

California Directed Trust Statutes Re Directed Trustee Liability

Black not bold = generally and introduction

Green bold = generally directed trusts

Black bold = directed trustee

Red bold = trustee director

Blue bold = applicable to both trustee director and directed trustee

Orange bold (1) = other – applicable but strangely worded

SEC. 3. Chapter 6 (commencing with Section 16600) is added to Part 4 of Division 9 of the Probate Code, to read:

CHAPTER 6. California Uniform Directed Trust Act

Probate Code §16600. (a) This chapter shall be known, and may be cited, as the California Uniform Directed Trust Act.

(b) The Legislature finds and declares all of the following:

(4) A directed trustee is required to take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction.

(5) Except for willful misconduct, a directed trustee is liable only for its own breach of trust in executing a direction and not for the trust director's breach of trust in exercising or not exercising the power of direction.

Probate Code §16602. For purposes of this chapter, the following definitions shall apply:

(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 other matters of trust administration. The term excludes the powers described in subdivision (a) of Section 16606.

(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:

(1) 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.

(2) 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, or other binding modification, including, but not limited to, under Section 15404.

Probate Code §16614. (a) Subject to subdivision (b), a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under subdivision (b) of Section 16608, and the trustee is not liable for the action.

(b) A directed trustee shall not comply with a trust director's exercise or nonexercise of a power of direction or further power under subdivision (b) of Section 16608 to the extent that, by complying, the trustee would engage in willful misconduct.

(c) 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 is true:

(1) The breach involved the trustee's or other trust director's willful misconduct.

(2) The release was induced by improper conduct of the trustee or other trust director in procuring the release.

(3) At the time of the release, the trust director did not know the material facts relating to the breach.

(d) A directed trustee that has reasonable doubt about their duty under this section may petition the court for instructions.

(e) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section.

Probate Code §16616. (a) Subject to Section 16618, a trustee shall provide information to a trust director to the extent the information is reasonably related both to the powers or duties of the trustee and the powers or duties of the trust director.

(b) Subject to Section 16618, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to the powers or duties of the trust director and the powers or duties of the trustee or other trust director.

(c) 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.

Probate Code §16618. (a) (1) Unless the terms of a trust provide otherwise, a trustee does not have a duty to do either of the following:

(A) Monitor a trust director.

(B) Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the trust director.

(2) By taking an action described in paragraph (1), a trustee does not assume the duty excluded by paragraph (1).

Probate Code §16620. The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that, in a directed trust, a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under Sections 16614, 16616, and 16618.

Probate Code §16630. In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

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CHAPTER 6. California Uniform Directed Trust Act

Probate Code §16602. For purposes of this chapter, the following definitions shall apply:

(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.

(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 other matters of trust administration. The term excludes the powers described in subdivision (a) of Section 16606.

(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:

(1) 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.

(2) 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, or 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.

Probate Code §16608. (a) Subject to Section 16610, the terms of a trust may grant a power of direction to a trust director.

(b) 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 pursuant to subdivision (a).

(c) Unless the terms of a trust provide otherwise, trust directors with joint powers shall act by majority decision.

Probate Code §16612. (a) Subject to subdivision (b), with respect to a power of direction or further power under subdivision (b) of Section 16608, both of the following apply:

(1) A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the 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.

(2) 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.

(b) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than this chapter to provide health care in the ordinary course of the trust director's business or practice of a profession, to the extent the trust director acts in that capacity, the trust director has no duty or liability under this chapter.

(c) 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.

Probate Code §16614.

(c) 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 is true:

(1) The breach involved the trustee's or other trust director's willful misconduct.

(2) The release was induced by improper conduct of the trustee or other trust director in procuring the release.

(3) At the time of the release, the trust director did not know the material facts relating to the breach.

Probate Code §16616. (a) Subject to Section 16618, a trustee shall provide information to a trust director to the extent the information is reasonably related both to the powers or duties of the trustee and the powers or duties of the trust director.

(b) Subject to Section 16618, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to the powers or duties of the trust director and the powers or duties of the trustee or other trust director.

(d) 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.

Probate Code §16618.

(b) (1) Unless the terms of a trust provide otherwise, a trust director does not have a duty to do either of the following:

(A) Monitor a trustee or another trust director.

(B) Inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the trust director might have acted differently than a trustee or another trust director.

(2) By taking an action described in paragraph (1), a trust director does not assume the duty excluded by paragraph (1).

Probate Code §16620. The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that, in a directed trust, a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under Sections 16614, 16616, and 16618.

Probate Code §16624. In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

Probate Code §16630. In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.