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SB-333 Trusts: modification or termination. (2017-2018)

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Senate Bill No. 333

CHAPTER 61

An act to amend Sections 15403 and 15404 of the Probate Code, relating to trusts.

[Approved by Governor July 10, 2017. Filed with Secretary of State July 10, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 333, Anderson. Trusts: modification or termination.

Existing law authorizes the beneficiaries of an irrevocable trust, upon the consent of all beneficiaries, to compel the modification or termination of the trust upon petition to the court. Existing law prohibits the modification or termination of an irrevocable trust if the continuance of the trust is necessary to carry out a material purpose of the trust, unless the court determines that modification or termination under the circumstances outweighs the interest in accomplishing a material purpose of the trust. Notwithstanding that provision, existing law prohibits the court from terminating a trust that is subject to a valid restraint on the transfer of a beneficiary's interest.

This bill would revise and recast these provisions to delete the provision prohibiting a court from terminating an irrevocable trust that is subject to a valid restraint on the transfer of a beneficiary's interest and instead authorize the court to terminate a trust with this restraint if the court finds good cause to do so. The bill would specify that a court is authorized to limit the class of beneficiaries whose consent is necessary to modify or terminate a trust when the class is described as "heirs" or "next of kin." The bill would also make clarifying changes.

Existing law authorizes the settlor and the beneficiaries of a trust, upon the consent of the settlor and all beneficiaries, to compel the modification or termination of the trust.

This bill would revise and recast those provisions and instead authorize the trust to be modified or terminated by the written consent of the settlor and all beneficiaries without court approval of the modification or termination. The bill would also make clarifying changes.

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

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

SECTION 1. Section 15403 of the Probate Code is amended to read:

15403. (a) Except as provided in subdivision (b), if all beneficiaries of an irrevocable trust consent, they may petition the court for modification or termination of the trust.

(b) If the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust. If the trust is subject to a valid restraint on the transfer of a beneficiary's interest as provided in Chapter 2 (commencing with Section 15300), the trust may not be terminated unless the court determines there is good cause to do so.

(c) If the trust provides for the disposition of principal to a class of persons described only as "heirs" or "next of kin" of the settlor, or using other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is necessary to modify or terminate a trust to the beneficiaries who are reasonably likely to take under the circumstances.

SEC. 2. Section 15404 of the Probate Code is amended to read:

15404. (a) A trust may be modified or terminated by the written consent of the settlor and all beneficiaries without court approval of the modification or termination.

(b) If any beneficiary does not consent to the modification or termination of the trust, the court may modify or partially terminate the trust upon petition to the court by the other beneficiaries, with the consent of the settlor, if the interests of the beneficiaries who do not consent are not substantially impaired.

(c) If the trust provides for the disposition of principal to a class of persons described only as "heirs" or "next of kin" of the settlor, or using other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is necessary to modify or terminate a trust to the beneficiaries who are reasonably likely to take under the circumstances.