

By: Rodríguez

S.B. No. 387

A BILL TO BE ENTITLED

AN ACT

relating to trusts.

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

SECTION 1. Section 42.0021(b), Property Code, is amended to read as follows:

(b) Contributions to an individual retirement account, individual retirement annuity, or Roth IRA that are "excess contributions" within the meaning of Section 4973 ~~[exceed the amounts permitted under the applicable provisions]~~ of the Internal Revenue Code of 1986, and any accrued earnings on such excess contributions, are not exempt under this section unless otherwise exempt by law. Amounts qualifying as nontaxable rollover contributions under Section 402(a)(5), 403(a)(4), 403(b)(8), or 408(d)(3) of the Internal Revenue Code of 1986 before January 1, 1993, are treated as exempt amounts under Subsection (a). Amounts treated as ~~[qualified]~~ rollover contributions under Section 402A(c)(3), 402A(c)(4), or 408A, Internal Revenue Code of 1986, are treated as exempt amounts under Subsection (a). In addition, amounts qualifying as nontaxable rollover contributions under Section 402(c), 402(e)(6), 402(f), 403(a)(4), 403(a)(5), 403(b)(8), 403(b)(10), 408(d)(3), or 408A of the Internal Revenue Code of 1986 on or after January 1, 1993, are treated as exempt amounts under Subsection (a). Amounts qualifying as nontaxable rollover contributions under Section 223(f)(5) of the Internal

Revenue Code of 1986 on or after January 1, 2004, are treated as exempt amounts under Subsection (a).

SECTION 2. Section 112.035(e), Property Code, is amended to read as follows:

(e) A beneficiary of the trust may not be considered a settlor merely because of a lapse, waiver, or release of:

(1) a power described by Subsection (f); or

(2) the beneficiary's right to withdraw a part of the trust property to the extent that the value of the property affected by the lapse, waiver, or release in any calendar year does not exceed with respect to the contribution by each donor the greater of the amount specified in:

(A) Section 2041(b)(2) or 2514(e), Internal Revenue Code of 1986; or

(B) Section 2503(b), Internal Revenue Code of 1986.

SECTION 3. Section 112.038, Property Code, is amended to read as follows:

Sec. 112.038. FORFEITURE CLAUSE. (a) A provision in a trust that would cause a forfeiture of or void an interest for bringing any court action, including contesting a trust, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that:

(1) just cause existed for bringing the action; and

(2) the action was brought and maintained in good

1 faith.

2 **(b) This section is not intended to and does not repeal any**
3 **law, recognizing that forfeiture clauses generally will not be**
4 **construed to prevent a beneficiary from seeking to compel a**
5 **fiduciary to perform the fiduciary's duties, seeking redress**
6 **against a fiduciary for a breach of the fiduciary's duties, or**
7 **seeking a judicial construction of a will or trust.**

8 SECTION 4. Sections 112.054(a) and (c), Property Code, are
9 amended to read as follows:

10 (a) On the petition of a trustee or a beneficiary, a court
11 may order that the trustee be changed, that the terms of the trust
12 be modified, that the trustee be directed or permitted to do acts
13 that are not authorized or that are forbidden by the terms of the
14 trust, that the trustee be prohibited from performing acts required
15 by the terms of the trust, or that the trust be terminated in whole
16 or in part, if:

17 (1) the purposes of the trust have been fulfilled or
18 have become illegal or impossible to fulfill;

19 (2) because of circumstances not known to or
20 anticipated by the settlor, the order will further the purposes of
21 the trust;

22 (3) modification of administrative, nondispositive
23 terms of the trust is necessary or appropriate to prevent waste or
24 avoid impairment of the trust's administration;

25 (4) the order is necessary or appropriate to achieve
26 the settlor's tax objectives and is not contrary to the settlor's
27 intentions; [~~or~~]

(5) subject to Subsection (d):

(A) continuance of the trust is not necessary to achieve any material purpose of the trust; or

(B) the order is not inconsistent with a material purpose of the trust; or

(6) the order is necessary to correct a scrivener's error in the governing document, even if unambiguous, to conform the terms to the settlor's intention if the settlor's intent with respect to the error being corrected is proved by clear and convincing evidence.

(c) The court may direct that an order described by Subsection (a)(4) or (6) has retroactive effect.

