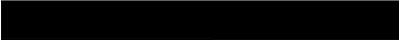


Instructions

1. Read the latest version of legislation drafted by your neighbors and colleagues.
 2. Click the **Edit** button in the top right corner of the screen to make any changes or additions you'd like to propose.
 3. Click **Save** when you are done.
-  **Help** link in the top-right corner of any page to learn more about how to use wikispaces.
 -  **discussion forum** by clicking on the **speech-bubble** button in the top-right corner.

NOTICE: The last day to submit draft legislation on this wiki is March 7, 2014

Enter your text below:

PROBATE CODE SECTION 1003

(a) The court may, on its own motion or on request of a personal representative, guardian, conservator, trustee, or other interested person, appoint a guardian ad litem at any stage of a proceeding under this code to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate:

- (1) A minor.
- (2) An incapacitated person.
- (3) An unborn person.
- (4) An unascertained person.
- (5) A person whose identity or address is unknown.
- (6) A designated class of persons who are not ascertained or are not in being.
- (7) A nonhuman animal who is either an estate asset or part of a trust res.

(The status of animals is inherently more than property as evidenced by animals being able to be beneficiaries of trusts pursuant to legislation. It makes sense, therefore, that when needed, a guardian ad litem could be appointed for them.)

?PROBATE CODE SECTION 21350-21356 ?

21350. (a) Except as provided in Section 21351, no provision, or provisions, of any instrument shall be

valid to make any donative transfer to any of the following:

(1) The person who drafted the instrument.

(2) Example additional clause here. By the same reasoning, no beneficiary of a will can be an executor of that will. THAT IS CRAZY. A TESTATOR'S CHILD(REN) ARE FREQUENTLY BOTH EXECUTOR(S) AND BENEFICIARY(IES).

(2) (3) A person related by blood or marriage to, is a domestic partner of, is a cohabitant with, or is an employee of, the person who drafted the instrument.

(3) (4) Any partner or shareholder of any...

PROBATE CODE SECTION 16060-16069

16069. The trustee is not required to account to the beneficiary, provide the terms of the trust to a beneficiary, or provide requested information to the beneficiary pursuant to Section 16061, in any of the following circumstances:

(a) ~~In the case of a beneficiary of a revocable trust, as provided in Section 15800, for the period when the trust may be revoked.~~

(b) (a) If the beneficiary and the trustee are the same person.

Probate Code § 15403. Modification or termination of irrevocable trust by all beneficiaries

(a) Except as provided in subdivision (b), if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust upon petition to the court.

(b) If the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust. Under this section the court does not have discretion to permit termination of a trust that is subject to a valid restraint on transfer of the beneficiary's interest as provided in Chapter 2 (commencing with [Section 15300](#)).

(c) This section does not apply to charitable trusts.

Version Notes:

The above section is for the actual legislative drafting. The above section uses ~~strikethrough~~ and **insertion formatting** for ease of review/edits. These format options are available in the Font menu option (the fourth option from the left, after the Bold, Italics and Underline menu options) of the Wiki menu when you are in "Edit" mode for this page (first [\[\[#|sign up\]\]](#) for an account at wikispaces.com so you can edit).

Commentary on Draft:

As the victim of an estate scam that left my father's estate managed by a woman who was married to him

for two years, I am particularly interested in the sections of the probate code that deal with trusts. Here is a good link to get [started](#). There is a lot to know about trusts, and in particular the rights of trust beneficiaries.

What can the Court do if the trustee is not doing his or her job?

The Court can remove a trustee and make the trustee pay the beneficiaries for any loss to the trust. Sometimes the Court will remove the trustee or suspend the trustee's powers while the case is pending if there is reason to believe the beneficiaries' interests are at risk.

Some trust documents say the trustee will be liable only for willful misconduct or gross negligence. However, California law is more strict, and the Court can remove a trustee for any of the following reasons:

- Breach of trust;
- Trustee has more `[[#debts]]` than assets or is otherwise unfit to act as trustee;
- The trust cannot be administered because of hostility or lack of cooperation between co-trustees;
- The trustee does not want to be the trustee;
- The trustee's payment is excessive;
- The law says some people must be disqualified from serving as a sole trustee. The people who cannot serve as a sole trustee are listed in Probate Code [Section 21350](#).

The beneficiary has three years from the date of receiving the trustee's report to ask the Court to remove the trustee for any causes for removal that might be revealed by the report.

For more information, see Probate Code [Section 17200](#).

As I understand it, these important considerations do not apply to living trusts. I would like to see the probate laws around living trusts tightened up. However, I am not an attorney, so will need some experienced guidance to help navigate through this complex issue. I also understand that trust beneficiaries of a living trust are not entitled to a copy of the trust or to an accounting of the trust assets. This seems like a serious gap in our probate laws given the sad reality of divorce and 2nd (and 3rd!) marriages. Some marriages only last a year or two before the death of a loved one, leaving a virtual stranger in charge of the family assets if the trust is written in a clumsy way.

