

SUBJECT: Revising certain statutory provisions related to trusts

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Leach, Julie Johnson, Krause, Middleton, Schofield, Smith
0 nays
3 absent — Davis, Dutton, Moody

WITNESSES: For — Craig Hopper, State Bar of Texas Real Estate, Probate, and Trust Law Section; (*Registered, but did not testify:* Melissa Shannon, Bexar County Commissioners Court; Lauren Hunt, State Bar of Texas Real Estate, Probate, and Trust Law Section; Guy Herman, Statutory Probate Courts of Texas as Presiding Judge)
Against — None

BACKGROUND: Property Code sec. 41.002(a)(1) governs the homestead creditor-protection for qualifying trusts, and Tax Code sec. 11.13(j) provides requirements for a property to be considered a residence homestead for the purpose of qualifying for a homestead exemption.

Property Code sec. 112.0715 governs the creation of a second trust, which can be created by a distribution of principal to a trust created under the same trust instrument as the first trust from which the principal was distributed or to a trust created under a different trust instrument.

Under Property Code sec. 115.014(b), at any point in a trust proceeding, a court is allowed to appoint an attorney ad litem to represent any interest that the court considers necessary.

Interested parties have noted that Texas trust laws are in need of a number of technical revisions and clarifications.

DIGEST: CSHB 2179 would modify certain standards and procedures in Texas law

regarding trusts, including revising provisions related to homesteads in qualifying trusts, testamentary general powers of appointment, creation of second trusts, and attorneys ad litem in trust proceedings.

Homesteads. CSHB 2179 would revise the section of Property Code related to homesteads in qualifying trusts to conform its homestead protection qualifying language with the homestead exemption qualifying language under the Tax Code, including adopting the phrase "rent free and without charge."

Testamentary general powers of appointment. The bill would prohibit a beneficiary of a spendthrift trust or the beneficiary's estate from being considered a settlor merely because the beneficiary, in any capacity, did any of the following:

- held or exercised a testamentary power of appointment, other than a general power of appointment;
- held a testamentary general power of appointment; or
- exercised a testamentary general power of appointment in favor of or for the benefit of the takers in default of the appointive assets.

If a beneficiary exercised a testamentary general power of appointment in favor of or for the benefit of any appointee other than the takers in default of the appointive assets, the appointive assets would be subject to the claims of the beneficiary's creditors, but only to the extent the beneficiary's owned property was insufficient to meet their debts. Unless appointed to the beneficiary's estate, the assets would not be subject to:

- administration as part of the beneficiary's estate;
- recovery by the personal representative of the beneficiary's estate, except as provide under applicable law; or
- the payment of taxes or administration expenses of the beneficiary's estate.

Distribution to second trust. The bill also would specify that a second trust could be created by a distribution of principal to a trust that retained

the same name used by the first trust, and if permitted by applicable law, the tax identification number of the first trust. If a second trust was created that retained the same name as the first trust, the property would not have to be retitled.

Attorney ad litem for trust proceedings. The bill would condition a court's authority to appoint an attorney ad litem to represent any interest that the court considered necessary, including to defend an action for a minor beneficiary or an incompetent beneficiary, on the court first determining that representation of the interest otherwise would be inadequate.

Other provisions. The bill would provide that, as intended by the Legislature, the bill's provisions concerning the distribution of principal to a second trust would be a codification of the common law of Texas in effect immediately before the effective date of the bill.

The bill's provisions would apply to a trust created before, or, or after the effective date of the bill.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.