

Sixty-first  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO.

Introduced by

Representative Klemin

1 A BILL for an Act to create and enact a new subsection to section 59-09-03 of the North Dakota  
2 Century Code, relating to definition of irrevocable; and amend and reenact section 59-16-13 of  
3 the North Dakota Century Code, relating to the duty of a trustee to inform beneficiaries and the  
4 settlor.

### 5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new subsection to section 59-09-03 of the North Dakota Century Code  
7 is created and enacted as follows:

8 "Irrevocable", means when in reference to a trust, a trust that is not revocable,  
9 including a formerly revocable trust that has become irrevocable, whether by the  
10 death of a settlor or otherwise.

11 **SECTION 2. AMENDMENT.** Section 59-16-13 of the North Dakota Century Code is  
12 amended and reenacted as follows:

#### 13 **59-16-13. (813) Duty to inform and report.**

14 1. A trustee shall keep the qualified beneficiaries of the trust reasonably informed  
15 about the administration of the trust and of the material facts necessary for them to  
16 protect their interests. Unless unreasonable under the circumstances, a trustee  
17 shall promptly respond to a beneficiary's request for information related to the  
18 administration of the trust.

19 1. Subject to 59-14-03, while a trust is revocable or to the extent that trust property in  
20 a irrevocable trust is subject to a power of withdrawal, the duty of the trustee to  
21 inform and report are owned exclusively:

22 a. To the settlor, while a trust is revocable; and,

23 b. To the holder of the power of withdrawal to the extent the trust property is  
24 subject to the power during the period in which the power may be executed.

- 1           2. With respect to trust property in an irrevocable trust which is not subject to a power  
2           of withdrawal:
- 3           ~~2.~~ b. A trustee upon written request shall promptly furnish a copy of the trust  
4           instrument:
- 5           a. ~~To~~ to a qualified beneficiary ~~of a revocable trust; and~~  
6           b. ~~To a beneficiary of a trust that is not revocable.~~
- 7           ~~3.~~ c. A trustee within sixty days after accepting a trusteeship shall notify the  
8           qualified beneficiaries of the acceptance and of the trustee's name, address,  
9           and telephone number.
- 10          ~~4.~~ ~~A trustee within sixty days after the date the trustee acquires knowledge of the~~  
11          ~~creation of an irrevocable trust, or the date the trustee acquires knowledge that a~~  
12          ~~formerly revocable trust has become irrevocable, whether by the death of the~~  
13          ~~settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence,~~  
14          ~~of the identity of the settlor or settlors, of the right to request a copy of the trust~~  
15          ~~instrument, and of the right to a trustee's report as provided in subsection 6.~~
- 16          d. A trustee shall notify the qualified beneficiaries of the trust existence, of the  
17          identity of the settlor, of the right to request a copy of the trust instrument, and  
18          of the right of the trustee's report as provided in subdivision f within sixty days  
19          after the date the trustee acquires knowledge:
- 20                (1) Of the creation of an irrevocable trust; or,  
21                (2) That a formerly revocable trust has become irrevocable.
- 22          ~~5.~~ e. A trustee shall notify the qualified beneficiaries in advance of any change in  
23          the method or rate of the trustee's compensation.
- 24          ~~6.~~ f. A trustee shall send to the ~~distributes~~ distributees or permissible ~~distributes~~  
25          distributees of trust income or principal, and to other qualified or nonqualified  
26          beneficiaries who request it, at least annually and at the termination of the  
27          trust, a report of the trust property, liabilities, receipts, and disbursements,  
28          including the source and amount of the trustee's compensation, a listing of the  
29          trust assets and, if feasible, their respective market values. Upon a vacancy  
30          in a trusteeship, unless a cotrustee remains in office, a report must be sent to  
31          the qualified beneficiaries by the former trustee. A personal representative,

conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

~~7.~~ g. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

~~8. The duties of a trustee specified in this section are not subject to section 59-14-03.~~

~~9.~~ h. ~~Subsections 3 subdivisions c and 4 d~~ do not apply to a trustee that accepts a trusteeship before August 1, 2007, to an irrevocable trust created before August 1, 2007, or to a revocable trust that becomes irrevocable before August 1, 2007.

a. Trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interest. Unless unreasonable under the circumstances, a trust shall promptly respond to a beneficiary's request for information related to the administration of the trust.

b. A trustee upon written request shall promptly furnish a copy of the portion of the trust instrument which relates to the interest of a qualified beneficiary.

c. A trustee within sixty days after accepting trusteeship shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address and telephone number.

g. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

h. Subdivisions c and d of this subsection do not apply to a trustee that accepts a trusteeship before August 1, 2007, to an irrevocable trust created before August , 2007, or to a revocable trust that becomes irrevocable before August 1, 2007.