

BILL ANALYSIS

C.S.H.B. 3635
By: Geren
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law on the exercise of powers by multiple trustees authorizes the remaining cotrustees, when a cotrustee is removed or suspended by court action, to act by majority vote to preserve trust assets and transact business as authorized by the trust instrument.

The law is not clear as to a remaining cotrustee's powers and duties when a court intervenes in a trust matter and suspends but does not remove a sitting cotrustee. Current trust law permits remaining cotrustees to administer a trust, provided that the cotrustee or cotrustees act by majority vote, which makes it ambiguous whether a sole remaining cotrustee constitutes a majority for trust administration purposes.

C.S.H.B. 3635 authorizes the remaining cotrustee or cotrustees to continue to conduct trust business when a cotrustee is suspended under provisions of the Property Code, and authorizes the remaining cotrustee or the remaining cotrustees to act if performance of the trustee's function is necessary to achieve the timely administration of the trust or to avoid injury to the trust property.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3635 amends the Property Code to include suspension under provisions of the Property Code as a condition under which a cotrustee is not required to participate in the performance of a trustee's function. The bill includes a prompt action being necessary to achieve the efficient administration of the trust or to avoid injury to a beneficiary as conditions under which a remaining cotrustee or the remaining cotrustees are authorized to act for the trust if a cotrustee is unavailable to participate in the performance of a trustee's function for certain reasons.

C.S.H.B. 3635 authorizes the remaining cotrustee or cotrustees to act for the trust as provided by the order of the court that suspended the cotrustee or another order of that court, if a cotrustee is unavailable to participate in the performance of the cotrustee's function because the cotrustee has been suspended under provisions of the Property Code.

C.S.H.B. 3635 makes its provisions applicable only to a trust existing on or after September 1, 2009, regardless of the date the trust was created.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3635 removes a provision included in the original clarifying that the remaining cotrustees of a trust are authorized to act for the trust if a temporary vacancy occurs in the cotrusteeship due to the suspension of a trustee. The substitute differs from the original by including suspension under provisions of the Property Code as a condition under which a cotrustee is not required to participate in the performance of a trustee's function, whereas the original included suspension by court order as such a condition. The substitute removes a provision in the original prohibiting a cotrustee who is a beneficiary of the trust from exercising sole discretion in taking an action or making a decision regarding the trust if the action or decision benefits the cotrustee as beneficiary.

C.S.H.B. 3635 differs from the original by authorizing, if a cotrustee is unavailable to perform the trustee's function, a remaining cotrustee or a majority of the remaining cotrustees to act for a trust if prompt action is necessary to achieve the efficient administration or purposes of the trust or to avoid injury to the trust property or a beneficiary, whereas the original authorizes such a cotrustee or cotrustees to act for the trust if performance of the trustee's function is necessary to achieve the timely administration of the trust or to avoid injury to the trust property.

C.S.H.B. 3635 adds a provision not included in the original authorizing the remaining cotrustee or cotrustees to act for the trust as provided by the order of the court that suspended the cotrustee or another order of that court, if a cotrustee is unavailable to participate in the performance of the cotrustee's function because the cotrustee has been suspended under provisions of the Property Code.

C.S.H.B. 3635 differs from the original by making its provisions applicable to a trust existing on or after September 1, 2009, regardless of the date the trust was created, whereas the original makes its provision applicable to a trust created on or after September 1, 2009.