

2015 Regular Session

HOUSE BILL NO. 439

BY REPRESENTATIVE NANCY LANDRY

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact R.S. 9:1783(B), 1821, 1822, 1891, 1894, 1904, 1905, 1953, 2026,
3 2028, 2031, 2087(B), 2096, and 2158 and to enact R.S. 9:2047 and 2114.1 and
4 Chapter 1-C of Code Title II of Code Book III of Title 9 of the Louisiana Revised
5 Statutes of 1950, to be comprised of R.S. 9:2263, relative to the Louisiana Trust
6 Code; to provide for who may be trustee; to provide for when testamentary trusts are
7 created; to provide for when inter vivos trusts are created; to provide for creation of
8 classes; to provide for representation; to provide for general rules for classes of
9 beneficiaries; to provide for interest in income for members of the same class; to
10 provide for assignment of interest in trusts and termination of trusts for mixed private
11 and charitable purposes; to provide for termination or modification to prevent
12 impairment of trust purposes and termination of small trusts; to provide for
13 concurrence of settlors in termination; to provide for delegation of the right to
14 amend; to provide for delegating trustee performance; to provide for co-trustees; to
15 provide for the power to adjust by a trustee; to provide for the revocation of inter
16 vivos trusts upon divorce; to provide for the allocation of different powers to
17 different trustees; to provide for trusts for the care of an animal; and to provide for
18 related matters.

19 Be it enacted by the Legislature of Louisiana:

20 Section 1. R.S. 9:1783(B), 1821, 1822, 1891, 1894, 1904, 1905, 1953, 2026, 2028,
21 2031, 2087(B), 2096, and 2158 are hereby amended and reenacted, and R.S. 9:2047 and
22 2114.1, and Chapter 1-C of Code Title II of Code Book III of Title 9 of the Louisiana
23 Revised Statutes of 1950, comprised of R.S. 9:2263, are hereby enacted to read as follows:

1 §1783. Who may be trustee

2 * * *

3 B. A nonprofit corporation or trust for educational, charitable, or religious
4 purposes that is designated as income or principal beneficiary may serve as trustee
5 of a trust for mixed private ~~or~~ and charitable purposes.

6 Comment - 2015

7 This revision clarifies the law. It provides that certain nonprofit corporations
8 or trusts may in some circumstances serve as trustees of mixed trusts, defined as a
9 trust for "private and charitable purposes." See R.S. 9:1951 (emphasis added). This
10 provision does not purport to specify who may be a trustee of a charitable trust. See
11 R.S. 9:2273.

12 * * *

13 §1821. When testamentary trust created

14 A testamentary trust is created at the moment of the settlor's death, ~~without~~
15 ~~awaiting the trustee's acceptance of the trust.~~

16 Comment - 2015

17 This revision clarifies the law. It makes clear that although a trustee's
18 acceptance is ultimately necessary, a testamentary trust is effective before the trustee
19 accepts, as his acceptance is retroactive to the date of the creation of the trust under
20 R.S. 9:1823.

21 §1822. When inter vivos trust created

22 An inter vivos trust is created upon execution of the trust instrument, ~~without~~
23 ~~regard to the trustee's acceptance.~~

24 Comment - 2015

25 This revision clarifies the law. It makes clear that although a trustee's
26 acceptance is ultimately necessary, an *inter vivos* trust is effective before the trustee
27 accepts, as his acceptance is retroactive to the date of the creation of the trust under
28 R.S. 9:1823.

