

Bill Status: Transmitted to Governor for action. 04/18/2019

SB 0542 by *Gardenhire

(HB 0675) by *Garrett

Trusts - As introduced, allows a revocable living trust that becomes irrevocable upon the death of the settlor to refer to a written statement of personal property not otherwise disposed of by the revocable trust; gives a trustee who has resigned or been removed the right and authority to petition the court for a release and discharge from all liability related to the trust, makes various other revisions. - Amends TCA Title 30; Title 31; Title 32; Title 34; Title 35 and Title 67.

☰ Summary

FISCAL SUMMARY

NOT SIGNIFICANT

BILL SUMMARY

This bill makes various revisions and additions relating to trusts and estates, including:

~~(1) For small estates (which are estates where the value of the property does not exceed \$50,000), present law requires the court to receive and file an original affidavit as a part of the court's permanent records and the clerk to deliver to the affiant as many certified copies of the affidavit as are requested. This bill revises this provision to instead require the clerk to deliver to the affiant small estate letters of authority with a single certified copy of the affidavit.~~

(2) Generally under present law, a person is prohibited from undertaking the administration of the estate of a minor or person with a disability until the person has been issued letters of guardianship or letters of conservatorship. However, a court may waive the prohibition when:

- (A) The total property of a minor or a person with a disability does not exceed \$20,000; or
- (B) The court uses a fund or recovery that does not exceed \$20,000 for the support of the minor or person with a disability.

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This bill increases the applicable dollar amount in the above provisions from \$20,000 to \$25,000.

(3) Present law authorizes the conversion of an income trust to a total unitrust in certain circumstances and if certain requirements are met. Present law specifies that the provisions governing total return unitrusts pertain to the administration of a trust and are available to any trust including a trust initially converted to a total return unitrust under the laws of another jurisdiction that is administered under Tennessee law or to any trust, regardless of its place of administration, whose governing instrument provides that Tennessee law governs matters of construction or administration unless:

- (A) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust or gives the trustee no discretion to distribute any trust principal to the income beneficiary under any circumstances;
- (B) The trust is a pooled income fund or a charitable-remainder trust described under federal law; and
- (C) Except for testamentary trusts established prior to July 1, 2010, the governing instrument expressly prohibits use of the present law provisions by specific reference to the law or expressly states the trustor's intent that net income not be calculated as a unitrust amount.

This bill revises (A) above to remove the provision regarding the trustee having no discretion to distribute. This bill clarifies "charitable-remainder trust" in (B) above to mean "charitable-remainder trust as described in federal law". This bill revises (C) above to remove the provision for testamentary trusts established prior to July 1, 2010.

(4) Under this bill, a revocable trust that becomes irrevocable upon the death of its settlor may refer to a written statement or list to dispose of tangible personal property not otherwise specifically disposed of by the revocable trust other than: money, evidences of indebtedness, documents of title, securities, and property used in a trade or business. The written statement or list may be created or altered at any time and must be handwritten or signed by the settlor, be dated, and describe the personal property and beneficiaries with reasonable certainty. Under this bill, the trustee will not be liable for any distribution of tangible personal property to the apparent beneficiary under the settlor's revocable trust without actual knowledge of the written statement or list, and the trustee has no duty to recover property distributed without knowledge of the written list.

~~(5) Under present law, unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.~~

~~This bill adds that a trustee who has resigned or been removed may, prior to delivering the trust property to another person, petition the court for a release and discharge from all liability related to a trust. All qualified beneficiaries must be made a party to any such proceeding.~~

(6) Generally, present law requires a recordation tax on all transfers of realty on an instrument

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evidencing transfer of any interest in real estate of 37 cents per \$100. This bill exempts from the tax deeds executed by the trustee of a testamentary trust or revocable living trust to implement the distribution of the real property from the recordation tax.

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~~(7) This bill specifies, in regard to the present law provisions for a person to disclaim inherited, gifted, or otherwise transferred property or interests, that the requirement to file the disclaimer with the court where the decedent's estate proceedings are or would be apply if the disclaimer involved an interest in the decedent's estate, that the estate to which the provisions are referring are the probate estate.~~

(8) This bill adds under the Uniform Trust Code that when a trust is apportioned into separate shares for a single beneficiary or related beneficiary group, the apportioned separate share of the trust will be treated as separate trusts even though such share may be commingled with other separate shares for investment and tax reporting purposes. This bill also specifies that the present law requirement for a trustee to keep certain beneficiaries of a trust reasonably informed will only apply to the beneficiaries of the separate share of the trust in situations where the trust is divided into separate shares for a single beneficiary or a separate group of beneficiaries.

ON APRIL 1, 2019, THE SENATE ADOPTED AMENDMENT #1 AND PASSED SENATE BILL 542, AS AMENDED.

