SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 801 (Allen)
Version: April 19, 2023
Hearing Date: May 2, 2023
Fiscal: No
Urgency: No
AM

SUBJECT

California Uniform Directed Trust Act

DIGEST

This bill enacts the California Uniform Directed Trust Act to establish a statutory framework for directed trusts.

EXECUTIVE SUMMARY

Existing law establishes a trustee's duties and standard of care in administering a trust according to the trust instrument and outlines the liabilities and fiduciary responsibilities that a trustee has to the beneficiary, or beneficiaries, of a trust. However, it is unclear under existing law what the fiduciary responsibilities are, or liability is, of a nontrustee that has directing power to invest, distribute, or administer a trust over a trustee, as is the case in a directed trust. Existing law is also unclear about the fiduciary responsibility and liability of a trustee who takes actions under the direction of a nontrustee director. This bill seeks to address the ambiguity in existing law by enacting the California Uniform Directed Trust Act (CUDTA), which establishes statutory definitions for the common components of a directed trust, including directed trusts themselves, as well as power of direction, trust director, and directed trustee. Based on these definitions, the CUDTA specifies that those who have the power to direct a trustee in a directed trust have the same fiduciary duties, responsibilities, and liabilities as a trustee in a traditional non-directed trust. The CUDTA further clarifies that a trustee that acts subject to a trust director's direction is generally liable only for the trustee's own willful misconduct.

The bill is sponsored by the California Commission on Uniform State Laws and the California Lawyers Association, Trusts and Estates Section. The bill is supported by the California Bankers Association. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Governs the distribution of income, interest and principal under a trust, and the allocation of distributions to beneficiaries by a trustee or of payments received by a trust under the Uniform Principal and Income Act (UPIA). (Prob. Code § 16320 et. seq.[1])

2) Provides that a trustee has a duty to administer the trust solely in the interest of the beneficiaries. If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them and must act impartially in investing and managing the trust property, taking into account any differing interests of the beneficiaries. (§ 16002, 16003.)

3) Requires trustees, generally, to:
   a) provide the terms of the trust to beneficiaries; (§ 16060.7)
   b) 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
   c) provide annual accounting to a beneficiary at the termination of the trust and upon change of trustee (§ 16062). However, a trustee is not required to account to the beneficiary, provide the terms of the trust to the beneficiary, or provide requested information to the beneficiary during the period when the trust may be revoked. (§ 16069.)

This bill:

1) Establishes the California Uniform Directed Trust Act (CUDTA).

2) Defines various terms for these purposes.
   a) "Breach of trust" includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, this chapter, or law of this state other than this chapter pertaining to trusts.
   b) "Directed trust" means a trust for which the terms of the trust grant a power of direction.
   c) "Directed trustee" means a trustee that is subject to a trust director's power of direction.
   d) "Power of direction" means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. Power of direction includes a power over the investment, management, or distribution of trust property or

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

other matters of trust administration. The term excludes the powers described in subdivision (b) of Section 16608.

e) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

f) "Terms of a trust" means either of the following:
    i. The manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or established by other evidence that has been admitted in a judicial proceeding.
    ii. The trust's provisions as established, determined, or amended by a trustee or trust director in accordance with applicable law, the exercise of a power of appointment in accordance with applicable law, a court order, other binding modification, including, but not limited to, under Section 15404.

g) "Trust director" means a person that is granted a power of direction by the terms of a trust, to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

3) The terms of a trust may grant a power of direction to a trust director. Unless the terms of a trust provide otherwise, a trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the trust director. Unless the terms of a trust provide otherwise, trust directors with joint powers must act by majority decision.

4) Provides that a trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power of direction or other authorized further power, if the power is held individually, as a sole trustee in a like position and under similar circumstances or, if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances. The terms of the trust may vary the trust director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances. The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

5) Requires a directed trustee to take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or authorized further power, and provides that the trustee is not liable for the action.
    a) Prohibits a directed trustee from complying with a trust director's exercise or nonexercise of a power of direction or authorized further power to the extent that, by complying, the trustee would engage in willful misconduct.

6) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if any of the following are true:
    a) The breach involved the trustee's or other trust director's willful misconduct.
    b) The release was induced by improper conduct of the trustee or other trust director in procuring the release.
    c) At the time of the release, the trust director did not know the material facts relating to the breach.

7) Provides that the terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under CUDTA.

8) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

9) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

10) By accepting appointment as a trust director of a trust subject to this chapter, the trust director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the trust director. Other methods of obtaining jurisdiction over a trust director are not precluded by this provision.

11) Provides that, unless the terms of the trust provide otherwise, the rules applicable to a trustee under existing law for specified matters, such as acceptance, providing a bond, and resignation and removal, apply to a directed trust.