29 * * *

30 §1891. Creation of class

31 A. Notwithstanding the provisions of R.S. 9:1803, R.S. 9:1831 through 1835,
32 and R.S. 9:1841 through 1847, but subject to the restrictions stated in this Subpart,
33 a person may create an inter vivos or testamentary trust in favor of a class consisting
34 of some or all of ~~his~~ the children, grandchildren, great grandchildren, nieces,
35 nephews, grandnieces, grandnephews, and great grandnieces and great grandnephews

1 (c) In light of the expansion of the potential members of a class trust to
 2 include certain members related to the current, former, or predeceased spouse of the
 3 settlor, the term "common ancestor" that existed in prior law has been eliminated.
 4 Under this revision, when the class consists solely of descendants of the same
 5 degree, such as a class of children or a class of grandchildren, the members of the
 6 class share by roots, irrespective of whether the members of the class are related to
 7 the settlor or the settlor's current, former, or predeceased spouse. When the class,
 8 however, includes other relatives as members, the division is made by heads.

9 (d) The power to modify a class trust under R.S. 9:2031 does not allow a
 10 person granted the power the authority to add relatives beyond those specified in
 11 Subsection A of this Section or beyond the scope of the class as defined by the trust
 12 instrument.

13 * * *

14 §1894. Representation

15 If a person dies before the creation of the trust, who would have been a
 16 member of the class if he had not died, his descendants shall be considered members
 17 of the class by representation unless the instrument otherwise provides. In all cases
 18 in which representation is permitted, the division is made by roots. If one root has
 19 produced several branches, the subdivision is also made by roots in each branch, and
 20 the members of the same branch take by heads.

21 Comment - 2015

22 This revision clarifies the operation of law of representation in the context
 23 of a class trust. It reproduces the provisions of Civil Code Article 885.

24 * * *

25 §1904. General rule

26 If the members of one class ~~of the settlor's children or grandchildren~~ are
 27 designated beneficiaries of income and members of a different class ~~of his children~~
 28 ~~or grandchildren~~ are designated as beneficiaries of principal, the class of
 29 beneficiaries of income shall be governed by R.S. 9:1899 through 9:1901 and the
 30 class of beneficiaries of principal shall be governed by R.S. 9:1902 and 9:1903.

31 Comment - 2015

32 This revision updates this Section on the closing of a class to make it
 33 consistent with the general rules on class trusts. See R.S. 9:1891.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 §1905. Interests in income

2 If members of the same class of ~~the settlor's children or grandchildren~~ are
 3 designated beneficiaries of both income and principal, interests in income before the
 4 class closes shall be governed by R.S. 9:1899 through 9:1901.

5 Comment - 2015

6 This revision updates this Section on the closing of a class to make it
 7 consistent with the general rules on class trusts. See R.S. 9:1891.

8 * * *

9 §1953. Assignment of interest in trust and termination of trust for mixed private and
 10 charitable purposes

11 A. ~~A~~ Unless the trust instrument provides otherwise or specifically contains
 12 a special needs provision, a private beneficiary of a trust for mixed private and
 13 charitable purposes, ~~including a spendthrift trust~~, may at any time ~~gratuitously~~ assign
 14 to a charitable principal beneficiary of the trust a fraction or all of ~~his~~ the private
 15 beneficiary's interest in the trust, ~~unless the trust instrument specifically contains a~~
 16 ~~special needs provision or provides otherwise.~~ An interest in a spendthrift trust may
 17 be assigned only gratuitously. An interest that is assignable only to a charitable
 18 principal beneficiary of the trust shall not be deemed to be subject to voluntary
 19 alienation for purposes of R.S. 9:2004.

20 B. If the trust instrument provides for the termination of the trust at the end
 21 of the specified term of the private interests, the trust may be terminated early by the
 22 charitable principal beneficiary as to the portion of the trust that, for any reason, no
 23 longer has a private beneficiary.

24 Comments - 2015

25 (a) This revision allows for practical planning opportunities and techniques,
 26 such as the exchange by a beneficiary of the beneficiary's interest in a charitable
 27 remainder trust for an annuity, which may be mutually advantageous to both the
 28 charity and the beneficiary. At the same time, however, this Section ensures that a
 29 beneficiary of a spendthrift trust is not allowed to onerously transfer his interest and
 30 thereby defeat the settlor's intent in establishing the trust.

