

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 the definition of irrevocable in reference to a trust; and to amend and
3 reenact section 59-16-13 of the North Dakota Century Code, relating to the duty of a trustee to
4 inform beneficiaries and the 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 if used 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. Subject to section 59-14-03, while a trust is revocable or to the extent that trust
15 property in a irrevocable trust is subject to a power of withdrawal, the duty of the
16 trustee to inform and report are owned exclusively:
- 17 a. To the settlor, while a trust is revocable; and
 - 18 b. To the holder of the power of withdrawal to the extent the trust property is
19 subject to the power during the period in which the power may be executed.
- 20 2. With respect to trust property in an irrevocable trust which is not subject to a power
21 of withdrawal:
- 22 a. A trustee shall keep the qualified beneficiaries of the trust reasonably
23 informed about the administration of the trust and of the material facts
24 necessary for them to protect their interests. Unless unreasonable under the

- 1 circumstances, a trustee shall promptly respond to a beneficiary's request for
2 information related to the administration of the trust.
- 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 or permissible distributes of trust income
25 or principal, and to other qualified or nonqualified beneficiaries who request it,
26 at least annually and at the termination of the trust, a report of the trust
27 property, liabilities, receipts, and disbursements, including the source and
28 amount of the trustee's compensation, a listing of the trust assets and, if
29 feasible, their respective market values. Upon a vacancy in a trusteeship,
30 unless a cotrustee remains in office, a report must be sent to the qualified
31 beneficiaries by the former trustee. A personal representative, conservator, or

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

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

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

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