

HOUSE RESEARCH

Bill Summary

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Overview

Article 1 of the bill amends trust law to (i) provide for memorial funds, (ii) provide for acquisition of title by successor trustees, (iii) delete unnecessary language in a trust statute, (iv) provide for non-judicial settlement agreements among trust beneficiaries, (v) provide for virtual representation in trust proceedings, and (vi) provide for court removal of trustees in limited circumstances. Article 2 makes technical corrections to the 2003 guardianship act and Article 3 makes technical corrections to all Minnesota Statutes to cite the guardianship act passed in 2003.

Article 1

Trusts

- 1** **Memorial fund.** Creates a legal structure for the kinds of memorial funds typically set up by a community in response to a personal tragedy (e.g., deaths in a fire). Currently there is no law on how these are set up or administered. This section would have the trust governed by the Minnesota Uniform Custodial Trust Act, which would assure the money is used for the benefit of the intended individuals.
- 2** **Appointment and acquisition of title by successor trustees and confirmation of acts performed during vacancies in trusteeship.** Provides for court appointment of a successor trustee in a manner consistent with the terms of the trust. Presumes appointment of a corporate trustee if the trustee that is removed was a corporate trustee. This presumption can

Section

be overcome if it serves the best interests of the beneficiaries and does not go against the material purpose of the trust. Also clarifies vesting of title in successor trustee.

3 Application. Amends Minn. Stat. § 501B.14. This section concerning the exercise of powers by a trustee was enacted in 1993 to comply with IRS rulings on trust taxation. The amendment in the bill strikes one clause in the subdivision that provides circumstances in which the section does not apply.

4 Nonjudicial settlement agreements. Allows the trustee and all beneficiaries of a trust that is not under court supervision to enter a binding nonjudicial settlement agreement regarding (1) approval of a trustee's accounting, (2) resignation of a trustee, (3) determination of a trustee's compensation, transfer of the trust location, and (4) termination of a charitable trust with a fair market value under \$50,000 if the cost of administering the trust would defeat or substantially impair the trust purpose. Requires the trust property to be distributed to conform to the grantor's intention.

The agreement is valid if it does not violate a material purpose of the trust.

5 Representation; pleadings; when parties are bound by others; notice.

Subd. 1. Applicability. Applies to judicial proceedings on trusts and to nonjudicial settlement agreements.

Subd. 2. Description to give reasonable notice. Interests to be affected must be described in a way that gives owners reasonable information.

Subd. 3. Binding effect of orders and agreements. Specifies when orders bind the sole holder or all co-holders of a power of revocation or general power of appointment. Specifies that absent a conflict of interest, orders binding the conservator of property bind the conservatee; orders binding the guardian bind the ward, and orders binding the agent bind the principal.

Lets fiduciaries provide "virtual representation" of the following if they are not otherwise represented and there is no conflict of interest: unborn or unascertained persons, persons whose identity or location is unknown and cannot be reasonably determined after diligent search, a minor, or any other person under legal disability.

Subd. 4. Required notice. Specifies who must receive notice in order to be bound as provided by subdivision 3.

6 Petition for court order. The trustee or a person interested in the trust may petition the district court for an order regarding various activities of the trust. The amendment allows a trustee to be removed by the court if it is necessary for the successful administration of the trust. A trustee may be removed if the court finds that the trustee has committed a serious breach of trust, there is lack of cooperation among co-trustees that substantially impairs the administration of the trust, the trustee cannot administer the trust effectively, there has been a substantial change of circumstances, or removal is requested by all beneficiaries. A trustee cannot be removed if it would go against the best interests of the beneficiaries or affect a material purpose of the trust.

Article 2

Guardians and Conservators

- 1 **1 Facility of transfer.** Adjusts the amount of funds a guardian may possess for the ward's benefit. Provides that the guardian can hold for a ward the sum of \$5,000 or an amount determined by the court.
- 2 **Procedure; criminal history and maltreatment records background check.** Corrects a statutory citation that was changed in the 2003 session.
- 3 **Judicial appointment of guardian: preliminaries to hearing.** Amends the 2003 guardianship law to conform to the established procedure of discretion in appointing a court visitor with each guardian/conservator petition. The 2003 law mandated the appointment of the visitor. Clarifies that the reports required to be filed for a guardianship must also be filed with the court.
- 4 **Notice.** Clarifies that the reports required to be filed for a guardianship must also be filed with the court.
- 5 **Original petition; persons under disability; preliminaries to hearing.** Same as section 4 except applies to conservatorship.
- 6 **Original petition; procedure at hearing.** Technical.
- 7 **General powers and duties of conservator.** Technical.
- 8 **Appealable orders.** Lists what orders, judgments, and decrees may be appealed to the Court of Appeals. Updates terminology of the guardianship act in paragraph (a)(2), reflects a new Court of Appeals decision that all final orders are appealable from the probate court in paragraph (b), and inserts the non-appealable order provisions of the old statutes in paragraph (c) accidentally eliminated in 2003.

Article 3

Technical Corrections

- 1-47 Change citations and terminology in existing law to conform to the 2003 Minnesota Guardianship-Conservatorship statute.