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AB-1079 Trusts: revocation. (2021-2022)

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Assembly Bill No. 1079

CHAPTER 749

An act to amend Sections 15800 and 16069 of the Probate Code, relating to trusts.

[Approved by Governor October 09, 2021. Filed with Secretary of State October 09, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1079, Gallagher. Trusts: revocation.

Existing law establishes procedures for the creation, modification, and termination of a trust, and regulates the administration of trusts by trustees on behalf of beneficiaries. Except as specified, existing law authorizes the revocation of a trust when the person holding the power to revoke the trust is competent. Existing law provides that, during this time, the duties of the trustee are owed to the person holding the power to revoke the trust.

This bill would impose additional requirements on the trustee of a trust if, during the time that a trust is revocable, no person holding the power to revoke the trust is competent, including, but not limited to, requiring the trustee to provide a copy of the trust instrument and any amendments to the beneficiaries under the trust instrument, as specified. The bill would authorize the trustee to rely on specified methods to establish incompetency, but would clarify that the bill does not affect any legal standard for establishing incompetency. The bill would make conforming changes to a related provision.

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

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

SECTION 1. Section 15800 of the Probate Code is amended to read:

15800. (a) Except to the extent that the trust instrument otherwise provides or where the joint action of the settlor and all beneficiaries is required, during the time that a trust is revocable and at least one person holding the power to revoke the trust, in whole or in part, is competent, the following shall apply:

- (1) The person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under this division.
- (2) The duties of the trustee are owed to the person holding the power to revoke.

(b) Except to the extent that the trust instrument otherwise provides or where the joint action of the settlor and all beneficiaries is required, if, during the time that a trust is revocable, no person holding the power to revoke the trust, in whole or in part, is competent, the following shall apply:

- (1) Within 60 days of the obtaining of information establishing the incompetency of the last person holding the power to revoke the trust, the trustee shall provide notice of the application of this subdivision and a true and complete copy of the trust

instrument and any amendments to each beneficiary to whom the trustee would be required or authorized to distribute income or principal if the settlor had died as of the date of receipt of the information. If the trust has been completely restated, the trustee need not include the trust instrument or amendments superseded by the last restatement.

(2) The duties of the trustee to account at least annually or provide information requested under Section 16061 shall be owed to each beneficiary to whom the trustee would be required or authorized to distribute income or principal if the settlor had died during the account period or the period relating to the administration of the trust relevant to the report, as applicable.

(3) A beneficiary whose interest is conditional on some factor not yet in existence or not yet determinable shall not be considered a beneficiary for purposes of this section, unless the trustee, in the trustee's discretion, believes it is likely that the condition or conditions will be satisfied at the time of the settlor's death.

(4) If the interest of a beneficiary fails because a condition to receiving that interest has not been satisfied or the trustee does not believe that the condition will be satisfied at the time of the settlor's death, the duties in paragraphs (1) and (2) shall be owed to the beneficiary or beneficiaries who would next succeed to that interest at the relevant time or period as determined under the trust instrument, as amended and restated.

(c) To establish incompetency for the purposes of subdivision (b), the trustee may rely on either of the following:

(1) The method for determining incompetency specified by the trust instrument, as amended or restated.

(2) A judicial determination of incompetency.

SEC. 2. Section 16069 of the Probate Code is amended to read:

16069. (a) The trustee is not required to account to the beneficiary, provide the terms of the trust to a beneficiary, or provide requested information to the beneficiary pursuant to Section 16061, in any of the following circumstances:

(1) In the case of a beneficiary of a revocable trust, as provided in subdivision (a) of Section 15800, for the period when the trust may be revoked.

(2) If the beneficiary and the trustee are the same person.

(b) Notwithstanding subdivision (a), in the case of a revocable trust, if no person holding the power to revoke the trust, in whole or in part, is competent, the trustee's duties to account shall be owed to those beneficiaries specified in paragraph (2) of subdivision (b) of Section 15800.

SEC. 3. The changes made by this act do not do either of the following:

(a) Diminish the right of a beneficiary to bring an action during the settlor's incompetency or after the trust becomes irrevocable, including an action related to the conduct of a trustee or a change to the terms of a trust.

(b) Affect any legal standard for establishing incompetency.