UNIFORM PROBATE CODE
(Last Amended or Revised in 2008)

Section 1-403. Pleadings; When Parties Bound by Others; Notice.

In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following rules apply:

(1) Interests to be affected must be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests or in another appropriate manner.

(2) A person is bound by an order binding another in the following cases:

(i) An order binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.

(ii) To the extent there is no conflict of interest between them or among persons represented:

(A) An order binding a conservator binds the person whose estate the conservator controls;

(B) An order binding a guardian binds the ward if no conservator of the ward's estate has been appointed;

(C) An order binding a trustee binds beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a former fiduciary, and in proceedings involving creditors or other third parties;

(D) An order binding a personal representative binds persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; and

(E) An order binding a sole holder or all co-holders of a general testamentary power of appointment binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.

(iii)Unless otherwise represented, a minor or an incapacitated, unborn, or unascertained person is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) If no conservator or guardian has been appointed, a parent may represent a minor child.

(4) Notice is required as follows:

(i) The notice prescribed by Section 1-401 must be given to every interested person or to one who can bind an interested person as described in paragraph (2)(i) or (ii). Notice may be given both to a person and to another who may bind the person.

(ii) Notice is given to unborn or unascertained persons, who are not represented under paragraph(2)(i)or (ii), by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(5) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall state its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

COMMENT

A general power, as used here and in Section 1-108, is one which enables the power holder to draw absolute ownership to himself. The section assumes a valid general power. If the validity of the power itself were in issue, the power holder could not represent others, as for example, the takers in default.

The general rules of civil procedure are applicable where not replaced by specific provision, *see* Section 1-304. Those rules would determine the mode of giving notice or serving process on a minor or the mode of notice in class suits involving large groups of persons made party to a suit.

1997 Technical Amendment. By technical amendment effective July 31, 1997, (E) under subsection 2(ii) was added to clarify that orders binding the holder of a general testamentary power may bind others to the extent their interests are subject to the power. The addition, like the other lettered segments of subsection (2)(ii), is qualified by the stem language: "To the extent there is no conflict between them or among persons represented…" Also, (iii) under (2)

was broadened to include minors and incapacitated persons with the others listed as persons who may be bound by judicial orders under principles of virtual representation.

UNIFORM TRUST CODE
(Last Revised or Amended in 2005)

ARTICLE 3

REPRESENTATION

General Comment

This article deals with representation of beneficiaries, both representation by fiduciaries (personal representatives, trustees, guardians, and conservators), and what is known as virtual representation. Representation is a topic not adequately addressed under the trust law of most States. Representation is addressed in the Restatement (First) of Property §§ 180-186 (1936), but the coverage of this article is more complete.

Section 301 is the introductory section, laying out the scope of the article. The representation principles of this article have numerous applications under this Code. The representation principles of the article apply for purposes of settlement of disputes, whether by a court or nonjudicially. They apply for the giving of required notices. They apply for the giving of consents to certain actions.

Sections 302-305 cover the different types of representation. Section 302 deals with representation by the holder of a general testamentary power of appointment. (Revocable trusts and presently exercisable general powers of appointment are covered by Section 603, which grant the settlor or holder of the power all rights of the beneficiaries or persons whose interests are subject to the power). Section 303 deals with representation by a fiduciary, whether of an estate, trust, conservatorship, or guardianship. The section also allows a parent without a conflict of interest to represent and bind a minor or unborn child. Section 304 is the virtual representation provision. It provides for representation of and the giving of a binding consent by another person having a substantially identical interest with respect to the particular issue. Section 305 authorizes the court to appoint a representative to represent the interests of unrepresented persons or persons for whom the court concludes the other available representation might be inadequate.

The provisions of this article are subject to modification in the terms of the trust. *See* Section 105. Settlors are free to specify their own methods for providing substituted notice and obtaining substituted consent.

SECTION 301. REPRESENTATION: BASIC EFFECT.

(a) Notice to a person who may represent and bind another person under this [article] has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this [article] is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in Sections [411 and] 602, a person who under this [article] may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

[(d) A settlor may not represent and bind a beneficiary under this [article] with respect to the termination or modification of a trust under Section 411(a).]

