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**SB-785 Estates and trusts: creditor's claim.** (2015-2016)

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**Senate Bill No. 785**

**CHAPTER 48**

An act to amend Sections 19000, 19001, 19003, 19006, 19008, 19024, 19025, 19320, 19323, and 19400 of the Probate Code, relating to trusts.

[ Approved by Governor July 02, 2015. Filed with Secretary of State July 02, 2015. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 785, Morrell. Estates and trusts: creditor's claim.

Existing law permits property to be titled in a trust, and provides that, upon the death of a settlor of a trust, the property of the deceased settlor that was subject to the power of revocation at the time of the settlor's death is subject to the claims of creditors of the deceased settlor's estate. Existing law defines specified terms for the purposes of these provisions.

This bill would define the terms "probate estate" and "trust estate" for the purposes of these provisions and clarify that certain uses of the term "estate" in existing law refer to a probate estate.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 19000 of the Probate Code is amended to read:

**19000.** As used in this part:

(a) "Claim" means a demand for payment for any of the following, whether due, not due, accrued or not accrued, or contingent, and whether liquidated or unliquidated:

(1) Liability of the deceased settlor, whether arising in contract, tort, or otherwise.

(2) Liability for taxes incurred before the deceased settlor's death, whether assessed before or after the deceased settlor's death, other than property taxes and assessments secured by real property liens.

(3) Liability for the funeral expenses of the deceased settlor.

(b) "Claim" does not include a dispute regarding title to specific property alleged to be included in the trust estate.

(c) "Creditor" means a person who may have a claim against the trust property.

(d) "Trust" means a trust described in Section 18200, or, if a portion of a trust, that portion that remained subject to the power of revocation at the deceased settlor's death.

(e) "Deceased settlor" means a deceased person who, at the time of his or her death, held the power to revoke the trust in whole or in part.

(f) "Debts" means all claims, as defined in subdivision (a), all expenses of administration, and all other proper charges against the trust estate, including taxes.

(g) "Probate estate" means a decedent's estate subject to administration pursuant to Division 7 (commencing with Section 7000).

(h) "Trust estate" means a decedent's property, real and personal, that is titled in the name of the trustee of the deceased settlor's trust or confirmed by order of the court to the trustee of the deceased settlor's trust.

**SEC. 2.** Section 19001 of the Probate Code is amended to read:

**19001.** (a) Upon the death of a settlor, the property of the deceased settlor that was subject to the power of revocation at the time of the settlor's death is subject to the claims of creditors of the deceased settlor's probate estate and to the expenses of administration of the probate estate to the extent that the deceased settlor's probate estate is inadequate to satisfy those claims and expenses.

(b) The deceased settlor, by appropriate direction in the trust instrument, may direct the priority of sources of payment of debts among subtrusts or other gifts established by the trust at the deceased settlor's death. Notwithstanding this subdivision, no direction by the settlor shall alter the priority of payment, from whatever source, of the matters set forth in Section 11420 which shall be applied to the trust as it applies to a probate estate.

**SEC. 3.** Section 19003 of the Probate Code is amended to read:

**19003.** (a) At any time following the death of the settlor, and during the time that there has been no filing of a petition to administer the probate estate of the deceased settlor in this state of which the trustee has actual knowledge, the trustee may file with the court a proposed notice to creditors. Upon the court's assignment of a proceeding number to the proposed notice, the trustee shall publish and serve notice to creditors of the deceased settlor in the form and within the time prescribed in Chapters 3 (commencing with Section 19040) and 4 (commencing with Section 19050). That action shall constitute notice to creditors of the requirements of this part.

(b) The filing shall be made with the superior court for the county in this state where the deceased settlor resided at the time of death, or if none, in any county in this state in which trust property was located at the time of the settlor's death, or if none, in the county in this state that was the principal place of administration of the trust at the time of the settlor's death.

(c) Nothing in subdivision (a) affects a notice or request to a public entity required by Chapter 7 (commencing with Section 19200).

