

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1745 (Nguyen)
Version: January 31, 2022
Hearing Date: May 31, 2022
Fiscal: No
Urgency: No
AM

SUBJECT

Trusts: notifications

DIGEST

This bill limits when a beneficiary can bring an action to contest a trust to 120 days from the date the notification from the trustee is served upon the beneficiary that a revocable trust, or any portion thereof, has become irrevocable because of the death of one or more settlors or by the express terms of the trust, as specified, or 60 days from the date on which a copy of the terms of the trust is delivered to that person, as provided, during that 120-day period, whichever is later.

EXECUTIVE SUMMARY

A trust is a means for property to be managed on behalf of, and distributed to, specified beneficiaries in accordance with the wishes of the trust's creator, or "settlor" without going through probate. A revocable trust may be revoked or changed without the consent of the beneficiaries or a court, whereas an irrevocable trust prohibits the settlor from revoking or changing the trust without the consent of the beneficiaries of the trust or the court. Revocable trusts become irrevocable when the settlor dies, or when the trust instrument itself states when it is to become irrevocable. Existing law requires the trustee of a trust to notify the beneficiaries and heirs of the deceased settlor of the existence of the trust when specified events occur. This notification allows the beneficiaries a specified time period in which they are authorized to bring an action to contest the trust. This bill would limit the instances when beneficiaries can bring an action to contest a trust within the specified time period to only when beneficiaries have received notice that a revocable trust, or any portion thereof, has become irrevocable because of the death of one or more settlors or by the express terms of the trust, as specified.

The bill is sponsored by the Trusts & Estates Section of the California Lawyers Association and supported by the Judicial Council. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Regulates the creation, modification, and termination of trusts, the administration of trusts by trustees on behalf of beneficiaries, and provides for the rights and responsibilities of all parties to a trust, *i.e.*, the settlor (the creator of the trust), trustee, beneficiary, heir, and a third party, such as a creditor. (Prob. Code § 15000 et seq.¹)
- 2) Requires a trustee to serve notification to each beneficiary of an irrevocable trust and each heir of the deceased settlor, as provided, within 60 days when one of the following events occurs: (§ 16061.7 (a) & (b).)
 - a) when a revocable trust, or any portion thereof, becomes irrevocable because of the death of one or more settlors or because, by the express terms of the trust, 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 of the settlors of the trust; (*Id.* (a)(1).)
 - b) whenever there is a change of trustee of an irrevocable trust; or (*Id.* (a)(2).)
 - c) whenever a power of appointment retained by the settlor is effective or lapses, as provided. (*Id.* (a)(3).)
- 3) Requires the notification, if served because the trust became irrevocable based on the death of one or more settlors or because of the express terms of the trust, to contain the following warning: “You may not bring an action to contest the trust more than 120 days from the date this notification by the trustee is served upon you or 60 days from the date on which a copy of the terms of the trust is delivered to you during that 120-day period, whichever is later.” (§ 16061.7 (h).)
- 4) Prohibits a person upon whom the notification by the trustee is served pursuant to 2) above, whether the notice is served within or after the required time period, from bringing an action to contest the trust more than 120 days from the date the notification by the trustee is served upon that person, or 60 days from the date on which a copy of the terms of the trust is delivered to that person during that 120-day period, whichever is later. (§ 16061.8.)

This bill:

- 1) Prohibits a person who has received the required notice from a trustee that a revocable trust, or any portion thereof, has become irrevocable because of the death of one or more settlors or because of the express terms of the trust, as specified, whether the notice is served within or after the required time period, from bringing

¹ All further statutory references are to the Probate Code unless stated otherwise.

an action to contest the trust more than 120 days from the date the notification by the trustee is served upon that person, or 60 days from the date on which a copy of the terms of the trust is delivered to that person, as provided, during that 120-day period, whichever is later.

- 2) Specifically excludes instances of notification based on a change of trustee of an irrevocable trust or a power of appointment retained by the settlor that either becomes effective or lapses from an action to contest a trust during the specified time periods in 1) above.

COMMENTS

1. Stated need for the bill

The author writes:

Probate Code Section 16061.8 limits the time for contesting a trust to 120 days after the service of the trustee notification prescribed by Probate Code section 16061.7. This code section provides for three different “triggering” events that require this notification: 1) whenever a revocable trust or a portion of a trust becomes irrevocable because of the death of the settlor or settlors; 2) whenever there is a change of trustee of an irrevocable trust; and 3) whenever a power of appointment retained by a settlor over an otherwise irrevocable trust lapses upon death. This legislative proposal would clarify Section 16061.8 to provide that the 120-day limitation period applies only when the notification is required by reason of the death of the settlor. A new limitation period would not be created or revived if notification is required upon the change of trustee of an existing irrevocable trust, as the trust has already been deemed just that – “irrevocable.” The proposed change would clarify an ambiguity in current law and further the existing statutory purpose of providing finality in post-death trust administration.