SECTION 5. Sections [112.071](#)(5), (6), and (7), Property Code, are amended to read as follows:

(5) "Full discretion" means a ~~[the]~~ power to distribute principal to or for the benefit of one or more of the beneficiaries of a trust that is not a trust with limited discretion ~~[limited or modified by the terms of the trust in any way, including by restrictions that limit distributions to purposes such as the best interests, welfare, or happiness of the beneficiaries].~~

(6) "Limited discretion" means a ~~[limited or modified]~~ power to distribute principal to or for the benefit of one or more beneficiaries of a trust that is limited by an ascertainable standard, including the health, education, support, or maintenance of the beneficiary.

(7) "Presumptive remainder beneficiary," with respect to a particular date, means a beneficiary of a trust on that date

1 who, in the absence of notice to the trustee of the exercise of the
2 power of appointment and assuming that any other powers of
3 appointment under the trust are not exercised, would be eligible to
4 receive a distribution from the trust if:

5 (A) the trust terminated on that date; or

6 (B) the interests of all current beneficiaries
7 ~~[currently eligible to receive income or principal from the trust]~~
8 ended on that date without causing the trust to terminate.

9 SECTION 6. Section [112.072](#)(a), Property Code, is amended to
10 read as follows:

11 (a) An authorized trustee who has the full discretion to
12 distribute the principal of a trust may distribute all or part of
13 the principal of that trust in favor of a trustee of a second trust
14 for the benefit of one, ~~[or]~~ more than one, or all of the current
15 beneficiaries of the first trust ~~[who are eligible to receive~~
16 ~~income or principal from the trust]~~ and for the benefit of one, ~~[or]~~
17 more than one, or all of the successor or presumptive remainder
18 beneficiaries of the first trust ~~[who are eligible to receive~~
19 ~~income or principal from the trust]~~.

20 SECTION 7. Section [112.078](#), Property Code, is amended by
21 adding Subsection (f) to read as follows:

22 (f) This section does not limit a beneficiary's right to
23 bring an action against a trustee for a breach of trust.

24 SECTION 8. Section [112.085](#), Property Code, is amended to
25 read as follows:

26 Sec. 112.085. EXCEPTIONS TO POWER OF DISTRIBUTION. An
27 authorized trustee may not exercise a power to distribute principal

of a trust under Section 112.072 or 112.073 to:

(1) reduce, limit, or modify a beneficiary's current, vested right to:

(A) receive a mandatory distribution of income or principal;

(B) receive a mandatory annuity or unitrust interest;

(C) withdraw a percentage of the value of the trust; or

(D) withdraw a specified dollar amount from the trust;

(2) ~~materially impair the rights of any beneficiary of the trust,~~

~~[(3)]~~ materially limit a trustee's fiduciary duty under the trust or as described by Section 111.0035;

(3) ~~[(4)]~~ decrease or indemnify against a trustee's liability;

(4) add a provision exonerating ~~[or exonerate]~~ a trustee from liability for failure to exercise reasonable care, diligence, and prudence;

(5) eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the distribution power under Section 112.072 or 112.073; or

(6) reduce, limit, or modify in the second trust a perpetuities provision included in the first trust, unless expressly permitted by the terms of the first trust.

SECTION 9. Section 113.018, Property Code, is amended to

1 read as follows:

2 Sec. 113.018. EMPLOYMENT AND APPOINTMENT OF AGENTS. (a) A
3 trustee may employ attorneys, accountants, agents, including
4 investment agents, and brokers reasonably necessary in the
5 administration of the trust estate.

6 **(b) Without limiting the trustee's discretion under**
7 **Subsection (a), a trustee may grant an agent powers with respect to**
8 **property of the trust to act for the trustee in any lawful manner**
9 **for purposes of real property transactions.**

10 **(c) A trustee acting under Subsection (b) may delegate any**
11 **or all of the duties and powers to:**

12 **(1) execute and deliver any legal instruments relating**
13 **to the sale and conveyance of the property, including affidavits,**
14 **notices, disclosures, waivers, or designations or general or**
15 **special warranty deeds binding the trustee with vendor's liens**
16 **retained or disclaimed, as applicable, or transferred to a**
17 **third-party lender;**

18 **(2) accept notes, deeds of trust, or other legal**
19 **instruments;**

20 **(3) approve closing statements authorizing deductions**
21 **from the sale price;**

22 **(4) receive trustee's net sales proceeds by check**
23 **payable to the trustee;**

