

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 565 (Dixon)
Version: March 27, 2025
Hearing Date: June 17, 2025
Fiscal: No
Urgency: No
AM

SUBJECT

Representation of trust beneficiaries

DIGEST

This bill revises notice requirements to trust beneficiaries for various actions relating to modifications or establishment of trusts by providing that notice given to a person authorized to represent and bind another person is sufficient to comply with notice requirements for actions regarding a trust. The bill provides that if a person consents for a person to represent and bind them, that consent must be in writing and that the consent binds the represented person unless they object to the representation before consent becomes effective. The bill prohibits specified persons from representing and binding another person for these purposes and authorizes certain representative relationships and representation of successive interests.

EXECUTIVE SUMMARY

A trust is a means for property to be managed and distributed to specified beneficiaries in accordance with the wishes of the trust's creator, or "settlor." The settlor typically transfers property into the trust, designates beneficiaries, and establishes guidelines for the management and distribution of the trust assets by a trustee, who has a legal obligation to implement the settlor's intent and make reasonable decisions with regard to the trust property. Existing law provides various requirements to provide notice to, or obtain consent from "all beneficiaries" of a trust or similarly broad classes of individuals. This bill seeks to clarify and streamline the method by which trust beneficiaries and other interested persons may receive statutorily required notices regarding an action relating to their interest in a trust by codifying the concept of virtual representation. The bill is sponsored by the California Bankers Association and the California Lawyers Association. The Committee received no timely opposition to the bill.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Governs the creation, validation, modification, termination, and administration of trusts, and provides for the adjudication of disputes relating to trusts. Provides for the rights and responsibilities of all parties to a trust, i.e., the settlor (i.e., the creator of the trust), trustee, beneficiary, heir, and a third party, such as a creditor. (Prob. Code §§ 15000 et seq.¹)
- 2) Establishes that the following actions are sufficient to comply with any requirement of the Probate Code related to providing required notice to a beneficiary, or to a person interested in the trust, as specified:
 - a) where an interest has been limited on any future contingency to persons who will compose a certain class upon the happening of a certain event without further limitation, if notice is given to the persons in being who would constitute the class if the event had happened immediately before the commencement of the proceeding or if there is no proceeding, if the event had happened immediately before notice is given;
 - b) where an interest has been limited to a living person and the same interest, or a share therein, has been further limited upon the happening of a future event to the surviving spouse or to persons who are or may be the distributees, heirs, issue, or other kindred of the living person, if notice is given to the living person; and
 - c) where an interest has been limited upon the happening of any future event to a person, or a class of persons, or both, and the interest, or a share of the interest, has been further limited upon the happening of an additional future event to another person, or a class of persons, or both, if notice is given to the person or persons who would take the interest upon the happening of the first of these events. (§ 15804(a).)
- 3) Provides that if a conflict of interest involving the subject matter of the trust proceeding exists between a person to whom notice is required to be given and a person to whom notice is not otherwise required to be given under 1), above, notice must also be given to persons not otherwise entitled to notice with respect to whom the conflict of interest exists. (*Id.* at subd. (b).)
- 4) Provides that nothing in 1) or 2), above, affects either:
 - a) the requirements for notice to a person who has requested special notice, a person who has filed notice of appearance, or a particular person or entity required by statute to be given notice; or

¹ All further references are to the Probate Code unless specified otherwise.

- b) the availability of a guardian ad litem pursuant to Section 1003. (*Id.* at subd. (c).)
- 5) Authorizes the court, on its own motion or on request of a personal representative, guardian, conservator, trustee, or other interested person, to appoint a guardian ad litem at any stage of a proceeding under the Probate Code to represent the interest of specified individuals, beneficiaries, or classes of persons, if the court determines that representation of the interest otherwise would be inadequate. (§ 1003.)

