

RESOLUTION 08-15-2017

DIGEST

Trust Proceeding: Time Consistency in Notice of Proposed Action

Amends Probate Code section 16502 to shorten time for someone to act on a Notice of Proposed Action from 45 days to 30 days, to provide consistent timing requirements in trust proceedings.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Probate Code section 16502 to shorten for someone to act on a Notice of Proposed Action from 45 days to 30 days to provide consistent timing requirements in trust proceedings. The resolution should be approved in principle because it will correct an inconsistency in the Probate Code regarding notice requirements during trust administration.

Currently during trust administration, the requirement of 45 days’ notice of a proposed action exceeds the general notice requirement of 30 days for other actions of the trustee. As the author of the resolution correctly points out, the period of notice required during trust administration is generally longer than during probate administration. This resolution would align the notice requirements of a proposed action in a trust proceeding with other provisions for notice during trust administration.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 16502 to read as follows:

- 1 § 16502
- 2 The notice of proposed action shall state that it is given pursuant to this section and shall
- 3 include all of the following:
- 4 (a) The name and mailing address of the trustee.
- 5 (b) The name and telephone number of a person who may be contacted for additional
- 6 information.
- 7 (c) A description of the action proposed to be taken and an explanation of the reasons for
- 8 the action.
- 9 (d) The time within which objections to the proposed action can be made, which shall be
- 10 at least 45-30 days from the mailing of the notice of proposed action.
- 11 (e) The date on or after which the proposed action may be taken or is effective.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Probate Code sections 16337 and 16500 et seq. permit a trustee to notify the beneficiaries of a trust of a proposed course of action or proposed non-action, and obtain their prior consent, either directly by a beneficiary's written consent or implicitly as a result of a beneficiary's failure to timely object. This notice procedure is intended to (a) promote efficient administration of trusts, (b) to open communication between trustees and beneficiaries, and (c) to provide trustees with a mechanism for obtaining the consent (directly or by implication) of the beneficiaries without having to resort to an expensive and time consuming petition to a court for formal court approval.

The statute was originally based on the "Notice of Proposed Action" procedure applicable in probate administration. (Prob. Code, § 10500)

The current Notice Procedure for trust administrations requires a notice period of 45 days, during which a beneficiary may object to the proposed course of action. (Prob. Code, § 16502). Absent a formal objection during said period, the beneficiary is deemed to have consented to the proposed course of action. All that is required to object is that a box be checked and the Notice returned to the trustee.

The current notice period of 45 days limits the effectiveness of the statute and serves no legitimate purpose, and can unnecessarily delay actions such as close of escrow on sale of property. The Probate Code permits a trustee to seek court approval of a proposed action, or nearly any other relief regarding a trust's affairs sought under Section 17200 et. seq., at a noticed hearing with only a 30-day notice. (Prob. Code, § 17203). There is no rationale for requiring a longer period when a non-court notice procedure is utilized. In promoting efficiency of administration of trusts in California, consistent periods in which a beneficiary must respond or take action should be utilized.

The Solution: This resolution shortens the time to object to a notice of proposed action or be deemed to consent from 45 to 30 days. This makes it consistent with the notice time for any proceeding under Probate Code section 17200. It further allows prompt resolution without court involvement for time sensitive matters, such as sale of property, and relieves a burden on the court from matters unnecessarily brought by noticed hearing to avoid a longer 45-day period.

While the probate Notice of Proposed Action (Prob. Code, § 10500) period of 15 days to take action or have consent deemed might appear attractive to some in the trust context as well, most probate proceedings are consistent in requiring 15 day notice as per Probate Code section 1220, as contrasted with the 30 day period for all Probate Code section 17200 petitions concerning the affairs of a trust. The 15 day limit in Probate proceedings and 30 in trust proceedings are both consistent with notice provisions in their respective practice areas. The current 45 day limit under Section 16502 creates an anomalous inconsistency resolved by this resolution.

IMPACT STATEMENT

The resolution affects any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

TEXCOM - SUPPORT

The proposal would shorten the notice provisions from the current 45 days to 30 days. Thirty (30) day notice would create consistency with other notice periods applicable in Trust proceedings, increase efficiency of Trust proceedings and encourage communication among interested parties. The shorter period will make the procedure more useful, and thus promote better communication between Trustees and beneficiaries. As the proceeding is optional, the more “user friendly” it can be made, the more the Trustees will elect to use the proceeding to notify beneficiaries of proposed actions; thus enhancing the communication among the interested parties.

This position is only that of the TRUSTS and ESTATES SECTION of the State Bar of California. This position has not been adopted by the State Bar’s Board of Trustees, and is not to be construed as representing the position of the State Bar of California.

Membership in the TRUSTS and ESTATES SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.