More [here](#). This Storify story provides a [succinct overview](#). There have been countless lawsuits and unnecessary estate battles due to the current law which give no rights to trust beneficiaries. This makes living trusts a favorite mechanism for shady deals. In general, giving too many rights to the trustee, and

no rights to the beneficiaries is asking for trouble. [Living trust scams and mills](#) are a big problem in California.

Other Potential Legal Reform Topics

What if any reform to probate and trust law is needed to address digital assets?

States are beginning to amend trust and estates statutes to resolve the confusion and anomalous results arising from the transition to digital assets. It is ever more common for people to conduct business and transactions and other important affairs via apps and website over a wide array of digital services and systems.

I think the most important page to link while working on this would be [Uniform Law Commission Committee on Fiduciary Access to Digital Assets](#). California has enacted a number of uniform laws proposed by the ULC, and I believe their work to be important. We may want to work on criticisms or improvements to their model act, but uniform laws have such advantages that we should keep in mind that the best solution to this problem might be to wait to see the final model act and recommend its adoption by the California legislature.

[DigitalEstateResource/](#) (which is somewhat dated now but still informative I hope) is a public information web site about the general topic of digital estates and trusts. The site highlights some of the [statutory reforms in other states](#) and highlight the work to be done by legislative, executive and judicial branches at the federal, state and local levels to ease this very emotionally sensitive and monetarily high value aspect of our nations transition to a digital economy.

Meet the Wiki Participants:

Name	Role	Focus area	Introductory note to the community
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Assemblyman Mike Gatto Convener

- [A](#)
- Legislative Site: www.asm.ca.gov/gatto I am Chairman of the Appropriations Committee in the California State Assembly. I represent Burbank, Glendale, La Cañada Flintridge, La Crescenta, Montrose, and the Los Angeles neighborhoods of Atwater Village, East Hollywood, Franklin Hills, Hollywood Hills, Los Feliz, and Silver Lake.

Dazza Greenwood Participant

- **Technology Law & Policy, MIT Media Lab**
 - Personal Blog: CIVICS.com
- Assemblyman Mike Gatto, I thank you for the opportunity to participate in the process of drafting the United States' First Ever "Wiki Bill" and look forward to contributing. To my fellow Wiki eCitizens: I look forward to meeting and working with you and discussing your ideas. We have an opportunity with this method and mechanism to really develop the issues and co-create a bill that is better than any of us could draft alone. Let's experiment with and hone how to collaboratively craft the best legislation we are collectively capable of achieving.
- I am retired from the law now and practices in Massachusetts, not California. This forum is of interest to me because

1) I was born in California and live in that great state on and off (most recently until 2009) and will be back home again eventually, and 2) a key area of my professional focus is online civic engagement and technology enabled policy.

CrazyLiz

Participant

I'm another retired lawyer, from California, and I'm also interested in citizen democracy, so I want to participate in this experiment. I've participated in the past in an experiment with rule-making by wiki, which didn't work out so well, but one unsuccessful attempt doesn't mean the idea can't work. It just means there's more to learn.

Since I originally set up my Wikispaces account several years ago for a project where I wanted to be anonymous, I'll continue to use the CrazyLiz screen name for now, but if it ever becomes important to disclose true identities (which I think is important in many areas touching on governance of all kinds) I can figure out a way to disclose my real name later.

Tim Bonnemann

Observer

• Digital

I'm the founder and CEO

engagement (technof Intellitics, Inc., a ology-enabled digital engagement startup collaborative digital engagement based in San José, CA. governance and We help organizations in public the public, private and participation) non-profit sector apply technology to drive collaborative governance.

- Company blog: <http://intellitics.com/blog/>

I will be following this effort as an observer. For previous coverage of wiki-enabled policy making, see our [blog](#).

Megan Eskey

Participant

- Open Government I am an expert in Open Government. I maintain a
- Living trust reform blog at
- Legislative reform <http://dad-memorial.blogspot.com/> with an international following. I am interested in seeing efforts like this extended to federal legislation as well. I live in San Jose, California. My interest is personal, as my father's estate has been rolled into a living trust where the trustee has refused to provide copies, an accounting, or any income to the beneficiaries who include my two younger sisters.

William J. Kelleher,
Ph.D.

Participant

Digital Democratization of Government; in particular, online voting for all elective offices in CA

Political scientist; author of Internet Voting Now. Blog: <http://tinyurl.com/IV4All> Twitter: wjkno1.

Allowing beneficiaries of a will to be its executor, as in Illinois and other states, invites abuse, and should be stopped.

Peggi Collins, Esq Participant

Practicing attorney in probate, wills, estates and estate administration. Interested in citizen democracy

Read more:

[Glendale News-Press](#)

[Silver Lake Star](#)

[LA Weekly](#)

[Los Angeles Times](#)

[Southern California Public Radio](#)

[The Daily Dot](#)

[AlJazeera America](#)

[Storify](#)

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[Crowdsourcing.org](#)

[Solutions for State and Local Government Technology](#)

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