

AN ACT

relating to the duties and removal of a trustee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 113, Property Code, is amended by adding Section 113.0211 to read as follows:

Sec. 113.0211. ADJUSTMENT OF CHARITABLE TRUST. (a) In this section:

(1) "Charitable entity" has the meaning assigned by Section 123.001(1).

(2) "Charitable trust" means a trust:

(A) the stated purpose of which is to benefit only one or more charitable entities; and

(B) that qualifies as a charitable entity.

(b) The trustee of a charitable trust may acquire, exchange, sell, supervise, manage, or retain any type of investment, subject to restrictions and procedures established by the trustee and in an amount considered appropriate by the trustee, that a prudent investor, exercising reasonable skill, care, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the trust. The prudence of a trustee's actions under this subsection is judged with reference to the investment of all of the trust assets rather than with reference to a single trust investment.

(c) The trustee of a charitable trust may make one or more

1 adjustments between the principal and the income portions of a
2 trust to the extent that the trustee considers the adjustments
3 necessary:

4 (1) to comply with the terms of the trust, if any, that
5 describe the amount that may or must be distributed to a charitable
6 entity beneficiary by referring to the income portion of the trust;
7 and

8 (2) to administer the trust in order to carry out the
9 purposes of the charitable trust.

10 (d) The authority to make adjustments under Subsection (c)
11 includes the authority to allocate all or part of a capital gain to
12 trust income.

13 (e) In making adjustments under Subsection (c), the trustee
14 shall consider:

15 (1) except to the extent that the terms of the trust
16 clearly manifest an intention that the trustee shall or may favor
17 one or more charitable entity beneficiaries, the needs of a
18 charitable entity beneficiary, based on what is fair and reasonable
19 to all other charitable entity beneficiaries of the trust, if any;
20 and

21 (2) the need of the trust to maintain the purchasing
22 power of the trust's investments over time.

23 SECTION 2. Section 113.082, Property Code, is amended by
24 amending Subsection (a) and adding Subsection (c) to read as
25 follows:

26 (a) A trustee may be removed in accordance with the terms of
27 the trust instrument, or, on the petition of an interested person

1 and after hearing, a court may, in its discretion, remove a trustee
2 and deny part or all of the trustee's compensation if:

3 (1) the trustee materially violated or attempted to
4 violate the terms of the trust and the violation or attempted
5 violation results in a material financial loss to the trust;

6 (2) the trustee becomes incompetent or insolvent; ~~[or]~~

7 (3) the trustee fails to make an accounting that is
8 required by law or by the terms of the trust; or

9 (4) in the discretion of the court, for other cause.

10 (c) A trustee of a charitable trust may not be removed
11 solely on the grounds that the trustee exercised the trustee's
12 power to adjust between principal and income under Section
13 113.0211.

14 SECTION 3. Section 113.151(a), Property Code, is amended to
15 read as follows:

16 (a) A beneficiary by written demand may request the trustee
17 to deliver to each beneficiary of the trust a written statement of
18 accounts covering all transactions since the last accounting or
19 since the creation of the trust, whichever is later. If the trustee
20 fails or refuses to deliver the statement on or before the 90th day
21 after the date the trustee receives the demand or after a longer
22 period ordered by a court [~~within a reasonable time after the demand~~
23 ~~is made~~], any beneficiary of the trust may file suit to compel the
24 trustee to deliver the statement to all beneficiaries of the trust.
25 The court may require the trustee to deliver a written statement of
26 account to all beneficiaries on finding that the nature of the
27 beneficiary's interest in the trust or the effect of the

1 administration of the trust on the beneficiary's interest is
2 sufficient to require an accounting by the trustee. However, the
3 trustee is not obligated or required to account to the
4 beneficiaries of a trust more frequently than once every 12 months
5 unless a more frequent accounting is required by the court. If a
6 beneficiary is successful in the suit to compel a statement under
7 this section, the court may, in its discretion, award all or part of
8 the costs of court and all of the suing beneficiary's reasonable and
9 necessary attorney's fees and costs against the trustee in the
10 trustee's individual capacity or in the trustee's capacity as
11 trustee.

12 SECTION 4. This Act takes effect September 1, 2003, and
13 applies only to a demand for an accounting made on or after that
14 date.

President of the Senate

Speaker of the House

I certify that H.B. No. 1471 was passed by the House on April 2, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1471 on May 22, 2003, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 1471 was passed by the Senate, with amendments, on May 20, 2003, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor