

AMENDED IN SENATE MARCH 30, 2000  
AMENDED IN ASSEMBLY JANUARY 20, 2000  
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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

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An act to add Section 53216.8 to the Government Code, and to amend Sections 16060.5, 16061.5, 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would provide that the phrase includes documents exercising a power of appointment, as specified, but does not include superseded trust instruments or amendments.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 shall provide a copy of the trust or irrevocable portion of it, as specified.

This bill would require the trustee to provide the copy, as specified, when the trust becomes irrevocable or a portion of the trust becomes irrevocable because of the death of one or more of the settlors. This bill would also require that the trustee provide the copy, as specified, when the terms of the trust expressly provide that the trust becomes irrevocable within one year of the death of a settlor because of a contingency related to the death of one or more settlors of the trust.

(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.

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, require that trustees provide specified information to certain beneficiaries and heirs when the terms

of the trust expressly provide that the trust becomes irrevocable within one year of the death of a settlor because of a contingency related to the death of one or more settlors of the trust. ~~The bill would also 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 further provide that a trustee who fails to give notification, as specified, to a beneficiary shall be responsible for all damages caused by the failure unless the trustee has made a reasonable and diligent effort to comply with the notification requirements. This bill would also provide that a trustee who fails to give notification, as specified, to an heir who is not a beneficiary and who is known to the trustee shall be responsible for all damages caused to the heir by the failure unless the trustee has made a reasonable and diligent effort, as defined, to comply with notification requirements. This bill would establish criteria for the award of attorney's fees in cases relating to the notification requirements described above. The bill would further 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.

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

3 16060.5. As used in this article, “terms of the trust”  
4 means the written trust instrument of an irrevocable trust  
5 or those provisions of a written trust instrument in effect  
6 at the settlor’s death that describe or affect that portion  
7 of a trust that has become irrevocable at the death of the  
8 settlor. In addition, “terms of the trust” includes, but is  
9 not limited to, signatures, amendments, disclaimers, and  
10 any directions or instructions to the trustee that affect the  
11 disposition of the trust. “Terms of the trust” does not  
12 include documents which were intended to affect  
13 disposition only while the trust was revocable. If a trust  
14 has been completely restated, “terms of the trust” does  
15 not include trust instruments or amendments which are  
16 superseded by the last restatement before the settlor’s  
17 death, but it does include amendments executed after the  
18 restatement. “Terms of the trust” also includes any  
19 document exercising a power of appointment over the  
20 trust or over any portion of the trust which has become  
21 irrevocable.

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

24 16061.5. (a) When a revocable trust or any portion of  
25 a revocable trust becomes irrevocable because of the  
26 death of one or more of the settlors of the trust, or  
27 because, by the express terms of the trust, the trust  
28 becomes irrevocable within one year of the death of a  
29 settlor because of a contingency related to the death of  
30 one or more of the settlors of the trust, the trustee shall  
31 provide a true and complete copy of the terms of the  
32 irrevocable trust, or irrevocable portion of the trust, to  
33 any beneficiary of the trust who requests it and to any heir  
34 of a deceased settlor who requests it.

35 (b) The trustee shall, for purposes of this section, rely  
36 upon any final judicial determination of heirship.  
37 However, the trustee shall have discretion to make a good  
38 faith determination by any reasonable means of the heirs  
39 of a deceased settlor in the absence of a final judicial  
40 determination of heirship known to the trustee.

1 SEC. 4. Section 16061.7 of the Probate Code is  
2 amended to read:

3 16061.7. (a) A trustee shall serve a notification by the  
4 trustee as described in this section in the following events:

5 (1) When a revocable trust or any portion thereof  
6 becomes irrevocable because of the death of one or more  
7 of the settlors of the trust, or because, by the express terms  
8 of the trust, the trust becomes irrevocable within one year  
9 of the death of a settlor because of a contingency related  
10 to the death of one or more of the settlors of the trust.

11 (2) Whenever there is a change of trustee of an  
12 irrevocable trust. The duty to serve the notification by the  
13 trustee is the duty of the continuing or successor trustee,  
14 and any one cotrustee may serve the notification.

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

17 (1) Each beneficiary of the irrevocable trust or  
18 irrevocable portion of the trust, subject to the limitations  
19 of Section 15804.

20 (2) Each heir of the deceased settlor, if the event that  
21 requires notification is the death of a settlor or  
22 irrevocability within one year of the death of the settlor  
23 of the trust by the express terms of the trust because of a  
24 contingency related to the death of a settlor.

25 (3) If the trust is a charitable trust subject to the  
26 supervision of the Attorney General, to the Attorney  
27 General.

28 (c) A trustee shall, for purposes of this section, rely  
29 upon any final judicial determination of heirship, known  
30 to the trustee, but the trustee shall have discretion to  
31 make a good faith determination by any reasonable  
32 means of the heirs of a deceased settlor in the absence of  
33 a final judicial determination of heirship known to the  
34 trustee.