This bill:

- 1) Provides that notice to a person who may represent and bind another person pursuant to this section is sufficient to comply with certain requirements of the Probate Code that notice be given to the represented person, and has the same effect as if notice were given directly to that represented person.
- 2) Authorizes a person to serve as a representative as provided under these provisions and bind another person except as follows:
 - a) the representative and the represented person cannot have a conflict of interest during the representation with respect to the particular matter that is the subject of the representation; and
 - b) a settlor cannot represent and bind a beneficiary regarding the termination or modification of an irrevocable trust.
- 3) Requires a person who provides consent for another person under these provisions to do so in writing.
- 4) Provides that the consent of a person who may represent and bind another person pursuant to these provisions is binding on the represented person unless the represented person objects to the representation before the consent would have become effective.
- 5) Provides that a fiduciary who acts in reliance upon a representation made pursuant to these provisions is not be liable for any resulting loss, unless the fiduciary committed a breach of trust intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of a beneficiary.
- 6) Provides that an action taken by the court under a specified division of the Probate Code is conclusive and binding upon a person represented pursuant to this section.
- 7) Provides that the following representation is permissible:
 - a) a parent may represent and bind the parent's minor children and children subsequently born if a guardian or guardian ad litem for the child or children has not been appointed;

- b) a conservator of the estate may represent and bind the conservatee;
 - c) a guardian of the estate may represent and bind the minor ward;
 - d) a guardian ad litem with authority to act with respect to the matter may represent and bind the ward;
 - e) an agent with authority to act with respect to the matter may represent and bind the principal;
 - f) a trustee may represent and bind the beneficiaries of the trust; and
 - g) a personal representative may represent and bind persons interested in the estate.
- 8) Specifies that, unless otherwise represented, a minor, an incapacitated person, a person subsequently born, or a person whose identity or location is unknown and not reasonably ascertainable may be represented by and bound by another person having a substantially identical interest with respect to the particular question or dispute.
- 9) Provides that the following representation of successive interests is permissible:
- a) if an interest has been given to persons who comprise a certain class upon the happening of a future event, the living persons who would constitute the class as of the date the representation is to be determined may represent and bind all other members of the class as of that date;
 - b) if an interest has been given to a living person or to a class of persons, and a substantially identical interest is to pass to another person or class of persons, or both, upon the happening of a future event, the living person or the living members of the class of persons who hold the interest may represent and bind all of the persons and classes of persons who might take on the happening of all future events; and
 - c) if an interest will be given to a living person or to a class of persons upon the happening of a future event and a substantially identical interest would pass to another person or class of persons, or both, upon the happening of one or more future events, the living person or the living members of the class of persons who will hold the interest on the happening of an earlier event may represent and bind all of the persons and classes of persons who might take on the happening of all future events.
- 10) Authorizes the holder of a lifetime or testamentary power of appointment to represent and bind persons who are permissible appointees or takers in default of that exercise.
- 11) Specifies that these provisions do not affect any of the following:
- a) Requirements for notice in a court proceeding to any of the following: a person who has requested special notice; a person who has filed notice of appearance; and a particular person or entity required by statute to be given notice.

- b) Availability of a guardian ad litem pursuant to Section 1003.
- c) A representative's previously existing duties.

12) Specifies that, for purposes of this section "notice" includes other papers.

COMMENTS

1. Stated need for the bill

The author writes:

In permitting "virtual representation" and aligning California with 47 other states, AB 565 authorizes a proven and well-established mechanism that provides clarity and a crucial update to the existing regulations regarding the creation, modification, and termination of a trust.

2. This bill seeks to codify the concept of virtual representation for providing statutorily required notice to trust beneficiaries or other similarly situated individuals

a. Trusts

A trust is a means for property to be managed on behalf of, and distributed to, specified beneficiaries in accordance with the wishes of the trust's creator, or "settlor," without going through probate. The settlor typically transfers property into the trust, designates beneficiaries, and establishes guidelines for the management and distribution of the trust assets by a trustee, who has a legal obligation to implement the settlor's intent and make reasonable decisions with regard to the trust property. A revocable trust may be revoked or changed without the consent of the beneficiaries or a court, whereas an irrevocable trust prohibits the settlor from revoking or changing the trust without the consent of the beneficiaries of the trust and/or the court. Revocable trusts become irrevocable when the settlor dies, or when the trust instrument itself states when it is to become irrevocable.