Comment

This section is general and introductory, laying out the scope of the article.

Subsection (a) validates substitute notice to a person who may represent and bind another person as provided in the succeeding sections of this article. Notice to the substitute has the same effect as if given directly to the other person. Subsection (a) does not apply to notice of a judicial proceeding. Pursuant to Section 109(d), notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure, which may require that notice not only be given to the representative but also to the person represented. For a model statute for the giving of notice in such cases, see Unif. Probate Code Section 1-403(3). Subsection (a) may be used to facilitate the giving of notice to the qualified beneficiaries of a proposed transfer of principal place of administration (Section 108(d)), of a proposed trust combination or division (Section 417), of a temporary assumption of duties without accepting trusteeship (Section 701(c)(1)), of a trustee's resignation (Section 705(a)(1)), and of a trustee's report (Section 813(c)).

Subsection (b) deals with the effect of a consent, whether by actual or virtual representation. Subsection (b) may be used to facilitate consent of the beneficiaries to modification or termination of a trust, with or without the consent of the settlor (Section 411), agreement of the qualified beneficiaries on appointment of a successor trustee of a noncharitable trust (Section 704(c)(2)), and a beneficiary's consent to or release or affirmance of the actions of a trustee (Section 1009). A consent by a representative bars a later objection by the person represented, but a consent is not binding if the person represented raises an objection prior to the date the consent would otherwise become effective. The possibility that a beneficiary might object to a consent given on the beneficiary's behalf will not be germane in many cases because the person represented will be unborn or unascertained. However, the representation principles of this article will sometimes apply to adult and competent beneficiaries. For example, while the trustee of a revocable trust entitled to a pourover devise has authority under Section 303 to approve the personal representative's account on behalf of the trust beneficiaries, such consent would not be

binding on a trust beneficiary who registers an objection. Subsection (b) implements cases such as *Barber v. Barber*, 837 P.2d 714 (Alaska 1992), which held that the a refusal to allow an objection by an adult competent remainder beneficiary violated due process.

Subsection (c) implements the policy of Sections 411 and 602 requiring express authority in the power of attorney or approval of court before the settlor's agent, conservator or guardian may consent on behalf of the settlor to the termination or revocation of the settlor's revocable trust.

2004 Amendment. For an explanation of the new subsection (d) and of the bracketed language in subsection (c), see the comment to the amendment to Section 411.

SECTION 302. REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT. To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

Comment

This section specifies the circumstances under which a holder of a general testamentary power of appointment may receive notices on behalf of and otherwise represent and bind persons whose interests are subject to the power, whether as permissible appointees, takers in default, or otherwise. Such representation is allowed except to the extent there is a conflict of interest with respect to the particular matter or dispute. Typically, the holder of a general testamentary power of appointment is also a life income beneficiary of the trust, oftentimes of a trust intended to qualify for the federal estate tax marital deduction. *See* I.R.C. § 2056(b)(5). Without the exception for conflict of interest, the holder of the power could act in a way that could enhance the holder's income interests to the detriment of the appointees or takers in default, whoever they may be.

SECTION 303. REPRESENTATION BY FIDUCIARIES AND PARENTS. To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) a [conservator] may represent and bind the estate that the [conservator] controls;

(2) a [guardian] may represent and bind the ward if a [conservator] of the ward's estate has not been appointed;

(3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(4) a trustee may represent and bind the beneficiaries of the trust;

(5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and

(6) a parent may represent and bind the parent's minor or unborn child if a [conservator] or [guardian] for the child has not been appointed.

Comment

This section allows for representation of persons by their fiduciaries (conservators, guardians, agents, trustees, and personal representatives), a principle that has long been part of the law. Paragraph (6), which allows parents to represent their children, is more recent, having originated in 1969 upon approval of the Uniform Probate Code. This section is not limited to representation of beneficiaries. It also applies to representation of the settlor. Representation is not available if the fiduciary or parent is in a conflict position with respect to the particular matter or dispute, however. A typical conflict would be where the fiduciary or parent seeking to represent the beneficiary is either the trustee or holds an adverse beneficial interest.