31 (b) Although the term "special needs provision" is not statutorily defined in
 32 the Louisiana Trust Code, it is intended to refer to those provisions in trusts designed
 33 to preserve the availability of means-tested governmental benefits for certain
 34 beneficiaries.

1 (c) For the process by which a trust is terminated, see R.S. 9:2051.

2 * * *

3 ~~§2026. Change of circumstances~~ Termination or modification to prevent impairment
4 of trust purposes; termination of small trust

5 A. The proper court may order the termination or modification of a trust, in
6 whole or in part, if:

7 ~~(1) The~~ the continuance of the trust unchanged would defeat or substantially
8 impair the purposes of the trust. In the event of termination of a trust under this
9 Subsection, the proper court shall provide for the distribution of the trust property,
10 including principal and undistributed income, to the beneficiaries in a manner that
11 conforms as nearly as possible to the intention of the settlor.

12 ~~(2)B.~~ B. Except as otherwise provided by the terms of the trust, a trustee has
13 ~~determined that~~ may terminate a trust after obtaining the consent of all beneficiaries
14 or their legal representatives if the market value of a trust is less than one hundred
15 thousand dollars and that, in relation to the costs of administration of the trust, the
16 continuance of the trust unchanged would defeat or substantially impair the purposes
17 of the trust. In such a case, the court may provide for the distribution of the trust
18 property, including principal and undistributed income, to the beneficiaries in a
19 manner which conforms as nearly as possible to the intention of the settlor and the
20 court shall make appropriate provisions for the appointment of a tutor in the case of
21 a minor beneficiary. A natural tutor, without need for a formal tutorship proceeding
22 and concurrence of an undertutor, may consent to the termination of a trust on behalf
23 of a minor.

24 C. In the event of the termination or modification of a trust under ~~the~~
25 ~~provisions of this Paragraph~~ Section, the trustee shall not be subject to liability for
26 such termination or modification.

27 Comments - 2015

28 (a) This revision changes the law in part. Prior law allowed for a court to
29 terminate or modify a trust if continuance of the trust unchanged would defeat or
30 substantially impair the purposes of the trust. This revision continues to allow for
31 court-ordered termination or modification in cases in which continuance of the trust
32 unaltered would defeat or substantially impair the purpose of the trust. When such

1 modification or termination occurs, the court shall order distribution of the trust
2 property to the beneficiaries in the way that would conform as closely as possible to
3 the intent of the settlor.

4 (b) Prior law also allowed for court termination or modification of certain
5 small trusts in circumstances where, because of the costs of administration of the
6 trust in relation to its value, continuance of the trust unchanged would defeat or
7 substantially impair the purposes of the trust. This revision now allows for
8 termination by a trustee without approval of the court of small or uneconomical
9 trusts, deemed to be those trusts worth less than one hundred thousand dollars.
10 Unlike prior law, a finding that the cost of administration of the trust would defeat
11 or substantially impair its purposes is no longer necessary. This revision does,
12 however, require a trustee who terminates a trust to obtain in advance the consent of
13 all the affected beneficiaries or their legal representatives. Legal representatives
14 include, but are not limited to, mandataries, curators, and tutors. In an effort to
15 simplify consent to termination, natural tutors may consent without the need for
16 formal proceedings. See, e.g., C.C.P. Art. 3396.9.

17 (c) In all instances, when termination or modification occurs under this
18 Section, the trustee is exonerated from liability for such termination or modification.

19 * * *

20 §2028. Concurrence of settlors in termination

21 Except as otherwise provided by law or the trust instrument, ~~The~~ the consent
22 of all settlors, trustees, and beneficiaries shall not be effective to terminate the trust
23 or any disposition in trust, ~~unless the trust instrument provides otherwise.~~

24 Comment - 2015

25 This revision signals and highlights the change in R.S. 9:2026 by recognizing
26 that in some limited instances the trustee is allowed, with the consent of the
27 beneficiaries, to terminate a trust.

