

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1458
(Representative Klemin)
(Senator Hogue)

AN ACT to create and enact a new subsection to section 59-09-03 and a new section to chapter 59-18 of the North Dakota Century Code, relating to the definition of irrevocable in reference to a trust and a presumption against eligibility for assistance programs for certain transactions; and to amend and reenact sections 59-16-13 and 59-17-06 of the North Dakota Century Code, relating to the duty of a trustee to inform beneficiaries and the settlor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

1. Subject to section 59-14-03, while a trust is revocable or to the extent that trust property in a irrevocable trust is subject to a power of withdrawal, the duty of the trustee to inform and report are owed exclusively:
 - a. To the settlor, while a trust is revocable;
 - b. To the holder of the power of withdrawal to the extent the trust property is subject to the power during the period in which the power may be executed; and
 - c. To a qualified beneficiary when the qualified beneficiary is required by law or regulation to provide that information to determine eligibility for benefits or to verify continued eligibility for benefits under title 50.
2. With respect to trust property in an irrevocable trust which is not subject to a power of withdrawal:
 - a. 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 interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.
 2. b. A trustee upon written request shall promptly furnish to a qualified beneficiary a copy of the portion of the trust instrument:
 - a. ~~To which relates to the interest of a qualified beneficiary of a revocable trust; and~~
 - b. ~~To a beneficiary of a trust that is not revocable.~~

- ~~3. c.~~ A trustee within sixty days after accepting a trusteeship shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number.
4. ~~A trustee within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection 6.~~
- d. A trustee shall notify the qualified beneficiaries of the trust existence, of the identity of the settlor, of the right to request a copy of the trust instrument, and of the right of the trustee's report as provided in subdivision f within sixty days after the date the trustee acquires knowledge:
- (1) Of the creation of an irrevocable trust; or
- (2) That a formerly revocable trust has become irrevocable.
- ~~5. e.~~ A trustee shall notify the qualified beneficiaries ~~in advance~~ of any change in the method or rate of the trustee's compensation.
6. f. A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified ~~or nonqualified~~ beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to 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.

SECTION 3. AMENDMENT. Section 59-17-06 of the North Dakota Century Code is amended and reenacted as follows:

59-17-06. Language invoking standard. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted ~~under sections 59-16-02, 59-16-03, 59-16-05, 59-16-06, and 59-16-07 and under this chapter:~~ "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

SECTION 4. A new section to chapter 59-18 of the North Dakota Century Code is created and enacted as follows:

Presumption against trustee. A transaction between a trustee and the trust's beneficiary during the existence of the trust or while the influence acquired by the trustee remains by which the trustee obtains any advantage from the trust's beneficiary is presumed to be entered by the trust's beneficiary without sufficient consideration and under undue influence. This presumption is a rebuttable presumption.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1458.

House Vote: Yeas 88 Nays 0 Absent 6

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State