Paragraph (2) authorizes a guardian to bind and represent a ward if a conservator of the ward's estate has not been appointed. Granting a guardian authority to represent the ward with respect to interests in the trust can avoid the need to seek appointment of a conservator. This grant of authority to act with respect to the ward's trust interest may broaden the authority of a guardian in some States although not in States that have adopted the Section 1-403 of the Uniform Probate Code, from which this section was derived. Under the Uniform Trust Code, a "conservator" is appointed by the court to manage the ward's property, a "guardian" to make decisions with respect to the ward's personal affairs. *See* Section 103.

Paragraph (3) authorizes an agent to represent a principal only to the extent the agent has authority to act with respect to the particular question or dispute. Pursuant to Sections 411 and 602, an agent may represent a settlor with respect to the amendment, revocation or termination of the trust only to the extent this authority is expressly granted either in the trust or the power. Otherwise, depending on the particular question or dispute, a general grant of authority in the power may be sufficient to confer the necessary authority.

SECTION 304. REPRESENTATION BY PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST. Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

Comment

This section authorizes a person with a substantially identically interest with respect to a particular question or dispute to represent and bind an otherwise unrepresented minor, incapacitated or unborn individual, or person whose location is unknown and not reasonably ascertainable. This section is derived from Section 1-403(2)(iii) of the Uniform Probate Code, but with several modifications. Unlike the UPC, this section does not expressly require that the representation be adequate, the drafters preferring to leave this issue to the courts. Furthermore, this section extends the doctrine of virtual representation to representation of minors and incapacitated individuals. Finally, this section does not apply to the extent there is a conflict of interest between the representative and the person represented.

Restatement (First) of Property §§ 181 and 185 (1936) provide that virtual representation is inapplicable if the interest represented was not sufficiently protected. Representation is deemed sufficiently protective as long as it does not appear that the representative acted in hostility to the interest of the person represented. Restatement (First) of Property § 185 (1936). Evidence of inactivity or lack of skill is material only to the extent it establishes such hostility. Restatement (First) of Property § 185 cmt. b (1936).

Typically, the interests of the representative and the person represented will be identical. A common example would be a trust providing for distribution to the settlor's children as a class, with an adult child being able to represent the interests of children who are either minors or unborn. Exact identity of interests is not required, only substantial identity with respect to the particular question or dispute. Whether such identity is present may depend on the nature of the interest. For example, a presumptive remaindermen may be able to represent alternative remaindermen with respect to approval of a trustee's report but not with respect to interpretation of the remainder provision or termination of the trust. Even if the beneficial interests of the representative and person represented are identical, representation is not allowed in the event of conflict of interest. The representative may have interests outside of the trust that are adverse to the interest of the person represented, such as a prior relationship with the trustee or other beneficiaries. *See* Restatement (First) of Property § 185 cmt. d (1936).

SECTION 305. APPOINTMENT OF REPRESENTATIVE.

(a) If the court determines that an interest is not represented under this [article], or that the otherwise available representation might be inadequate, the court may appoint a [representative] to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A [representative] may be appointed to represent several persons or interests.

(b) A [representative] may act on behalf of the individual represented with respect to any matter arising under this [Code], whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a [representative] may consider general benefit accruing to the living members of the individual's family.

Comment

This section is derived from Section 1-403(4) of the Uniform Probate Code. However, this section substitutes " representative" for "guardian ad litem" to signal that a representative under this Code serves a different role. Unlike a guardian ad litem, under this section a representative can be appointed to act with respect to a nonjudicial settlement or to receive a notice on a beneficiary's behalf. Furthermore, in making decisions, a representative may consider general benefit accruing to living members of the family. "Representative" is placed in brackets in case the enacting jurisdiction prefers a different term. The court may appoint a representative

to act for a person even if the person could be represented under another section of this article.

