

By: Geren

H.B. No. 3635

A BILL TO BE ENTITLED

AN ACT

relating to administration of a trust involving cotrustees.

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

SECTION 1. Section 113.085, Property Code, is amended by amending Subsections (b), (c), and (d) and adding Subsection (c-1) to read as follows:

(b) Except as provided in Subsection (c-1), if ~~if~~ a vacancy, including a temporary vacancy due to the suspension of a trustee, occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee shall participate in the performance of a trustee's function unless the cotrustee:

(1) is unavailable to perform the function because of absence, illness, suspension by court order, disqualification under other law, or other temporary incapacity; or

(2) has delegated the performance of the function to another trustee in accordance with the terms of the trust or applicable law, has communicated the delegation to all other cotrustees, and has filed the delegation in the records of the trust.

(c-1) Notwithstanding Subsection (c), a cotrustee who is a beneficiary of the trust may not exercise sole discretion in taking an action or making a decision regarding the trust if the action or decision benefits the cotrustee as beneficiary.

1 (d) If a cotrustee is unavailable to participate in the
2 performance of a trustee's function for a reason described by
3 Subsection (c)(1) or (c-1) and performance of the trustee's
4 function [~~prompt action~~] is necessary to achieve the timely
5 administration [~~purposes~~] of the trust or to avoid injury to the
6 trust property, the remaining cotrustee or [~~a majority of~~] the
7 remaining cotrustees may act for the trust.

8 SECTION 2. Section 113.085, Property Code, as amended by
9 this Act, applies only to a trust created on or after September 1,
10 2009. A trust created before September 1, 2009, is governed by the
11 law in effect on the date the trust was created, and the former law
12 is continued in effect for that purpose.

13 SECTION 3. This Act takes effect September 1, 2009.