28 * * *

29 §2031. Delegation of right to ~~amend~~ modify

30 A. A trust instrument may authorize a person ~~other than the settlor~~ who is in
31 being on the date of the creation of the trust to modify the provisions of the trust
32 instrument in order to add or remove beneficiaries, or modify their rights, if all of the
33 affected beneficiaries are descendants of the person given the power to modify. A
34 beneficiary added pursuant to this Section may be a person who is not in being when
35 the trust is created, provided the individual is in being at the time the power to add
36 is exercised.

37 B. As to a class trust, a trust instrument may authorize a person who is in
38 being on the date of the creation of the trust, or a person who is not yet in being but

1 (b) This provision operates to revoke automatically upon divorce all
 2 revocable provisions "designating or appointing the settlor's former spouse." This
 3 provision is deliberately broad so as to include not only beneficiary designations but
 4 also fiduciary appointments, limited powers of appointment, and other similar
 5 designations. This Section recognizes that in most instances a settlor would not want
 6 to maintain the designation or appointment of a former spouse. The trust instrument,
 7 a court judgment, or the parties in a property settlement agreement may provide to
 8 the contrary. Automatic revocation under this Section is applicable only to
 9 designations or appointments of a former spouse. It is not applicable to designations
 10 or appointments of relatives of the former spouse, whose status under the trust the
 11 settlor may wish to maintain. But see Unif. Prob. Code §2-804.

12 (c) This provision is not intended to conflict with trusts governed by federal
 13 law and must, in appropriate cases, yield when preempted. Under the Employee
 14 Retirement Income Security Act (ERISA), "any and all State laws insofar as they
 15 may now or hereafter relate to any employee benefit plan" are preempted by ERISA.
 16 29 U.S.C. §1144(a). See also Hillman v. Maretta, 133 S.Ct. 1943 (2013)
 17 (recognizing the preempted effect of the Federal Employees' Group Life Insurance
 18 Act of 1954 on a Virginia statute that not only revoked beneficiary status for former
 19 spouses in contracts for death benefits but also gave a cause of action against the
 20 former spouse to the party who would have received death benefits, had federal law
 21 not pre-empted).

22 (d) As a matter of law, a trustee is insulated from liability under this Section
 23 provided the trustee acts in good faith and does not know of the settlor's divorce or
 24 of a judgment or property settlement agreement requiring the trustee to maintain a
 25 designation or appointment of the settlor's former spouse.

26 (e) Remarriage of the settlor to the divorced spouse does not serve to revive
 27 the designations and appointments of the spouse. But see Unif. Prob. Code
 28 §2-804(e).

29 (f) Under this provision, designations or appointments of a former spouse are
 30 revoked upon the date of the divorce judgment.

31 * * *

32 §2087. Delegating performance

33 * * *

34 B.(1) A trustee may, by power of attorney, delegate the performance of
 35 ~~ministerial duties and~~ acts that he could not reasonably be required to perform
 36 personally and the performance of ministerial duties.

37 (2) A ~~written~~ power of attorney ~~in authentic form, executed~~ granted by a
 38 trustee authorizing a mandatary to ~~sell~~ alienate, acquire, lease, or encumber
 39 specifically described ~~immovable~~ property ~~at a~~ on specific price terms, shall be
 40 considered the delegation of the performance of a ministerial duty as provided by
 41 Paragraph (1) of this Subsection. The recitation by the trustee in a power of attorney
 42 that he has approved the specific terms of the transaction shall be sufficient to

1 demonstrate that the trustee has delegated to the mandatary the performance of a
2 ministerial duty.