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Probate Code (Refs & Annos)
Division 9. Trust Law (Refs & Annos)
Part 3. Trustees and Beneficiaries (Refs & Annos)
Chapter 2. Beneficiaries (Refs & Annos)
➡ **§ 15804. Notice; future interest of beneficiary**

(a) Subject to subdivisions (b) and (c), it is sufficient compliance with a requirement in this division that notice be given to a beneficiary, or to a person interested in the trust, if notice is given as follows:

(1) 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, notice shall be 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.

(2) 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, notice shall be given to the living person.

(3) 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, notice shall be given to the person or persons in being who would take the interest upon the happening of the first of these events.

(b) 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 subdivision (a), notice shall also be given to persons not otherwise entitled to notice under subdivision (a) with respect to whom the conflict of interest exists.

(c) Nothing in this section affects any of the following:

(1) 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.

(2) Availability of a guardian ad litem pursuant to Section 1003.

(d) As used in this section, “notice” includes other papers.

CREDIT(S)

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1992, c. 178 (S.B.1496), § 43.4.)

LAW REVISION COMMISSION COMMENTS

1992 Amendment

Subdivision (a)(1) of Section 15804 is amended to clarify its application to notices given under this division outside of judicial proceedings. See, e.g., Section 15686 (notice of trustee's fee).

Subdivision (d) has been added to make clear that other papers, such as accounts to beneficiaries under Section 16062, are covered by the rules governing notice in this section. [21 Cal.L.Rev.Comm.Reports 191 (1991).]

1990 Enactment

Section 15804 continues Section 15804 of the repealed Probate Code without change. For provisions where this section applies, see Sections 17203 (notice of hearing on petitions generally), 17351 (provisions for removal of certain testamentary trusts from continuing jurisdiction), 17403 (notice of petition for transfer to another jurisdiction), 17454 (notice of petition for transfer to California). See Section 17204 (request for special notice). See also Section 24 (“beneficiary” defined).

Background on Section 15804 of Repealed Code

Section 15804 was added by 1986 Cal.Stat. ch. 820 § 40 and was amended by 1988 Cal.Stat. ch. 1199 § 105.3. Subdivision (a) restated former Probate Code Section 1215.1 (repealed by 1986 Cal.Stat. ch. 820 § 35) without substantive change. Subdivision (b) restated former Probate Code Section 1215.2 (repealed by 1986 Cal.Stat. ch. 820 § 35) without substantive change. Subdivision (c) restated the first sentence of former Probate Code Section 1215.4 (repealed by 1986 Cal.Stat. ch. 820 § 35) without substantive change. The 1988 amendment corrected a cross-reference. For background on the provisions of this division, see the Comment to this division under the division heading. [20 Cal.L.Rev.Comm.Reports 1001 (1990)].

HISTORICAL AND STATUTORY NOTES

2009 Electronic Update

1992 Legislation

The 1992 amendment, in subd. (a)(1) relating to interests limited on a future contingency, substituted “proceeding, or if there is no proceeding, if the event had happened immediately before a notice is given” for “proceedings” and added subd. (d) describing “notice”.

1991 Main Volume

Former § 15804, added by Stats.1986, c. 820, § 40, amended by Stats.1988, c. 1199, § 105.3, relating to similar subject matter, was repealed by Stats.1990, c. 79 (A.B.759), § 13, operative July 1, 1991.

Transitional provisions, see § 3. For text of former section, see Appendix (App. § 1 et seq.) at end of Code.

Derivation: Former § 1215.1 added by Stats.1974, c. 171, § 1, amended by Stats.1982, c. 1199, § 3.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

Former §§ 1215.2, 1215.4 added by Stats.1974, c. 171, § 1.

Former § 15804, added by Stats.1986, c. 820, § 40, amended by Stats.1988, c. 1199, § 105.3.

LAW REVIEW AND JOURNAL COMMENTARIES

Review of Selected 1992 California Legislation. 24 Pac.L.J. 605 (1993).

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Decedents' Estates § 288, Petition--Contents.

CA Jur. 3d Decedents' Estates § 326, Notice of Hearing.

CA Jur. 3d Trusts § 81, Notice With Trusts Involving Future Interests.

Cal. Civ. Prac. Probate & Trust Proceedings § 7:9, Notice of Hearing.