COMMENTS

1. Stated need for the bill:

The author writes:

> Known as the California Uniform Directed Trust Act (CUDTA), SB 801 modernizes California's probate law to keep pace with the evolving landscape of trust drafting. In a traditional trust framework, trustees are accountable to the beneficiary and have an established standard of care and fiduciary responsibility. With the rise in appointments of trust directors, there are concerns about the obligations to trust beneficiaries, which have not been explicitly articulated in statute. SB 801 follows the guidance of the National Conference of Commissioners on Uniform State Laws to address the practical questions raised by the presence of a trust director alongside trustees in a directed trust. Specifically, the CUDTA ensures that if a trust director

holds power over functions like investment, distribution, and administration that would have otherwise belonged to a trustee, the director must be held to the same standard of care, fiduciary responsibility, and liability as a trustee. Further, SB 801 clarifies that a trustee who acts in accordance to a trust director's direction is generally liable only for the trustee's own willful misconduct. With better clarity and guidance on the efficacious use of directed trusts, the CUDTA provides the necessary tools for accountability in the management of their assets.

2. Establishes the California Uniform Directed Trust Act

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.

In a traditional trust, the trustee is responsible for all aspects of administering the trust, including custody, investment, and distribution of trust property. The allocation of authority to a trustee has been the foundation of trust law for centuries. However, a new kind of trust has risen that grants a trust director, not the trustee, the power to direct the trustee in how to administer the trust. In response to the rise in the creation of directed trusts, the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission) published a framework of rules and definitions for directed trusts—the Uniform Directed Trust Act. The Uniform Law Commission states that:

> The rise of directed trusts raises numerous unsettled questions of law. The most obvious question is how to allocate fiduciary responsibility between a trust director and a trustee. If a trust director exercises a power of direction and the trustee acts accordingly, a court must decide how much responsibility for the action belongs to the director and how much belongs to the trustee. In addition, a directed trust creates a host of further problems about how to govern a trust director, such as how to discern whether a trust director has duly accepted appointment and how to differentiate between a fiduciary power belonging to a trust director and a nonfiduciary power belonging to the holder of a power of appointment.[…] The purpose of the UDTA is to address these complications.

To date, 16 other states have enacted some form of the UDTA.

The author and sponsors of this bill state that they used the UDTA as guidance when drafting the CUDTA, but made some changes to conform with California law and drafting style. The bill imposes primary fiduciary responsibility for a trust director's actions on the director, while preserving a minimum core of duty in a trustee. A trust director has the same fiduciary duties as a trustee would have in a like position and under similar circumstances under the bill. However, a trustee that acts subject to a trust director's direction will only be liable generally for the trustee's own willful misconduct. A similar allocation of power and duty among cotrustees is provided as well. The bill provides various solutions to the many practical problems created by the presence of a trust director, such as the sharing of information among a trustee and a trust director and the compensation, succession, and appointment of a trust director.

3. Statements in support

The California Commission on Uniform State Laws, a sponsor of the bill, writes:

> In 2017, the ULC approved the Uniform Directed Trust Act (UDTA). Senate Bill 801 would enact UDTA in California.
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> In a traditional trust, the responsibility for all aspects of the trust's administration—including custody, investment, and distribution—belongs to the trustee. For centuries, this allocation of authority to a trustee has been a foundation of trust law. In a directed trust, however, this foundation may be modified by a grant of power over some aspect of trust administration to a trust director. A trust director is not a trustee but has the power either to direct the trustee in the trust's administration or to administer the trust directly. A trust director can have virtually any power over a trust, including the power to direct the trustee in the investment and distribution of trust property and the power to amend or terminate the trust.
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> The rise of directed trusts raises numerous unsettled questions of law. The most obvious question is how to allocate fiduciary responsibility between a trust director and a trustee.
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> The purpose of the UDTA is to address this and other complications. The UDTA expressly validates terms of a trust that provide for a trust director and prescribes a simple set of rules for directed trusts. The UDTA's basic strategy for allocating fiduciary duty is to impose primary fiduciary responsibility for a trust director's actions on the director, while preserving a minimum core of duty in a trustee. A trust director has the same fiduciary duties as a trustee would have in a like position and under similar circumstances, but a trustee that acts subject to a trust director's direction is generally liable only for the trustee's own willful misconduct. The UDTA authorizes a similar allocation of power and duty among co-trustees.

SUPPORT

California Commission on Uniform State Laws (sponsor)
California Lawyers Association, Trusts and Estates Section (sponsor)
California Bankers Association

OPPOSITION

None known.

RELATED LEGISLATION

Pending Legislation: SB 522 (Niello, 2023) repeals the existing Uniform Principal and Income Act and revises and updates those provisions under a new name, the Uniform Fiduciary Income and Principal Act. SB 522 is currently pending in the Assembly.

Prior Legislation:

SB 1157 (Jones, 2022), would have repealed the existing Uniform Principal and Income Act and revised and updated those provisions under a new name, the Uniform Fiduciary Income and Principal Act. SB 1157 was never set for a hearing in the Assembly Judiciary Committee.

SB 754 (Poochigian, Ch. 100, Stats. 2005) authorized a trustee, unless prohibited by the governing instrument, to convert a trust into a unitrust, pursuant to specified procedures and requirements.

AB 846 (Ackerman, Ch. 846, Stats. 1999) repealed the Revised Uniform Principal and Income Act and enacted the Uniform Principal and Income Act.

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