3 * * *

4 Comments - 2015

5 (a) This revision clarifies the law. It establishes that the trustee's authority
6 to delegate by mandate is not limited solely to "ministerial duties" but includes both
7 "ministerial duties" and also other "acts that he could not reasonably be required to
8 perform," which might include discretionary as well as ministerial duties. Prior to
9 the 2010 amendment, Louisiana jurisprudence on this issue was clear. See, e.g., City
10 of New Orleans v. Cheramie, 509 So. 2d 58 (La. Ct. App. 1st Cir. 1987) (allowing
11 City of New Orleans, as trustee, to delegate to agents the ability to negotiate and
12 lease land held in trust).

13 (b) This revision also makes clear that the acquisition, alienation, lease, or
14 encumbrance of property may be an allowable delegation of a ministerial duty when
15 the discretionary functions of the agent have been removed, such as when a trustee
16 delegates the authority to an agent to consummate a transaction on specific terms.
17 See, e.g., Peter Title, 1 La. Prac. Real Est. §6:44 (2d ed. 2013). When discretionary
18 considerations are involved, a trustee should not delegate authority unless it is to
19 perform an act that he could not reasonably be required to perform personally.

20 (c) The types of actions provided in Paragraph (B)(2) of this Section are an
21 illustrative list of delegable acts and not intended to be exhaustive or comprehensive
22 catalogue.

23 * * *

24 §2096. Co-trustees

25 If ~~there are~~ two or more trustees have the same powers, each shall participate
26 in the administration of the trust and use reasonable care to prevent a co-trustee from
27 committing a breach of trust and shall compel him to redress a breach of trust.

28 Comment - 2015

29 Under this revision, multiple trustees have liabilities and duties with regard
30 to the actions or inactions of their co-trustees, only if the trustees have been granted
31 the same powers. Trustees granted different powers have no such liabilities and
32 duties with respect to each other and are governed by R.S. 9:2114.1.

33 * * *

34 §2114.1. Allocation of different powers to different trustees

35 A trust instrument may confer different powers upon different trustees, in
36 which case each trustee acts independently with respect to those powers conferred
37 upon him. As to powers not conferred upon him, he shall have no duties or liabilities
38 as to the actions or inactions of the other trustees.

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Comment - 2015

This provision is new. It changes the law insofar as it allows a trust instrument to confer different powers upon each of multiple trustees. For instance, a trust instrument may grant one trustee the power to invest and another trustee the power to make distributions. In such a case, each trustee has fiduciary duties to the beneficiaries for matters within his control but no duties or liabilities with respect to the actions or inactions of the other trustees, unless the trust instrument provides otherwise. When the same powers are conferred upon multiple trustees, the provisions of R.S. 9:2096, 2113, and 2114 govern.

* * *

§2158. Power to adjust

~~A. Subject to the limitations set forth in this Subpart,~~ A trustee may make an adjustment between principal and income when the interest of one or more beneficiaries is defined by reference to the "income" of a trust, and the trustee determines, after taking into account the allocations for the year under Subpart D of this Part, that the adjustment is necessary in order for the trustee to satisfy his duty to be fair and reasonable to all the beneficiaries, taking into account the purposes of the trust.

B. When income is distributed during the year, the income can be determined based on the adjustment to be made for the year. The adjustment to be made for the year can be determined in a way that causes the total amount distributed to the income beneficiary during the year to be equal to a percentage of the value of the trust property at the end of the prior year or at the end of an average of up to three prior years.

C. The authority to make an adjustment under this Section is subject to the limitations set forth hereafter in this Subpart.

Comment - 2015

This revision clarifies the law insofar as it establishes that an income-only trust may operate in a manner similar to a unitrust.

* * *

CHAPTER 1-C. TRUST FOR THE CARE AND BENEFIT OF AN ANIMAL

§2263. Trust for the care of an animal

A. A trust may be created to provide for the care of one or more animals that are in being and ascertainable on the date of the creation of the trust.