Cal. Civ. Prac. Probate & Trust Proceedings § 6:15, Petition.

Cal. Civ. Prac. Probate & Trust Proceedings § 6:16, Notice of Hearing.

Cal. Civ. Prac. Probate & Trust Proceedings § 24:13, Notice.

Cal. Civ. Prac. Probate & Trust Proceedings § 24:54, Loyalty.

Cal. Civ. Prac. Probate & Trust Proceedings § 24:66, Exercise of Discretionary Powers.

Cal. Civ. Prac. Probate & Trust Proceedings § 24:69, Duty to Serve Notification of Changes.

Cal. Civ. Prac. Probate & Trust Proceedings § 24:72, Duty to Account.

Forms

California Transactions Forms--Estate Planning § 12:26, Duty to Notify.

West's California Code Forms, Probate § 13651 Form 1, Spousal or Domestic Partner Property Petition-- Judicial Council Form DE-221.

West's California Code Forms, Probate § 16061.7 Form 1, Notification by the Trustee of the [Name of Trust Instrument] Trust.

Treatises and Practice Aids

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

13 Witkin, California Summary 10th Trusts § 64, (S 64) Trust Law.

13 Witkin, California Summary 10th Trusts § 86, (S 86) Notice of Changes Affecting Irrevocable Trust.

13 Witkin, California Summary 10th Trusts § 88, (S 88) Contents of Account.

13 Witkin, California Summary 10th Trusts § 147, Notice to Beneficiary.

14 Witkin, California Summary 10th Wills and Probate § 814, Petition.

14 Witkin, California Summary 10th Wills and Probate § 831, Notice of Hearing.

West's Ann. Cal. Prob. Code § 15804, CA PROBATE § 15804

Current with urgency legislation through Ch. 9, 11-17 of the 2009 Reg.Sess., Ch. 12 of the 2009-2010 2nd Ex.Sess., and Ch. 26 of the 2009-2010 3rd Ex.Sess., Governor's Reorganization Plan No. 1 of 2009, Prop. 1F, approved at the 5/19/2009 election, and propositions on the 6/8/2010 ballot received as of 7/1/2009

(C) 2009 Thomson Reuters

END OF DOCUMENT

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

West's Delaware Code Annotated Currentness
Title 12. Decedents' Estates and Fiduciary Relations
Part V. Fiduciary Relations
Chapter 35. Trusts
Subchapter III. General Provisions
§ 3547. Representation by person with a substantially identical interest

<Text of section effective 8-1-2009. See also section effective until 8-1-2009.>

(a) Unless otherwise represented, a minor, incapacitated, or unborn person, or a person whose identity or location is unknown and not reasonably ascertainable (hereinafter referred to as an "unascertainable person"), may for all purposes be represented by and bound by another who has a substantially identical interest with respect to the particular question or dispute but only to the extent that there is no material conflict of interest between the representative and the person represented with respect to the particular question or dispute.

(b) A presumptive remainder beneficiary or the person or persons authorized to represent the presumptive remainder beneficiary under any other subsection of this section may represent and bind contingent successor remainder beneficiaries for the same purposes, in the same circumstances, and to the same extent as an ascertainable competent beneficiary may represent and bind a minor, incapacitated, unborn or unascertainable person. As used in this subsection (b), a "presumptive remainder beneficiary" means as of any date, a beneficiary who, as of any date and but for the exercise of any power of appointment, would receive income or principal of the trust if the trust were to terminate as of that date (without regard to the exercise of any power of appointment) or, if the trust does not provide for its termination, a beneficiary who would receive or be eligible to receive distributions of income or principal of the trust if all of the beneficiaries currently receiving or eligible to receive distributions of income or principal were deceased.