24 **(5) indemnify and hold harmless any third party who**
25 **accepts and acts under a power of attorney with respect to the sale;**

26 **(6) take any action, including signing any document,**
27 **necessary or appropriate to sell the property and accomplish the**

1 delegated powers;

2 (7) contract to purchase the property for any price on
3 any terms;

4 (8) execute, deliver, or accept any legal instruments
5 relating to the purchase of the property or to any financing of the
6 purchase, including deeds, notes, deeds of trust, guaranties, or
7 closing statements;

8 (9) approve closing statements authorizing payment of
9 prorations and expenses;

10 (10) pay the trustee's net purchase price from funds
11 provided by the trustee;

12 (11) indemnify and hold harmless any third party who
13 accepts and acts under a power of attorney with respect to the
14 purchase; or

15 (12) take any action, including signing any document,
16 necessary or appropriate to purchase the property and accomplish
17 the delegated powers.

18 (d) A trustee who delegates a power under Subsection (b) is
19 liable to the beneficiaries or to the trust for an action of the
20 agent to whom the power was delegated.

21 (e) A delegation by the trustee under Subsection (b) must be
22 documented in a written instrument acknowledged by the trustee
23 before an officer authorized under the law of this state or another
24 state to take acknowledgments to deeds of conveyance and administer
25 oaths. A signature on a delegation by a trustee for purposes of this
26 subsection is presumed to be genuine if the trustee acknowledges
27 the signature in accordance with Chapter 121, Civil Practice and

1 Remedies Code.

2 (f) A delegation to an agent under Subsection (b) terminates
3 six months from the date of the acknowledgment of the written
4 delegation unless terminated earlier by:

5 (1) the death or incapacity of the trustee;

6 (2) the resignation or removal of the trustee; or

7 (3) a date specified in the written delegation.

8 (g) A person that in good faith accepts a delegation under
9 Subsection (b) without actual knowledge that the delegation is
10 void, invalid, or terminated, that the purported agent's authority
11 is void, invalid, or terminated, or that the agent is exceeding or
12 improperly exercising the agent's authority may rely on the
13 delegation as if:

14 (1) the delegation were genuine, valid, and still in
15 effect;

16 (2) the agent's authority were genuine, valid, and
17 still in effect; and

18 (3) the agent had not exceeded and had properly
19 exercised the authority.

20 (h) A trustee may delegate powers under Subsection (b) if
21 the governing instrument does not affirmatively permit the trustee
22 to hire agents or expressly prohibit the trustee from hiring
23 agents.

24 SECTION 10. Section 114.003, Property Code, is amended by
25 amending Subsections (b) and (c) and adding Subsections (a-1), (d),
26 (e), and (f) to read as follows:

27 (a-1) In this section, "trust director" means any person who

1 is not a trustee and who has, under the terms of a trust, a power to
 2 direct one or more trustees on any matter, or any cotrustee who has,
 3 under the terms of a trust, a power to direct one or more cotrustees
 4 on any matter. A person is not a trust director for purposes of this
 5 section merely by holding a general or limited power of appointment
 6 over the trust assets or, if a person is a beneficiary of the trust,
 7 merely by holding a power to prohibit the trustee from taking any
 8 action with respect to the trust.

9 (b) If the terms of a trust give a trust director ~~[person]~~
 10 the power to direct certain actions of a [the] trustee, Subsections
 11 (c), (d), (e), and (f) apply ~~[the trustee shall act in accordance~~
 12 ~~with the person's direction unless:~~

13 ~~[(1) the direction is manifestly contrary to the terms~~
 14 ~~of the trust, or~~

15 ~~[(2) the trustee knows the direction would constitute~~
 16 ~~a serious breach of a fiduciary duty that the person holding the~~
 17 ~~power to direct owes to the beneficiaries of the trust].~~

18 (c) A trust director is a fiduciary of the trust subject to
 19 the same duties and standards applicable to a trustee of a trust as
 20 provided by applicable law unless the terms of the trust provide
 21 otherwise. The terms of the trust may not, however, limit the trust
 22 director's duty ~~[A person, other than a beneficiary, who holds a~~
 23 ~~power to direct is presumptively a fiduciary required]~~ to act in
 24 good faith with regard to the purposes of the trust and the
 25 interests of the beneficiaries. The trust director is liable for
 26 any loss resulting directly or indirectly from a breach of the trust
 27 director's fiduciary duty ~~[holder of a power to direct is liable for~~

1 ~~any loss that results from a breach of the person's fiduciary duty]~~.