**SEC. 4.** Section 19006 of the Probate Code is amended to read:

**19006.** (a) If a trustee of a trust established by the deceased settlor files, publishes, and serves notice as provided in Section 19003 the protection from creditors afforded that trustee and trust shall also be afforded to any other trusts established by the deceased settlor and the trustees and beneficiaries of those trusts.

(b) If the personal representative of the deceased settlor's probate estate has published notice under Section 8120 and given notice of administration of the probate estate of the deceased settlor under Chapter 2 (commencing with Section 9050) of Part 4 of Division 7, the protection from creditors afforded the personal representative of the deceased settlor's probate estate shall be afforded to the trustee and to the beneficiaries of the trust.

(c) In the event that, following the filing and publication of the notice set forth in Section 19003, there shall be commenced any proceeding under which a notice pursuant to Section 8120 is required to be published, then the trustee shall have a right of collection against that probate estate to recover the amount of any debts paid from trust assets that would otherwise have been satisfied (whether by law or by direction in the deceased settlor's will or trust) by the property subject to probate proceedings.

**SEC. 5.** Section 19008 of the Probate Code is amended to read:

**19008.** If there is no proceeding to administer the probate estate of the deceased settlor, and if the trustee does not file a proposed notice to creditors pursuant to Section 19003 and does not publish notice to creditors pursuant to Chapter 3

(commencing with Section 19040), then the liability of the trust to any creditor of the deceased settlor shall be as otherwise provided by law.

**SEC. 6.** Section 19024 of the Probate Code is amended to read:

**19024.** At least 30 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing, together with a copy of the petition, to be mailed to each of the following persons who is not a petitioner:

- (a) All trustees of the trust and of any other trusts to which an allocation of liability may be approved by the court pursuant to the petition.
- (b) All beneficiaries affected.
- (c) The personal representative of the deceased settlor's probate estate, if any is known to the trustee.
- (d) The Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General, unless the Attorney General waives notice.

**SEC. 7.** Section 19025 of the Probate Code is amended to read:

**19025.** (a) If any creditor, beneficiary, or trustee fails timely to file a written pleading upon notice, then the case is at issue, notwithstanding the failure. The case may proceed on the petition and written statements filed by the time of the hearing, and no further pleadings by other persons are necessary. The creditor, beneficiary, or trustee who failed timely to file a written pleading upon notice may not participate further in the proceeding for the determination requested, and that creditor, beneficiary, or trustee shall be bound by the decision in the proceeding.

(b) The court's order, when final, shall be conclusive as to the liability of the trust property with respect to the claims at issue in the petition. In the event of a subsequent administration of the probate estate of the deceased settlor, that order shall be binding on the personal representative of the probate estate of the deceased settlor as well as all creditors and beneficiaries who had notice of the petition.

**SEC. 8.** Section 19320 of the Probate Code is amended to read:

**19320.** If it appears that a debt of the deceased settlor has been paid or is payable in whole or in part from property in the deceased settlor's trust, then the trustee, the surviving spouse, the personal representative, if any, of a deceased settlor's probate estate, or a beneficiary may petition for an order to allocate the debt.

**SEC. 9.** Section 19323 of the Probate Code is amended to read:

**19323.** (a) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing and a copy of the petition to be served on the surviving spouse in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

(b) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of hearing, together with a copy of the petition, to be mailed to each of the following persons who are not petitioners:

- (1) All trustees of the trust and of any trusts to which an allocation of liability may be approved by the court pursuant to the petition.
- (2) All beneficiaries affected.
- (3) The personal representative of the deceased settlor's probate estate, if any is known to the trustee.
- (4) The Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General, unless the Attorney General waives notice.

**SEC. 10.** Section 19400 of the Probate Code is amended to read:

**19400.** Subject to Section 366.2 of the Code of Civil Procedure, if there is no proceeding to administer the probate estate of the deceased settlor, and if the trustee does not file a proposed notice to creditors pursuant to Section 19003 and does not publish notice to creditors pursuant to Chapter 3 (commencing with Section 19040), then a beneficiary of the trust to whom payment, delivery, or transfer of the deceased settlor's property is made pursuant to the terms of the trust is personally liable, to the extent provided in Section 19402, for the unsecured claims of the creditors of the deceased settlor's probate estate.