(c) In the case of a trust having a minor or incapacitated beneficiary who may not be represented by another pursuant to subsection (a) or subsection (b) of this section, the custodial parent or parents or guardian of the property of the beneficiary may represent and bind the beneficiary for purposes of any judicial proceeding or nonjudicial matter pertaining to the trust; provided that, in the case of a custodial parent or parents, there is no material conflict of interest between the minor or incapacitated beneficiary and either of such beneficiary's parents with respect to the particular question or dispute. Furthermore, such representative may, for all purposes, represent and bind an unborn person or unascertainable person who has an interest, with respect to the particular question or dispute, that is substantially identical to the interest of the minor or incapacitated beneficiary represented by the representative, but only to the extent that there is no material conflict of interest between the minor or incapacitated beneficiary represented by the representative and the unborn or unascertainable person with respect to the particular question or dispute.

(d) Unless otherwise provided in the governing instrument, the provisions of this section shall apply for purposes of any judicial proceeding and for purposes of any non-judicial matter. For purposes of this section, judicial proceedings shall include any proceeding before a court or administrative tribunal of this State, including a proceeding that involves a trust whether or not the administration of the trust is governed by the laws of this State, and non-judicial matters include, but are not limited to, the grant of consents, releases or ratifications pursuant to Section 3588 of this

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

title and the measurement of the limitation period described in Section 3585 of this title.

CREDIT(S)

72 Laws 2000, ch. 388, § 3, eff. June 30, 2000. Amended by 76 Laws 2007, ch. 90, § 8, eff. Aug. 1, 2007; 77 Laws 2009, ch. 98, § 19, eff. Aug. 1, 2009.

Current through 77 Laws 2009, chs. 1-150. Revisions to 2009 Acts made by the Delaware Code Revisors were unavailable at time of publication.

(C) 2009 Thomson Reuters.

END OF DOCUMENT

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

West's Nevada Revised Statutes Annotated Currentness
Title 13. Guardianships; Conservatorships; Trusts
Chapter 165. Trustees' Accounting (Uniform Act)
Testamentary Trusts
165.100. Representation of beneficiary

A beneficiary who is a minor or otherwise legally incapacitated, and also possible unborn or unascertained beneficiaries, may be represented in a testamentary trust accounting by a court-appointed attorney or by competent living members of the class to which they do or would belong, or by a guardian ad litem, as the court deems proper. If the residence of any beneficiary is unknown, or there is doubt as to the existence of one or more persons as beneficiaries, the court shall make such provision for service of notice and **representation** on the accounting as it believes proper.

CREDIT(S)

Amended by Laws 1999, p. 2384.

Formerly section 9 of chapter 135 of Laws 1941; NCL (1931)-1941 Supplement, § 7718.08.

HISTORICAL AND STATUTORY NOTES

Laws 1999, c. 467, in the first sentence, substituted “A beneficiary” for “Any beneficiary”, deleted “, of unsound mind” following “is a minor”, substituted “incapacitated” for “incompetent”, “a court-appointed attorney” for “the court”, and “proper” for “best”.

LIBRARY REFERENCES

Federal Civil Procedure 188.
Guardian and Ward 28.
Infants 77 to 87, 90.
Parties 35.77.
Trusts 299.1 to 305.
Westlaw Key Number Searches: 170Ak188; 196k28; 211k77 to 211k87; 211k90; 287k35.77; 390k299.1 to 390k305.
C.J.S. Federal Civil Procedure § 92.
C.J.S. Guardian and Ward §§ 69 to 70.
C.J.S. Infants §§ 152, 222 to 242.
C.J.S. Parties § 27.
C.J.S. Trusts §§ 378, 386 to 389.

RESEARCH REFERENCES

Treatises and Practice Aids

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

Bogert - the Law of Trusts and Trustees § 871, Procedure--Parties--Costs and Fees.

Bogert - the Law of Trusts and Trustees § 970, Parties and Procedure on Accounting.

N. R. S. 165.100, NV ST 165.100

Current through the 2007 74th Regular Session and the 25th Special Session (2008) of the Nevada Legislature and technical corrections received from the Legislative Counsel Bureau through the 25th Special Session (2008).

Copr. (C) 2009 Thomson Reuters Copr. (c) 2009. The text of the Nevada Revised Statutes appearing in this database was produced from computer tapes provided by the Nevada Legislative Counsel Bureau and is subject to a claim of copyright by the State of Nevada.