2 (d) If the terms of a trust provide that a trustee is to
3 follow the direction of a trust director or act only with the trust
4 director's consent or direction, the trustee is not liable for any
5 loss resulting directly or indirectly from any act taken or not
6 taken by the trustee pursuant to the trust director's direction or
7 as a result of the trust director's failure to direct, consent, or
8 act, after having been requested to do so by the trustee, if:

9 (1) the direction is not contrary to an express
10 prohibition or mandate in the trust instrument, which shall be
11 evaluated exclusively on the terms of the trust and without
12 reference to any judicial or legal standard;

13 (2) the trustee does not act in bad faith; and

14 (3) the trustee does not have actual knowledge that
15 the direction would constitute fraud as applied to the fiduciary
16 duties of the trust director.

17 (e) Unless the terms of the trust expressly provide
18 otherwise, a trustee does not have any duty to:

19 (1) monitor the trust director's conduct;

20 (2) provide the trust director with advice or consult
21 with the trust director;

22 (3) inform or warn the trust director or any
23 beneficiary or third party that the trustee disagrees with any of
24 the trust director's actions or directions;

25 (4) take any action to prevent the trust director from
26 giving any direction or taking any action; or

27 (5) compel the trust director to redress the

1 director's action or direction.

2 (f) Absent clear evidence to the contrary, the actions of
3 the directed trustee pertaining to matters within the scope of
4 authority of the trust director, including confirming that the
5 trust director's directions have been carried out and recording and
6 reporting actions taken pursuant to the trust director's direction,
7 are presumed to be administrative actions taken by the trustee and
8 are not considered an undertaking by the trustee to monitor the
9 trust director's actions or participate in actions within the scope
10 of the trust director's authority.

11 SECTION 11. Sections 115.002(b-1) and (b-2), Property Code,
12 are amended to read as follows:

13 (b-1) If there are multiple [~~noncorporate~~] trustees none of
14 whom is a corporate trustee and the trustees maintain a principal
15 office in this state, an action shall be brought in the county in
16 which:

17 (1) the situs of administration of the trust is
18 maintained or has been maintained at any time during the four-year
19 period preceding the date the action is filed; or

20 (2) the trustees maintain the principal office.

21 (b-2) If there are multiple [~~noncorporate~~] trustees none of
22 whom is a corporate trustee and the trustees do not maintain a
23 principal office in this state, an action shall be brought in the
24 county in which:

25 (1) the situs of administration of the trust is
26 maintained or has been maintained at any time during the four-year
27 period preceding the date the action is filed; or

1 (2) any trustee resides or has resided at any time
2 during the four-year period preceding the date the action is filed.

3 SECTION 12. Section [181.083](#), Property Code, is amended by
4 adding Subsections (c) and (d) to read as follows:

5 (c) To the extent specified in an instrument in which a
6 donee exercises a power, any estate or interest in real or personal
7 property created through the exercise of the power by the donee is
8 considered to have been created at the time of the exercise of the
9 donee's power and not at the time of the creation of the donee's
10 power, provided that in the instrument the donee:

11 (1) specifically refers to Section [181.083](#)(c),
12 Property Code;

13 (2) specifically asserts an intention to exercise a
14 power of appointment by creating another power of appointment
15 described in Section 2041(a)(3) or Section 2514(d), Internal
16 Revenue Code of 1986; or

17 (3) specifically asserts an intention to postpone the
18 vesting of any estate or interest in the property that is subject to
19 the power, or suspend the absolute ownership or power of alienation
20 of that property, for a period ascertainable without regard to the
21 date of the creation of the donee's power.

22 (d) Subsection (c) applies regardless of whether the
23 donee's power may be exercised in favor of the donee, the donee's
24 creditors, the donee's estate, or the creditors of the donee's
25 estate.

26 SECTION 13. (a) Except as otherwise expressly provided by a
27 trust, a will creating a trust, or this section, the changes in law

1 made by this Act apply to a trust existing or created on or after
2 September 1, 2015.

3 (b) For a trust existing on September 1, 2015, that was
4 created before that date, the changes in law made by this Act apply
5 only to an act or omission relating to the trust that occurs on or
6 after September 1, 2015.

7 SECTION 14. This Act takes effect September 1, 2015.