AMENDMENT #1 removes the provisions of this bill that are described above in the bill summary in items (1), (5), and (7).

SENATE BILL 542

By Gardenhire

AN ACT to amend Tennessee Code Annotated, Title 30;
Title 31; Title 32; Title 34; Title 35 and Title 67,
relative to trusts and estates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

~~SECTION 1. Tennessee Code Annotated, Section 30-4-103(2), is amended by deleting the second sentence of the subdivision and substituting instead the following:~~

~~The clerk shall deliver to the affiant small estate letters of authority with a certified copy of the affidavit onto which are affixed the clerk's stamp and seal certifying that the affidavit has been filed in the office of the probate court.~~

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~~SECTION 2. Tennessee Code Annotated, Section 31-1-103(b)(2)(A), is amended by deleting the language "if the disclaimer involves an interest in a decedent's estate, with the court in which the decedent's estate proceedings are or would be pending" and substituting instead "if the disclaimer involves an interest in a decedent's probate estate assets, with the court in which the decedent's probate estate proceedings are or would be pending".~~

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SECTION 3. Tennessee Code Annotated, Section 34-1-104(b) is amended by deleting the language "twenty thousand dollars (\$20,000)" and substituting instead "twenty-five thousand dollars (\$25,000)".

SECTION 4. Tennessee Code Annotated, Section 34-1-104(c) is amended by deleting the language "twenty thousand dollars (\$20,000)" and substituting instead "twenty-five thousand dollars (\$25,000)".

SECTION 5. Tennessee Code Annotated, Section 35-6-108(k)(1), is amended by deleting subdivisions (A), (B), and (C) and substituting instead the following:

(A) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(B) The trust is a pooled income fund described in 26 U.S.C. § 642(c)(5) or a charitable-remainder trust described in 26 U.S.C. § 664(d); and

(C) The governing instrument expressly prohibits use of this section by specific reference to the section or expressly states the trustor's intent that net income not be calculated as a unitrust amount.

SECTION 6. Tennessee Code Annotated, Title 35, Chapter 15, Part 6, is amended by adding the following language as a new section:

(a)

(1) A revocable (living) trust that becomes irrevocable upon the death of its settlor may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the revocable trust, other than money, evidences of indebtedness, documents of title, securities, and property used in a trade or business.

(2) To be effective under this section as evidence of the intended disposition, the writing:

(A) Must:

(i) Be either in the handwriting of the settlor or signed by the settlor;

(ii) Be dated; and

(iii) Describe the items and the beneficiaries with reasonable certainty;

(B) May be prepared before or after the execution of the revocable trust;

(C) May be altered by the settlor after its preparation, provided that the settlor signs and dates the alteration; and

(D) May be a writing that has no significance apart from its effect upon the dispositions made by the revocable trust.

(3) If more than one (1) otherwise effective writings exist or a single writing contains properly signed and dated alterations, the provisions of the most recent writing or alteration revoke any inconsistent provisions of all prior writings.

(b) A trustee is not liable for any distribution of tangible personal property to the apparent beneficiary under the settlor's revocable trust without actual knowledge of the written statement or list, as described in subsection (a), and the trustee has no duty to recover property distributed without knowledge of the written statement or list.

SECTION 7. Tennessee Code Annotated, Section 35-15-707, is amended by adding the following as a new subsection:

Prior to delivering the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to receive the property, a trustee who has resigned or been removed shall have the right and authority to petition the court for a release and discharge from all liability related to such trust. All qualified beneficiaries must be made a party to any such proceeding and have the opportunity to object to such release and discharge, and the trustee must provide the court and the qualified beneficiaries with an accounting of the trustee's services and any other information requested by the court. The decision to grant a release and discharge to the trustee shall be within the discretion of the court.

SECTION 8. Tennessee Code Annotated, Section 35-15-810, is amended by adding the following as a new subsection:

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For all purposes under the Tennessee Uniform Trust Code, when a trust is apportioned into separate shares for a single beneficiary or related beneficiary group, the apportioned separate share of the trust shall be treated as separate trusts even though such share may be commingled with other separate shares for investment and tax reporting purposes as provided in this section.

SECTION 9. Tennessee Code Annotated, Section 35-15-813(a)(1), is amended by adding the following sentence to the end of the subdivision:

If a trust is divided into separate shares for the sole benefit of a single beneficiary or a separate group of beneficiaries, the trustee's duty shall apply only to the beneficiary or beneficiaries of the separate share of the trust.

SECTION 10. Tennessee Code Annotated, Section 67-4-409(a)(3), is amended by adding the following as a new subdivision:

Are deeds executed by the trustee of a testamentary trust or revocable living trust to implement the distribution of the real property to a trust beneficiary or beneficiaries;

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.