27 ~~returned to the trustee as undeliverable, the notice~~
28 ~~requirement of this article is satisfied.~~

29 ~~(d)~~

30 (e) The notification by trustee shall be served by mail
31 to the last known address, pursuant to Section 1215, or by
32 personal delivery.

33 ~~(e)~~

34 (f) The notification by trustee shall be served not later
35 than 60 days following the occurrence of the event
36 requiring service of the notification by trustee, or 60 days
37 after the trustee became aware of the existence of a
38 person entitled to receive notification by trustee, if that
39 person was not known to the trustee on the occurrence
40 of the event requiring service of the notification and the



1 trustee became aware of the existence of that person not
2 more than 120 days after the death of one or more of the
3 settlors of the trust. If there is a vacancy in the office of
4 the trustee on the date of the occurrence of the event
5 requiring service of the notification by trustee, or if that
6 event causes a vacancy, then the 60-day period for service
7 of the notification by trustee commences on the date the
8 new trustee commences to serve as trustee.

9 ~~(f)~~

10 (g) The notification by trustee shall contain the
11 following information:

12 (1) The identity of the settlor or settlors of the trust
13 and the date of execution of the trust instrument.

14 (2) The name, mailing address and telephone number
15 of each trustee of the trust.

16 (3) The address of the physical location where the
17 principal place of administration of the trust is located,
18 pursuant to Section 17002.

19 (4) Any additional information that may be *expressly*
20 required by the terms of the trust instrument.

21 ~~(5) A notification that the recipient is entitled, upon
22 reasonable request to the trustee, to receive from the
23 trustee a true and complete copy of the terms of the trust.~~

24 ~~(g) The~~

25 *(h) If the notification by the trustee is served because*
26 *a revocable trust or any portion of it has become*
27 *irrevocable because of the death of one or more settlors*
28 *of the trust, the notification by the trustee shall also*
29 *include a warning, set out in a separate paragraph in not*
30 *less than 10-point boldfaced type, or a reasonable*
31 *equivalent thereof, that states as follows:*

32 “You may not bring an action to contest the trust more
33 than 120 days from the date this notification by the trustee
34 is served upon you or 60 days from the day on which a
35 copy of the terms of the trust is mailed or personally
36 delivered to you in response to your request during that
37 120-day period, whichever is later.”

38 ~~(h) A trustee who fails to serve the notification by
39 trustee as required by this section shall be responsible for
40 all damages, including attorney’s fees and costs, caused by~~



1 ~~the failure unless the trustee makes a good faith effort to~~
2 ~~comply with this section. A trustee shall, for purposes of~~
3 ~~this section, rely upon any final judicial determination of~~
4 ~~heirship; but the trustee shall have discretion to make a~~
5 ~~good faith determination by any reasonable means of the~~
6 ~~heirs of a deceased settlor in the absence of a final judicial~~
7 ~~determination of heirship known to the trustee.~~

8 (i) Any waiver by a settlor of the requirement of
9 serving the notification by trustee required by this section
10 is against public policy and shall be void.

11 (j) A trustee may serve a notification by trustee in the
12 form required by this section on any person in addition to
13 those on whom the notification by trustee is required to
14 be served. A trustee is not liable to any person for serving
15 or for not serving the notice on any person in addition to
16 those on whom the notice is required to be served. A
17 trustee is not required to serve a notification by trustee
18 if the event that otherwise requires service of the
19 notification by trustee occurs before January 1, 1998.

20 ~~(k) A trustee who serves a notification pursuant to this~~
21 ~~section shall not be liable to any person if the trustee~~
22 ~~withholds distribution from the trust for the period in~~
23 ~~which a beneficiary or heir may bring an action to contest~~
24 ~~the trust.~~

25 *SEC. 5. Section 16061.8 of the Probate Code is*
26 *amended to read:*

27 16061.8. No person ~~who receives upon whom~~ the
28 notification by the trustee *is served* pursuant to this
29 chapter may bring an action to contest the trust more
30 than 120 days from the date the notification by the trustee
31 is served upon him or her, or 60 days from the day on
32 which a copy of the terms of the trust is mailed or
33 personally delivered to him or her in response to his or
34 her request during that 120-day period, whichever is
35 later.

36 *SEC. 6. Section 16061.9 is added to the Probate Code,*
37 *to read:*

38 16061.9. (a) *A trustee who fails to serve the*
39 *notification by trustee as required by Section 16061.7 shall*
40 *be responsible for all damages, including attorneys' fees*



1 *and costs, caused by the failure unless the trustee makes*
2 *a good faith effort to comply with that section.*

3 *(b) With respect to trust assets that have already been*
4 *distributed, no trustee shall be liable to any beneficiary or*
5 *heir for failing to serve notification by trustee in the*
6 *absence of a showing of the trustee's bad faith or lack of*
7 *reasonable diligence in serving notification by the*
8 *trustee.*

9 *(c) A trustee, in exercising discretion with respect to*
10 *the timing and nature of distributions of trust assets, may*
11 *consider the fact that the period in which a beneficiary or*
12 *heir could bring an action to contest the trust has not*
13 *expired.*