END OF DOCUMENT

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

Effective:[See Text Amendments]

Mckinney's Consolidated Laws of New York Annotated Currentness
Surrogate's Court Procedure Act (Refs & Annos)
Chapter 59-A. Of the Consolidated Laws (Refs & Annos)
Article 3. Proceedings, Pleadings and Process (Refs & Annos)
➡ **§ 315. Joinder and representation of persons interested in estates**

1. The provisions of this section shall apply in any proceeding in which all persons interested in the estate are required to be served with process. For the purposes of this section, the term "an interest in the estate" includes both interests in income and interests in principal.

2. Representation of class interests.

(a) Where an interest in the estate has been limited as follows, it shall not be necessary to serve process on any other person than as herein provided:

(i) In any contingency to the persons who shall compose a certain class upon the happening of a future event, the persons in being who would constitute the class if such event had happened immediately before the commencement of the proceeding.

(ii) To a person who is a party to the proceeding and the same interest has been further limited upon the happening of a future event to a class of persons described in terms of their relationship to such party, the party to the proceeding.

(iii) To unborn or unascertained persons, none of such persons, but if it appears that there is no person in being or ascertained, having the same interest, the court shall appoint a guardian ad litem to represent or protect the persons who eventually may become entitled to the interest.

(b) Where a party to the proceeding has a power of appointment it shall not be necessary to serve the potential appointees and if it is a general power of appointment it shall not be necessary to serve the takers in default of the exercise thereof.

3. Representation of contingent interests.

Where an interest in the estate has been limited to a person who is a party to the proceeding and the same interest has been further limited upon the happening of a future event to any other person it shall not be necessary to serve such other person.

4. Representation in probate proceeding. In a proceeding for probate of a testamentary instrument the interests of the respective persons specified in subdivisions 2(a)(ii) and 3 of this section shall be deemed to be the same interest,

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

whether or not their respective interests are in income or in principal or in both, provided that they are beneficiaries of the same trust or fund, that they have a common interest in proving or disproving the instrument offered for probate and that the person who is a party under subdivision 2(a)(ii) or the person to whom the interest has been limited under subdivision 3 would not receive greater financial benefit if such instrument were denied probate (in the case where such beneficiaries have a common interest in proving such instrument) or admitted to probate, (in the case where such beneficiaries have a common interest in disproving such instrument).

5. Representation of persons under a disability. If the instrument expressly so provides, where a party to the proceeding has the same interest as a person under a disability, it shall not be necessary to serve the person under a disability.

6. The decree or order entered in any such proceeding shall be binding and conclusive on all persons upon whom service of process is not required.

7. In any proceeding in which service of process upon persons interested in the estate may be dispensed with pursuant to the provisions of this section or section twenty-two hundred ten, in addition to such other requirements as may be applicable to the petition in the particular proceeding, the petition shall (i) set forth in a form satisfactory to the court the information required by subdivision three of section three hundred four with respect to the persons interested in the estate upon whom service of process may be dispensed with, the nature of the interests of such persons and the basis upon which service of process may be dispensed with, and (ii) state whether the fiduciary or any other person has discretion to affect the present or future beneficial enjoyment of the estate and, if so, set forth the discretion possessed and, if exercised, the manner in which it has been exercised. Notwithstanding the foregoing provisions of this section and any provisions of the instrument to the contrary, if the court finds that the representation of a person's interest is or may be inadequate it may require that he be served. The basis for such finding shall be set forth specifically in the order.

8. Nonjudicial settlements of accounts of fiduciaries. Unless the instrument expressly provides otherwise, an instrument settling an account, executed by all the persons upon whom service of process would be required in a proceeding for the judicial settlement of the account, shall be binding and conclusive on all persons upon whom service of process would not be required to the same extent as that instrument binds the persons who executed it.

CREDIT(S)

(Added L.1967, c. 739, § 1; amended L.1973, c. 70, §§ 1, 2; L.1981, c. 178, § 1.)

Current through L.2009, chapters 1 to 14 and 16 to 87.

Copr © 2009 Thomson Reuters

END OF DOCUMENT

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.