2. Limits when a beneficiary can bring an action to contest a trust to when a revocable trust, or any portion thereof, has become irrevocable because of the death of one or more settlors or because of the express terms of the trust, as specified

a. Background

A trust is a means for property to be managed on behalf of, and distributed to, specified beneficiaries in accordance with the wishes of the trust’s creator, or “settlor” without going through probate. The settlor typically transfers property into the trust, designates beneficiaries, and establishes guidelines for the management and distribution of the trust assets by a trustee, who has a legal obligation to implement the settlor’s intent and make reasonable decisions with regard to the trust property. A revocable trust may be revoked or changed without the consent of the beneficiaries or a court, whereas an

irrevocable trust prohibits the settlor from revoking or changing the trust without the consent of the beneficiaries of the trust and/or the court. Revocable trusts become irrevocable when the settlor dies, or when the trust instrument itself states when it is to become irrevocable.

Existing law requires the trustee of a trust to notify the beneficiaries and heirs of the deceased settlor of the existence of the trust when specified events occur. (§ 16061.7 (a) & (b).) These events include: (1) when a revocable trust or any portion thereof becomes irrevocable because of the death of one or more of the settlors of the trust, or because, by the express terms of the trust, 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 of the settlors of the trust; (2) whenever there is a change of trustee of an irrevocable trust; and (3) whenever a power of appointment retained by a settlor is effective or lapses upon death of the settlor, as provided. (*Id.* a)(1)-(3).)

Existing law limits the time period in which a person may bring an action to contest a trust to no more than 120 days from the date the notification by the trustee is served upon the person, or 60 days from the day on which a copy of the terms of the trust is mailed or personally delivered to the person during that 120-day period, whichever is later. (§ 16061.8.) A trustee is only required to provide specific warning to a beneficiary that they have a limited time period to contest the trust in the case when a trust becomes irrevocable because of the death of one or more settlors or by the express terms of the trust. (§ 16061.7 (h).)

b. Bill promotes efficient administration of trusts

This bill would limit when a beneficiary can contest a trust to only when notification is served to the beneficiary by the trustee that a revocable trust, or any portion thereof, has become irrevocable because of the death of one or more settlors or because of the express terms of the trust, as specified. Under the bill's provisions a beneficiary would no longer be authorized to contest a trust when the beneficiary has received notification that there is a change of trustee of an irrevocable trust or notification that a power of appointment retained by a settlor is effective or lapses upon death of the settlor.

The author and sponsor of the bill argue that this change is necessary to ensure that beneficiaries do not have multiple chances to contest a trust, i.e. whenever there is a change of trustee of an irrevocable trust or whenever a power of appointment retained by a settlor is effective or lapses upon death of the settlor. Under these two instances, the underlying provisions of the trust do not change, as is the case when a revocable trust becomes irrevocable. By only allowing trusts to be contested at the time they become irrevocable and within the specified time period, the bill promotes efficiency in the administration of trusts because a trustee can confidently administer the trust without the lingering possibility of beneficiaries contesting the trust in the future. The Judicial Council, which supports the bill, notes that the bill will improve Probate Court

efficiency because it provides clarity and consistency to the timeliness of contesting trusts in the state.

3. Arguments in support

The sponsor of the bill, the Trusts & Estates Section of the California Lawyers Association, writes:

[...] The statutory notification promotes the efficient administration of a trust after the death of a settlor because it alerts all interested parties to the short 120-day limitation period available to contest the trust instrument. The trustee serves the notification, commonly with a copy of the relevant terms of the trust, on all interested parties. If the applicable limitation period expires with no action by the interested parties, the trustee can confidently administer the trust according to its terms and without fear of a pending contest. If one or more interested parties file a contest within the 120-day period, the trustee can bring all contests to a head and settle them with finality.

More than one event may occur during a trust administration that triggers notification under Section 16061.7. For example, 1) death of the settlor in year 1 would trigger notification; and 2) change of the trustee in year 3 would trigger a second notification. Under current law, it is not clear if the beneficiaries have a new 120-day period to contest the trust following the second notification sent in year 3. Yet there would be no reason to allow trust contests following change of the trustee and to do so would be contrary to the goal of finality, established following the initial statutory notification that is provided after death of the settlor.

AB 1745 clarifies that the 120-day limitation period for contesting a trust, after the trustee notification required under Probate Code Section 16061.7, applies only when the notification is required by reason of the death of a settlor. [...]

The Judicial Council writes in support of the bill:

[...] The current language of Probate Code section 16061.8, which AB 1745 amends, has been interpreted inconsistently within the courts and among probate specialists. AB 1745 would create certainty with regard to the timelines for contesting trusts, thereby improving Probate Court efficiency and encouraging consistency in determining the timeliness of contests to trusts throughout the state. [...]

SUPPORT

Trusts & Estates Section of the California Lawyers Association (sponsor)
Judicial Council

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 2573 (Oberholte, 2020) was identical to the provisions of this bill. That bill was held in this Committee.

PRIOR VOTES:

Assembly Floor (Ayes 72, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)