1 (b) This Section provides a simple and alternative way for an individual to
2 provide for the care of an animal. To that extent, this Section creates a unique
3 exception to a foundational principle of Louisiana law and allows an animal to serve
4 as the beneficiary of a trust, through a mechanism sometimes referred to as a
5 "statutory pet trust." It thus constitutes an exception to the ordinary requirement that
6 a beneficiary be a natural or juridical person. See, e.g., R.S. 9:1801. Individuals
7 may still provide for animals by using a traditional trust wherein a settlor can make
8 a gift of an animal to an individual who is designated as an income beneficiary in a
9 trust instrument. The trust instrument may then provide that the trustee will
10 distribute income to the beneficiary as is necessary, provided that the beneficiary
11 exercises care for the animal. Moreover, an individual may also provide for an
12 animal by making a donation to an individual with an accompanying charge that the
13 donee care for an animal.

14 (c) Under this Section, only animals that are "in being" are allowable
15 beneficiaries of an animal trust. The general requirements of the Louisiana Trust
16 Code that the beneficiary be sufficiently designated and that the beneficiary be "in
17 being and ascertainable" on the date of the creation of the trust apply. See R.S.
18 9:1801 and 1803. An unborn animal is deemed to be "in being and ascertainable"
19 if it is born alive. See R.S. 9:1803.

20 (d) This Section contemplates the existence of a tetrapartite, rather than
21 tripartite relationship, under which there exists a settlor, trustee, caregiver, and
22 beneficiary. Under this Section, the settlor maintains the traditional role and
23 function under the Louisiana Trust Code, R.S. 9:1761 through 1764. The animal
24 serves as the beneficiary. The trustee's role is to exercise his duties with respect to
25 the money or other trust property used for the care of the animal. The caregiver is
26 the party responsible for the care and custody of the animal.

27 (e) Under a traditional trust, the beneficiary has the ability to enforce the
28 trust and compel the trustee to perform his duties. In the context of a trust for the
29 benefit of an animal, no human beneficiary exists. Consequently, this Section allows
30 for the appointment of an individual in the trust to enforce the trust and to ensure that
31 the trustee is appropriately discharging his duties. In the absence of the designation
32 of a person to enforce the trust or if the person designated is absent, deceased, or
33 refuses to serve, the trust provisions may be enforced by the caregiver or the settlor,
34 if living, or the settlor's successors.

35 (f) Under this Section, a court has authority to terminate the trust in part if
36 the trust property "substantially exceeds" the amount required to care for each animal
37 and for reasonable compensation and expenses of the trustee and the caregiver. This
38 provision is modeled on Section 2-907(c)(6) of the Uniform Probate Code rather than
39 Section 408(3) of the Uniform Trust Code. The standard of care that the animal had
40 received prior to the creation of the trust should be considered by a court in
41 ascertaining whether the trust property "substantially exceeds" what is necessary.

42 (g) A trust may be created for one or multiple animals. Under this Section,
43 the trust terminates upon the death of the last surviving animal. Thus, this Section
44 creates specific exception to the general provisions of the Louisiana Trust Code
45 specifying a maximum term for a trust. See, e.g., R.S. 9:1831, 1832, and 1833.

46 (h) Upon partial or complete termination of a trust, the trust property is
47 distributed to the person named in the trust, who may be a natural or juridical person
48 or the trustee of another trust. If the trust does not provide for a recipient upon
49 partial or complete termination, the trust property shall be distributed to the settlor,
50 if living, or to the settlor's successors.

51 (i) As with the creation of any trust, no particular language need be used to
52 create an animal trust, provided the intent to do so is clear. See R.S. 9:1753. Thus,
53 a statement in a will as simple as, "I leave \$10,000 for the care of my dog" or "I

1 leave \$10,000 to my dog" should be sufficient to establish an animal trust under this
2 Section.

3 (j) Despite the stand-alone nature of this Section, resort to the background
4 rules of the Louisiana Trust Code is necessary in some instances. Thus, the attempt
5 to provide for every possible contingency under this Section has been avoided and,
6 under the last provision of this Section, reference is made to the rules of the
7 Louisiana Trust Code, mutatis mutandis, when relevant.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____