Existing law provides that a trustee has a duty to keep beneficiaries of the trust reasonably informed of the trust and its administration. (§ 16060.) In general, trustees must: provide the terms of the trust to beneficiaries (§ 16060.7), report to beneficiaries, upon reasonable request, by providing information to the beneficiary relating to the administration of the trust relevant to the beneficiary's interest (§16061), and provide annual accounting to a beneficiary at the termination of the trust and upon change of trustee (§ 16062). Additionally, a trustee must serve beneficiaries and heirs with notice and a copy of the trust within 60 days of specified events: (1) the trust becoming irrevocable because of the death of the settlor, (2) a change of trustee of an irrevocable trust, and (3) whenever a power of appointment retained by a settlor over an otherwise

irrevocable trust becomes effective or lapses – which in turn triggers a 120-day limitations period for bringing an action to contest the trust. (§§ 16061.7, 16061.8.)

b. Virtual representation

The author and sponsors of the bill argue that this bill aligns California with 47 other states who have already codified some form of virtual representation. The framework of the bill is somewhat similar to language found in the Uniform Trust Code adopted by the Uniform Law Commission regarding virtual representation.² According to the sponsors, the bill provides an “alternative to the lengthy, costly and time-consuming courtroom process” that is currently required when beneficiaries of a trust are minors, incapacitated, unborn, or unknown (*hereafter* MIUUs). Existing law provides in Section 15804 that when notice is required to be given to a beneficiary with a future or successive interest, or a person interested in a trust, notice given to a specified individual may be sufficient to comply with the requirement to provide notice. However, this section does not apply to MIUUs, and therefore any modification to a trust that involves MIUUs requires court approval or the appointment of a guardian ad litem, which involves monetary costs and time for both the trustee and the courts. The underlying theory behind virtual representation is that a competent adult may represent and bind others who lack the legal capacity to represent themselves.

The bill builds in certain safeguards by providing that:

- the representative and the represented person shall not have a conflict of interest during the representation with respect to the particular matter that is the subject of the representation;
- a settlor shall not represent and bind a beneficiary regarding the termination or modification of an irrevocable trust;
- specifies that the represented person can object to the representation before the consent of the representative would have become effective; and
- that any consent provided by a representative is done so in writing.

The bill provides that certain types of representation are permissible and bind the represented person, provided that there is no conflict of interest between the represented person and the representative. Additionally, the bill specifies that it does not affect a person who has requested special notice, a person who has filed notice of appearance, any particular person or entity required by statute to be given notice, the availability of a guardian ad litem as provided under existing law, and any previously existing duty of a representative. The bill provides that a fiduciary who acts in reliance upon a representation made pursuant to these provisions is not be liable for any resulting loss, unless the fiduciary committed a breach of trust intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of a beneficiary.

² Uniform Trust Code (2023), Uniform Law Commission, proposed § 301-303.

The bill also states that an action taken by the court is conclusive and binding upon a person represented pursuant these provisions.

3. Statements in support

The California Bankers Association, a sponsor of the bill, writes:

[...] Numerous sections of the Probate Code reference the need to provide notice to, or obtain consent from, “all beneficiaries” of a trust or similarly broad classes. Beneficiaries who are Minors, Incapacitated, Unborn, or Unknown MIUUs) cannot legally consent to a modification. The logic behind AB 565’s virtual representation is that MIUUs do not have the legal capacity to protect their own interests, but another person who has substantially identical interests (or a fiduciary duty to protect those interests) will protect the MIUUs’ interests in the same way as the MIUUs would, had they been able to do so. Importantly, AB 565 would create a new alternative, without limiting the appointment of a guardian ad litem or otherwise seek court guidance as an option to represent the interests of MIUUs if desired by the parties.

AB 565 authorizes a proven and well-established mechanism which provides clarity and a crucial update to the otherwise functional existing rules regarding the delivery of notice, and the modification or termination of a trust. Forty-seven other states already have a similar statute. [...]

SUPPORT

California Bankers Association (sponsor)

California Lawyers Association (sponsor)

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES

Assembly Floor (Ayes 74, Noes 0)

Assembly Judiciary Committee (Ayes 12, Noes 0)
