

House Bill 3635
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

(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 under this code, 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.

(d) If a cotrustee is unavailable to participate in the performance of a trustee's function for a reason described by Subsection (c)(1) and 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, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(d-1) If a cotrustee is unavailable to participate in the performance of the cotrustee's function because the cotrustee has been suspended under this code, the remaining cotrustee or cotrustees may act for the trust as provided by the order of the court that suspended the cotrustee or another order of that court.

SECTION 2. Section 113.085, Property Code, as

SENATE VERSION

SECTION 1. Sections 113.085(c) and (d), Property Code, are amended to read as follows:

(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 under this code or other law, disqualification, if any, under this code, 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.

(d) If a cotrustee is unavailable to participate in the performance of a trustee's function for a reason described by Subsection (c)(1) and 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, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

Same as House version.

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amended by this Act, applies only to a trust existing on or after September 1, 2009, regardless of the date the trust was created.

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

SENATE VERSION

Same as House version.

CONFERENCE