35 (d) The trustee need not provide a copy of the  
36 notification by trustee to any beneficiary or heir (1)  
37 known to the trustee but who cannot be located by the  
38 trustee after reasonable diligence or (2) unknown to the  
39 trustee.

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

4 (f) The notification by trustee shall be served not later  
5 than 60 days following the occurrence of the event  
6 requiring service of the notification by trustee, or 60 days  
7 after the trustee became aware of the existence of a  
8 person entitled to receive notification by trustee, if that  
9 person was not known to the trustee on the occurrence  
10 of the event requiring service of the notification. If there  
11 is a vacancy in the office of the trustee on the date of the  
12 occurrence of the event requiring service of the  
13 notification by trustee, or if that event causes a vacancy,  
14 then the 60-day period for service of the notification by  
15 trustee commences on the date the new trustee  
16 commences to serve as trustee.

17 (g) The notification by trustee shall contain the  
18 following information:

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

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

23 (3) The address of the physical location where the  
24 principal place of administration of the trust is located,  
25 pursuant to Section 17002.

26 (4) Any additional information that may be expressly  
27 required by the terms of the trust instrument.

28 (5) A notification that the recipient is entitled, upon  
29 reasonable request to the trustee, to receive from the  
30 trustee a true and complete copy of the terms of the trust.

31 (h) If the notification by the trustee is served because  
32 a revocable trust or any portion of it has become  
33 irrevocable because of the death of one or more settlors  
34 of the trust, or because, by the express terms of the trust,  
35 the trust becomes irrevocable within one year of the  
36 death of a settlor because of a contingency related to the  
37 death of one or more of the settlors of the trust, the  
38 notification by the trustee shall also include a warning, set  
39 out in a separate paragraph in not less than 10-point

1 boldface type, or a reasonable equivalent thereof, that  
2 states as follows:

3 “You may not bring an action to contest the trust more  
4 than 120 days from the date this notification by the trustee  
5 is served upon you or 60 days from the date on which a  
6 copy of the terms of the trust is mailed or personally  
7 delivered to you in response to your request during that  
8 120-day period, whichever is later.”

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

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

21 SEC. 5. Section 16061.8 of the Probate Code is  
22 amended to read:

23 16061.8. No person upon whom the notification by the  
24 trustee is served pursuant to this chapter may bring an  
25 action to contest the trust more than 120 days from the  
26 date the notification by the trustee is served upon him or  
27 her, or 60 days from the day on which a copy of the terms  
28 of the trust is mailed or personally delivered to him or her  
29 in response to his or her request during that 120-day  
30 period, whichever is later.

31 SEC. 6. Section 16061.9 is added to the Probate Code,  
32 to read:

33 16061.9. (a) A trustee who fails to serve the  
34 notification by trustee as required by Section 16061.7 *on*  
35 *a beneficiary* shall be responsible for all damages;  
36 ~~including attorneys’ fees and costs~~; caused by the failure  
37 unless the trustee makes a ~~good faith~~ *reasonable and*  
38 *diligent* effort to comply with that section.

39 (b) ~~With respect to trust assets that have already been~~  
40 ~~distributed, no trustee shall be liable to any beneficiary or~~

1 ~~heir for failing to serve notification by trustee in the~~  
2 ~~absence of a showing of the trustee's bad faith or lack of~~  
3 ~~reasonable diligence in serving notification by the~~  
4 ~~trustee.~~ A trustee who fails to serve the notification by  
5 trustee as required by Section 16061.7 on an heir who is  
6 not a beneficiary and whose identity is known to the  
7 trustee shall be responsible for all damages caused to the  
8 heir by the failure unless the trustee shows that the  
9 trustee made a reasonable and diligent effort to comply  
10 with that section. For purposes of this subdivision,  
11 "reasonable and diligent effort" means that the trustee  
12 has sent notice by first class mail to the heir at the heir's  
13 last mailing address actually known to the trustee.

14 (c) In addition to any other remedies provided by law,  
15 if a person entitled to notice under Section 16061.7 does  
16 not receive that notice and shows that a trustee failed to  
17 make a reasonable and diligent effort to provide the  
18 notice, the person shall be entitled to an award of  
19 reasonable attorney's fees. If a trustee shows that an  
20 action brought against the trustee by a person for failure  
21 to provide notification under Section 16061.7 was in bad  
22 faith, the trustee shall be entitled to an award of  
23 reasonable attorney's fees.

24 (d) A trustee, in exercising discretion with respect to  
25 the timing and nature of distributions of trust assets, may  
26 consider the fact that the period in which a beneficiary or  
27 heir could bring an action to contest the trust has not  
28 expired.

