

Senate Bill No. 1907

CHAPTER 410

An act to amend Section 16081 of the Probate Code, relating to trusts.

[Approved by Governor August 17, 1996. Filed with
Secretary of State August 19, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1907, O'Connell. Trusts: power of beneficiary.

Existing law requires a person who is a beneficiary of a trust and who holds a power to take or distribute income or principal to or for his or her benefit pursuant to a standard to exercise that power reasonably and in accordance with the standard. Existing law provides that, in any case in which the standard governing the exercise of the power does not clearly indicate that a broader power is intended, the holder of the power may exercise it in his or her favor only for his or her health, education, support, or maintenance.

This bill would revise these provisions to, among other things, provide that, unless a broader power is intended by express reference to these provisions, this beneficiary may take or distribute income or principal to or for his or her benefit only for his or her health, education, support, or maintenance, as provided. The bill would provide that its changes would apply retroactively to trusts meeting certain criteria, except as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 16081 of the Probate Code is amended to read:

16081. (a) Subject to the additional requirements of subdivisions (b), (c), and (d), if a trust instrument confers "absolute," "sole," or "uncontrolled" discretion on a trustee, the trustee shall act in accordance with fiduciary principles and shall not act in bad faith or in disregard of the purposes of the trust.

(b) Notwithstanding the use of terms like "absolute," "sole," or "uncontrolled" by a settlor or a testator, a person who is a beneficiary of a trust that permits the person, either individually or as trustee or cotrustee, to make discretionary distributions of income or principal to or for the benefit of himself or herself pursuant to a standard, shall exercise that power reasonably and in accordance with the standard.

(c) Unless a settlor or a testator clearly indicates that a broader power is intended by express reference to this subdivision, a person who is a beneficiary of a trust that permits the person, as trustee or



cotrustee, to make discretionary distributions of income or principal to or for the benefit of himself or herself may exercise that power in his or her favor only for his or her health, education, support, or maintenance within the meaning of Sections 2041 and 2514 of the Internal Revenue Code. Notwithstanding the foregoing and the provisions of Section 15620, if a power to make discretionary distributions of income or principal is conferred upon two or more trustees, the power may be exercised by any trustee who is not a current permissible beneficiary of that power ; and provided further that if there is no trustee who is not a current permissible beneficiary of that power, any party in interest may apply to a court of competent jurisdiction to appoint a trustee who is not a current permissible beneficiary of that power, and the power may be exercised by the trustee appointed by the court.

(d) Subdivision (c) does not apply to either of the following:

(1) Any power held by the settlor of a revocable or amendable trust.

(2) Any power held by a settlor's spouse or a testator's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 21520, has been allowed.

(e) Subdivision (c) applies to any of the following:

(1) Any trust executed on or after January 1, 1997.

(2) Any testamentary trust created under a will executed on or after January 1, 1997.

(3) Any irrevocable trust created under a document executed before January 1, 1997, or any revocable trust executed before that date if the settlor was incapacitated as of that date, unless all parties in interest elect affirmatively not to be subject to the application of subdivision (c) through a written instrument delivered to the trustee. That election shall be made on or before the latest of January 1, 1998, three years after the date on which the trust became irrevocable, or, in the case of a revocable trust where the settlor was incapacitated, three years after the date on which the settlor became incapacitated.

(f) Notwithstanding the foregoing, the provisions of subdivision (c) neither create a new cause of action nor impair an existing cause of action that, in either case, relates to any power limited by subdivision (c) that was exercised before January 1, 1997.

(g) For purposes of this section, the term "party in interest" means any of the following persons:

(1) If the trust is revocable and the settlor is incapacitated, the settlor's legal representative under applicable law, or the settlor's attorney-in-fact under a durable power of attorney that is sufficient to grant the authority required under subdivision (c) or (e), as applicable.

(2) If the trust is irrevocable, each trustee, each beneficiary then entitled or authorized to receive income distributions from the trust,



or each remainder beneficiary who would be entitled to receive notice of a trust proceeding under Section 15804. Any beneficiary who lacks legal capacity may be represented by the beneficiary's legal representative, attorney-in-fact under a durable power of attorney that is sufficient to grant the authority required under subdivision (c) or (e), as applicable, or in the absence of a legal representative or attorney-in-fact, a guardian ad litem appointed for that purpose.

